

Prisons and Pandemic INACTION IS NOT AN OPTION





ADVOCACY BRIEF 1



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COVID-19 & Global Context

The ‘**coronavirus**’ or a ‘**disease**’ popularly known as ‘**COVID-19**’ has been declared as a ‘**Public Health Emergency of International Concern**’ by the World Health Organization (WHO).

As closed, restricted and often congested places, the prisons across the world are considered as ‘hotbeds of communicable diseases.’

Pakistan is known for its prison overcrowding which itself is a health hazard in the best of times. During a pandemic, it is a ticking time bomb. It is for these reasons that rights activists are describing prisons as a ‘petri dish’ for COVID-19 for self-evident reasons.

While this ‘**pandemic**’ keeps intensifying its outreach, countries around the world have already learnt useful lessons on how best to prevent further spread of the virus. Iran and India, which have large prison populations like Pakistan, are releasing thousands of inmates. The UK, which was one of the slowest to react, has placed correctional facilities in lockdown.

Many others are releasing prisoners, asking them to serve the remainder of their sentences at home. **Nations not acting fast enough have to contend with riots.**

Nearly two dozen people have died in Colombia’s prisons after inmates protested over inadequate safeguards amid mounting frustration and anger. Italy’s prisons are facing a similar predicament.

It is worth sharing how the world elsewhere continues to undertake action by sharpening the focus around the following key priority areas:

- Compiling as detailed data as possible by disaggregating prison population along:
 - health issues,
 - sentencing duration,
 - age,
 - gender,
 - nature of criminal offence, etc.

Readily available datasets along these lines can help prioritise immediate administrative action for effective control, prevention and safeguarding measures:

- Measured and proportionate policy towards establishing prisoners’ contact with friends, families, legal representatives;
- Adequate, risk-informed and well-thought-out measures for transporting Under-Trial Prisoners (UTPs) to courts for trial proceedings; and
- Other short to medium- and long-term policy, legal and operational steps (Please refer to recommendations at the end).

Pakistan: Situation Analysis

Pakistan has one of the largest prison populations in the world with its prison facilities operating at 134 per cent of their actual capacity. Prisons in Pakistan are overcrowded, accommodating 77,275 inmates including juveniles, women, senior citizens, and those who are health impaired instead of its lawful capacity of 57,742 which makes prisons as incubators for diseases.

Pakistan's prisons are considered as congested places with poor ventilation, communal toilets and towels, where water and soap are uncommon luxuries. Consequently, the transmission of Covid-19 will have devastating consequences for detainees, prison staff, visitors, and the general public alike.

- Of the 193 posts of medical officers in jails of Pakistan, 108 remain vacant. Lack of sufficient medical facilities and shortage of doctors further exacerbate these matters.
- Before COVID-10 struck, some 2,400 inmates were reported to be suffering from contagious diseases such as HIV and TB.
- Around 1,500 are above the age of 60. Their advanced age, coupled with limited disease prevention measures, makes their situation particularly dire.
- Juveniles, women, and the physically disabled are also among them.
- 2,100 have physical ailments and around 600 prisoners are diagnosed with mental illnesses.
- Nearly 30,000 people working in prisons across the country also run the risk of exposing their families to the virus.

Global Standards, International Law and Pakistan

The government of Pakistan is obligated under domestic and international law to protect the rights of prisoners during public health emergencies. Article 12 of the International Covenant on **'Economic, Social and Cultural Rights'** stipulates that states must; *"respect, protect and fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health including those who are imprisoned or detained"*.

United Nations Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment provides that under *"Principle 38: A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial."*

Nevertheless, the most important right, applicable here is that of life and its security. This too is declared by the **Universal Declaration of Human Rights** and provided for not only our Constitution but **International**

Covenant on Civil and Political Rights (ICCPR).

United Nations Standard Minimum Rules for the Treatment of Prisoners and current lack of health security due to the epidemic threatens prisoners' life, which calls for suspension of convictions and bails to UTPs, legally presumed innocent inmates.

Article 1 of the '**International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**' also discourages and protects punishment to suspected criminals.

Moreover, due to these rights enshrined in local laws and principles given by international law, contemporary Criminal Jurisprudence provides that **"Grant of bail is rule and refusal is an exception"**.

Prisons & Pandemic: The Balochistan Context

Eleven prisons of Balochistan are currently accommodating 2025 prisoners against total capacity of holding 2585 prisoners. Out of 2025, 1091 are UTPs. This makes Balochistan stands out as the only province not facing an acute problem of overall overcrowding but there are specific cases where the problem of overcrowding exists, posing a grave risk of disease outbreak. District Jail Quetta is currently housing 634 inmates against the available capacity of 472. Similarly, *Gaddani* Jail is overcrowded as there are 315 prisoners against the capacity of 223. Same goes for District Jail Dm *Jamali* that has a capacity of 120 but there are 131 prisoners locked up.

The nature of criminal cases vary as far as the profile of prisoners is concerned. There are only 25 women and 25 juvenile prisoners amongst 2025.

The Prison Department has prioritised the following types of prisoners as priority UTPs to be released as and when ordered by the relevant authorities:

- Prisoners/UTPs who are 60 and above age /if she/he has served "1/2" portion of their sentence with demonstrated capability of reform as per Pakistan Prison Rule (**Rule 146**).
- Convicts involved in minor offences.
- Prisoners/UTPs of mentally ill, disable prisoners after carrying out a standing medical board.
- Women (pregnant or having a minor with them) confined in prisons.

As per the official records, the province has initiated work on 'Probation & Parole policy'. The response of the Hon'ble High Court is also positive and all District and Sessions Judges, including Magistrates are directed to visit prisons regularly and release those prisoners not falling in prohibitory cases on personal surety bonds. At the time of 15-20 new admissions

in prisons, their cases fall in prohibitory clause. All newly registered upcoming criminals fall in heinous offences or arrested due to 70 releases on personal surety.

Authorities have also indicated that they are making sure that every newly admitted prisoner is quarantined in a designated segregated place. They have informed that leave to staff has been stopped and no subordinate is allowed to leave headquarters without the permission of the competent authority. While interviews inside the premises are not being allowed and the matter is also under consideration to stop all sorts of congregational prayers.

As per data shared by prison department, there are no confirmed cases of Covid-19 in the provincial jails so far and all prisons have declared one ward for isolation, however they are lacking required facilities.

Key Recommendations

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. In brief, a mix of policy, legal/judicial and other institutional measures can go a long way in addressing the challenge of potential outbreak of COVID-19 in Balochistan prisons.

Role of the Chief Minister's Office

As an elected head of the provincial government, the Chief Minister office may consider formulating a policy response taking into account the following considerations:

- Define 'principles of policy' whether to put all prisons on lockdown in order to suppress the virus or subject prison facilities to containment and risk mitigation strategies.
- Establish clarity for a stronger contingency plan in the eventuality of a possible corona outbreak in prisons.
- Define the scope of challenge in terms of inmates requiring support and their profiling based on credible data.
- Determine administrative needs and financial implications.
- Set clear short, medium to long-term goals of addressing overcrowding in relation to the proposed emergency measures.
- Grant Bail to UTPs (Rule vs Exception) specially including suspension of sentence of all those who are sentenced to punishment for 5 years or less.
- Government has wide powers under section 401 of CrPC to suspend or commute execution of sentence or remit the whole or any part of sentence of a prisoner with or without conditions.

- Set aside funds to support prisoners lacking ability for surety bonds and other financial needs to comply with financial penalties imposed on them.
- Link up with legal aid mechanism such as 'Bar Association Legal Aid Committees', 'District Legal Empowerment Committees', *Bait Ul Mal*, referral systems of non-government organisations (NGOs) active in the province and nationwide.
- Then there are other ways through which the prison population can be reduced. Provincial authorities have important role to play making use of relevant rules, laws, etc. All those who's release date is nearby should be given remission as part of the policy to reduce overcrowding.
- Under article 45 of the constitution, the President of Pakistan has unlimited power to pardon/remit and to suspend or commute any sentence passed by any court, etc.
- Greater synergies with health authorities, development of containment strategies, and clear WHO guidelines provide for provision of adequate space between people, adequate air exchange, routine disinfection of the environment, as well as limiting contact of prisoners by distributing food in rooms/cells instead of a common canteen.

Role of the Home Department

- Notify a summary in line with 'policy response' issued by CM's office to be duly approved by the Cabinet for immediate executive action as part of broad-based and province-wide policy initiative.
- Formulate implementation and monitoring strategies, including specific responses (how and why) certain categories of prisoners should be released especially vulnerable ones amongst the UTPs.
- Establish a 'COVID-19 Crisis Unit' dedicated to prevent prisons from being overwhelmed with the challenge of COVID-19 outbreak. Mobilise team and appoint a focal person for overall coordination and information sharing. This includes daily press brief to update public on the nature, scope and status of policy and institutional response.

Prison Authorities

- Prepare a brief matrix (Plan of Action) including assigning responsibilities to the concerned staff against priority actions such as preparation of different lists of prisoners starting with most vulnerable, logistical requirements, transportation needs, medical supplies, etc.
- Conduct needs assessment in order to organise data so that priority prisoners can be identified including requirements for logistics and medical equipment (WHO Early 5).
- Assign and authorise concerned staff to immediately isolate prisoners already infected with diseases and subject them to timely testing and screening. Follow WHO guidelines and Government approved protocols, including use of equipment.
- Coordinate with judicial authorities to ensure newly arrested detainees are subjected to prior testing/to admission of new UTPs.

- Make plans to shift prisoners to less crowded prisons in other districts, including a criterion for onsite treatment or transfer to hospitals.
- Establish 'Isolation Units' for prisoners of concern. Adapt Standard Operating Procedures (SOPs) and train staff to manage the isolation process.
- Create awareness material for prisoners and display it at visible points to make them understand and practice preventive and precautionary measures.
- Limitations on contact with the outside world should be proportionate, time-limited and non-discriminatory so whereas limitation of face-to-face contact stands suspended at present, prison authorities need to ensure enhancing the use of phone calls to mitigate for the loss of outside contact.
- Those who have health issues i.e. Hepatitis, HIV, Asthma, Kidney and other medical and mental issues, requiring urgent attention, should be given bail.
- Prisons authorities will have to work together with healthcare teams and follow protocols in accordance with the National Action Plan to fight the coronavirus.
- Prison authorities need to be trained in how to carry out risk communications with the inmates to ensure precautionary measures are observed.

Police

- Law Enforcement Agencies (LEAs) to ensure that arrests are conducted so that custodial measures are seen as a last resort and are reserved for only the most heinous of cases.
- If arrests continue as part of business-as-usual, and court dockets continue to be flooded with frequent adjournments being granted, people who are undertrial will continue to be in prisons for long periods of time facing higher risks of contracting the pandemic.
- The costs to the community of keeping prisoners in prison for non-violent or technical violations is outweighed by the need to prevent the spread of the virus.
- As these are unprecedented times, taking the chance to suspend sentences and expect defendants to turn up to hearings is something stakeholders will have to do.
- Ticketing schemes may be introduced for non-serious offences and non-custodial measures such as probation and parole are proposed to be used widely.
- Other steps can include use of policing power to grant bail.

Prosecution

Sec 494 of CrCP allows prosecution to withdraw the case with the court's permission, which leads to acquittal and release of the accused prisoner.

Judiciary

- Apart from the general powers regarding bail, courts have the special power to release UTPs on bail all accused if their prosecution has been delayed beyond reasonable time. It is 2 years in case punishable with death, 1 year in offences punishable with life.
- Section 265 K & 249 of CrPC grants the power to courts to acquit an accused at any stage of the trial if it finds that the prosecution will be futile.
- The Juvenile Justice System Act 2018 gives the power to the courts to order release on bail juveniles who are accused of any bailable offence. In case of delay in the conclusion of trial for six months after arrest, the court may grant bail in all kinds of offences.
- Women are entitled to release on bail in identical cases after half the time i.e 1 year and 6 months.

Parole, Probation and Reclamation Authorities

Under the Good Conduct of Prisoners' Probationary Release Act 1926 executive authorities are empowered to release offenders on parole when they are satisfied that a prisoner's track-record behind bars, which suggests that s/he would likely abstain from crime and would lead a "useful and industrious life" in the community. In such cases, it may grant a license of release on the condition that the prisoner remains under the supervision of a parole officer or a "secular institution or of a person or society professing the same religion as the prisoner" etc.



Annexures:

1. Lessons learnt and actions taken by select countries:

Following is a snapshot of how some countries are quickly launching distinct measures as part of their containment and suppression of virus strategies;

- **Afghanistan:** Released 10,000 prisoners mostly women, youth and the critically ill inmates numbering over 55 on March 26, 2020.
- **Australia:** Increased access to telephones for prisoners to keep in touch with their families.
- **Czech Republic:** Banned family members from visiting relatives in prisons and jails.
- **Ethiopia:** On 25 March, 4,011 prisoners were granted pardon by Ethiopian President in an effort to prevent the coronavirus spread. The pardon applies only to prisoners convicted of minor crimes who are serving sentences of up to three years and those who are about to be released.
- **Turkey:** On March 20, Turkish civil society organisations published a statement on the COVID-19 outbreak and urged for immediate action in prisons. In their article, they emphasized on informing the public, especially family and lawyers of prisoners, about quarantine practices and the health status of prisoners.
- **United Kingdom:** The government released specific guidance to prisons in the event of coronavirus symptoms or cases, specifically the rule that *“any prisoner or detainee with a new, continuous cough or a high temperature should be placed in protective isolation for 7 days”*.
- Following the case in HMP Manchester, public services Think Tank Reform called for the release of 2,305 *low-risk* offenders on short sentences to reduce the risk of coronavirus on the prison population. Their report argues that prison are *“overcrowded [with] insanitary conditions and poor-quality healthcare”*. Similar actions have been taken in Iran and the United States.
- On March 21, former justice secretary David Gauke called for suspension of short sentences and early release of some prisoners to avoid COVID-19 spread.
- **United States:** Jail and prison officials across the country try to prevent outbreaks of coronavirus in the nation’s 6,000 prisons. Between March 22 and March 26, 23 inmates had escaped and at least one inmate was tested positive for COVID-19 in each of the two prisons.

2. Countries suffering violence, loss and damage caused by outraged inmates

Following incidents reveal the extent to which COVID-19 has already unleashed death and destruction across the globe:

- **Italy** saw riots in 27 prisons with 6 inmates reportedly killed and prison staff taken hostage.
- Violence broke out in **Colombia's** 12 prisons as a result of indiscriminate firing by officials. 23 people were killed while 91 injured, protesting against poor health standards.
- **Lebanon** witnessed massive riots in overcrowded prisons as fearful prisoners demanded that they be released in fear of being infected.
- Prisoners rioted in southern **Iran** on March 30. Since the beginning of the year, riots have broken out in prisons in *Aligudarz, Hamedan, and Tabriz*, with some prisoners escaping. 70 inmates escaped *Saqez* Prison in Kurdistan province on March 27
- A riot started at the prison in Buriram Province in northeastern **Thailand** on 29 March when a false rumor about coronavirus infection spread as a cover-up for an escape attempt. Seven of the 2,100 prisoners escaped and were recaptured. Two prisoners at a different facility in the country have been diagnosed with COVID-19, and families have been banned from visiting prisons in the country for 14 days, and in addition there are calls to release all medically-vulnerable inmates.

3. Mandela Rules

While a detailed examination of the international legal framework for prisoner protection is beyond the scope of this document, the following sections summarise key protection-based legal provisions relevant to containment measures being taken by global governments, including Pakistan, and point out some problems with such measures.

A. The Right to Health Services and Mental Wellbeing

- Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners.¹
- Health care standards must be the same as provided in the community and prisoners should have access, in prison, to all necessary health-care services free of charge without discrimination on the grounds of their legal status.²

¹ Rule 25 Mandela Rules.

² Rule 24 Mandela Rules.

- Particular attention must be paid to prisoners with special needs.³
- Prisoners must be provided with water and other articles necessary to keep themselves and their surroundings clean.⁴
- Even outside the context of a pandemic, healthcare standards in prisons are lacking. In a crisis, the shortage of medical equipment and staff in prisons is worrying. Basic protective measures encouraged by the World Health Organization include **social distancing, frequent hand-washing, and self-isolation**—all impossible in the context of prisons.

B. Right to Contact with the Outside World, Legal Assistance, and Restriction of Movement

- Prisoners should be allowed under supervision to communicate with friends and family at regular intervals through means available. (Letters, phone calls, digital means, etc.)⁵
- Disciplinary measures shall not include prohibition of family contact unless temporarily required for security and order.⁶
- Prisoners shall be given opportunity, time, and facilities to be visited by and to communicate with a legal adviser of their own choice or a legal aid provider.⁷
- Prisoners shall be kept informed of the news through various means.⁸
- Prisoners not employed in outdoor work shall have at least one hour of suitable exercise in the open air (daily) if the weather permits.⁹
- As mentioned above, measures restricting contact with family, friends, and legal representatives have led to prison riots worldwide. Such limitations on contact and movement should be proportionate and measured. Limiting contact with legal counsel, in particular, should be communicated to inmates and should be time-bound and subject to review at periodic intervals.¹⁰ Alternate arrangements for communication such as letter writing and phone calls must be implemented. To ensure the continued dispensation of justice, criminal justice bodies must take measures such as remote hearings or and/or providing recommended protective gear for face-to-face processes.

C. Detention monitoring and right to prohibition of torture and ill-treatment and protections for isolation.

- Indefinite or prolonged solitary confinement, corporal punishment, or the reduction of a prisoner's diet or drinking water, and/or collective punishment is prohibited.¹¹

3 Rule 25 Mandela Rules.

4 Rule 18 Mandela Rules.

5 Rule 58 Mandela Rules.

6 Rule 43 Mandela Rules.

7 Rule 61 Mandela Rules.

8 Rule 63 Mandela Rules.

9 Rule 23 Mandela Rules.

10 Penal Reform Report.

11 Rule 43 Mandela Rules; see Rules for details on what constitutes solitary confinement.

- There shall be a two-fold system for regular inspections of prisons and penal services, including Internal and External Inspections (conducted by a body independent of the prison administration, which may include competent international or regional bodies).¹²
- Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit'.¹³

There must be open and clear communication by prison management, regarding the provision of food, drinks, sanitary items and medicine, and contact with the outside world—as far as possible. Places of quarantine fall within the mandate of monitoring bodies and their access may be deferred but cannot be blocked indefinitely. Where isolation is necessary, authorities should put in place a regime so people can benefit from meaningful human contact. Isolation further exacerbates anxiety and insecurity, which can lead to violence and impact mental health of detainees. During isolation or a quarantine, the conditions and regime should at a minimum, meet the standards set out in the UN Nelson Mandela Rules.¹⁴

4. Prison Data

POPULATION OF PRISONERS CONFINED IN THE JAILS OF BALOCHISTAN AS ON 18-03-2020																		
S.NO.	NAME OF JAIL	ESTABLISHED ON	CAPACITY	DETENUE	CIVIL	CONDEMNED PRISONERS	CONVICTED PRISONERS		UNDER TRIAL PRISONERS		JUVENILE PRISONERS			FOREIGNERS		TOTAL		
						MALE	MALE	FEMALE	MALE	FEMALE	Convict MALE	FE-MALE	Under trial MALE	FE-MALE	MALE	FEMALE	MALE	FEMALE
1.	Central Jail. Mach	1929	850	-	-	67	454	-	09	-	-	-	0	-	01	-	531	
2.	Central Jail Khuzdar	1997	280	03	0	-	63	-	104	01	0	-	0	-	-	-	171	0
3.	Central Jail Gaddani	2002	223	03	0	-	162	0	140	03	-	-	0	0	05	05	307	08
4.	Central Jail Mastung	1942	70	-	-	-	02	-	22	-	-	-	-	-	02	-	26	-
5.	Central Jail Zhob	1947	150	-	-	-	09	-	26	-	-	-	0	-	-	-	35	-
6.	District Jail Quetta	1939	472	01	05	0	48	03	530	07	0	-	23	-	17	-	624	10
7.	District Jail Sibi	1890	120	0	-	-	10	-	52	-	-	-	-	-	01	-	63	-
8.	District Jail D.M. Jamali	1978	120	-	-	-	13	-	117	-	-	-	-	0	01	-	131	-
9.	District Jail Loralai	1884	60	-	-	-	09	-	29	-	02	-	-	-	-	-	40	-
10.	District Jail Turbat.	1978	90	0	-	0	39	-	32	02	-	-	0	-	-	-	71	02
11.	District Jail Nushki	2009	150	-	-	-	06	-	17	-	-	-	-	-	-	-	23	-
TOTAL:-		-	2585	07	05	67	815	03	1078	13	02	0	23	0	27	05	2022	20

Copy forwarded to the Secretary Home & Tribal Affairs Department of Balochistan, Quetta for information.

G. Total: 2042

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¹² Rule 83 Mandela Rules.

¹³ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), under the following circumstances (art 14 (2) OPCAT):

¹⁴ Penal Reform Report.



The comprehensive approach of SP-II is aligned with Pakistan's vision 2025. Striving to achieve the Sustainable Development Goal (SDG) 16 on Peace, Justice and Institutions: *"Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."* Also contributing to the SDG Goals 3, 5, 8, 11, 15 and 17.



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