

**Submission to the United Nations Secretary General’s Report on the Human Rights of Migrants**

**Submitted by:**

**Justice Project Pakistan**

**12th May 2023**

**About Justice Project Pakistan**

The Justice Project Society, commonly referred to as Justice Project Pakistan **(JPP),** is a legal action non-government organization dedicated to representing the most vulnerable Pakistani prisoners facing the harshest punishments, including those facing the death penalty, mentally ill prisoners, victims of police torture, and juvenile prisoners, and overseas Pakistani prisoners. JPP was formed in Lahore, Pakistan in December 2009.

JPP investigates, advocates, educates, and litigates, building public and political support as well as legal precedents that will lead to systemic reform of the criminal justice system in Pakistan.  Our work combines strategic litigation, fierce domestic and international public and policy advocacy campaigns, and building the capacity of stakeholders who can improve the representation and treatment of individuals facing capital punishment in Pakistan and abroad.

1. **Overview**

Migrant workers are an integral part of Pakistan’s economy and the labour market, yet the regulation of labour migration in Pakistan remains weak, leaving thousands of low-wage workers vulnerable to human trafficking, forced labour, ill-treatment in detention overseas and even death. Close to 9 million Pakistanis are currently working abroad, with the vast majority of them employed in GCC countries. These expats are an integral part of the Pakistani economy, sending back $27.48 billion in 2022, with over half of this amount coming from Pakistanis employed in the Gulf. While many of the issues these migrants face originate from the systems set up in host countries, there are numerous steps that the Government of Pakistan must take to ensure that migrant Pakistanis are being provided their fundamental rights in their host countries.

1. **The Protection of Pakistani Migrants under the Law**

While the Government of Pakistan is under a constitutional obligation to protect and uphold the rights of its citizens across the world, overseas Pakistanis often face a range of issues that are not adequately addressed by existing legislation and mechanisms. Encouraged by the state, millions of Pakistanis emigrate to foreign lands to seek better opportunities, particularly in the Gulf countries - the choice of 96.15% of the country’s expat workforce[[1]](#footnote-0). An estimated 9 million Pakistani migrants sent back $27.48 billion in 2022. While Pakistanis from all walks of life move abroad to earn a living, most are blue-collar workers coming from indigent backgrounds, never having travelled before and with little knowledge of local laws and their own legal rights.

Despite not having signed and ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Government of Pakistan is a part of several international instruments relating to the rights of migrants, including the Global Compact for Migration, to uphold the rights of its citizens across the globe, and to afford them the opportunity to safely migrate abroad. These include the Prevention of Trafficking in Persons Act 2018 and Prevention of Smuggling of Migrants Act 2018, promulgated to prevent and combat trafficking of persons and smuggling of migrants by land, sea and by air. The rules for operationalization of the respective legislations have been drafted and were approved by the Cabinet in 2020. Since enactment of these laws, there have been more than 1,000 human trafficking investigations and 161 convictions.

1. **The National Emigration and Welfare Policy[[2]](#footnote-1)**

There remains a need for a coherent migration and consular protection policy, given the numerous issues which plague Pakistan’s migration regime. In 2016, the Ministry of Overseas Pakistanis and Human Resource Development (MOPHRD) began work on a “National Emigration and Welfare Policy for Overseas Pakistanis”, which was finalised in 2020. It was developed in light of the lack of ministerial and departmental coordination, inadequate awareness of rights and redressal mechanisms and prevailing complaints from migrants about exploitation by recruiters and employers abroad.

This policy, which aims for promotion of safe and regular export of manpower to other countries, improved welfare services for expatriates, streamlined complaint redressal and engagement of the Pakistani diaspora in national development, has yet to be introduced. It requires approval from the Federal Cabinet before it can be implemented, a process which must be initiated by the MOPHRD.

1. **Lack of a Consular Protection Policy for Pakistanis Detained Abroad**

As of yet, Pakistan does not have a consular policy that provides guidelines to missions abroad in case of arrest or detention of a Pakistani national. In 2010, under the direction of the Supreme Court of Pakistan, the Ministry of Foreign Affairs devised ‘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’, directing missions to:

1. ‘Maintain close contacts with local authorities with a view to collecting all relevant information about cases of arrest/detention/imprisonment of Pakistani nationals in the country/countries of accreditation and keep the Ministry informed’
2. ‘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
3. ‘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’[[3]](#footnote-2)

In 2017 the Lahore High Court, in pursuance to litigation filed by the Justice Project Pakistan on behalf of the families of 10 prisoners facing execution in GCC,directed the Ministry of Foreign Affairs to draft a consular policy for its overseas citizens who are imprisoned abroad and/or facing execution. 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.6

Till date, a consular protection policy remains to be seen.

1. **Lack of Coherence Regarding Complaint Mechanisms**

There are a number of complaint mechanisms in place for overseas Pakistanis to register grievances and complaints, yet data on these complaint cells and their effectiveness remains sparse, with the exception of the Overseas Pakistanis Foundation’s complaint cell, which has reportedly resolved 28,526 complaints by overseas Pakistanis against 33,982 registered complaints[[4]](#footnote-3).

Some of these complaint cells and mechanisms are; The Bureau of Emigration and Overseas Employment (BEOE), Community Welfare Attaches (CWAs) posted at various Pakistani embassies across the globe, the Overseas Pakistanis Commission complaint cell and the Grievance Commissioner Cell for Overseas Pakistanis.[[5]](#footnote-4)

In the absence of a uniform policy for consular protection and welfare of Pakistanis abroad, the wide range of complaint mechanisms in place often leads to confusion among overseas Pakistanis and the relevant ministries and departments regarding who is responsible for addressing complaints and what function each complaint cell may serve. The National Emigration and Welfare Policy, if passed, would seek to address this issue through consolidation of the complaint handling mechanism and streamlined inter-departmental coordination.

1. **Flaws in the Recruitment Process**

Despite the existence of safeguards that regulate the recruitment of Pakistani migrant workers at home, numerous procedural issues prevail. Under Pakistani law, workers seeking employment overseas must go through registered Overseas Employment Promoters (OEPs) or obtain an employment visa directly from an employer overseas. The Bureau of Emigration and Overseas Employment (BEOE) is responsible for issuing licences to OEPs, monitoring and regulating overseas labour migration, and handling complaints made against OEPs. However, illegal trading of ‘Azad Visas’ by unlicensed promoters, inadequate enforcement of pre-departure briefings under the law and a failure to regulate ‘sub-agents’ in Pakistan’s recruitment industry lead to deceptive recruitment practices and legal issues for Pakistanis abroad.[[6]](#footnote-5)

Other stakeholders involved in a migrant's journey from Pakistan include the Overseas Pakistani Foundation, Labor Attache, Airport Security Forces, Anti-Narcotic Forces, and Federal Investigation Agency. In October 2018, the BEOE launched a biometric verification procedure for intending migrants to ensure transparency in the process of migration and transfer of remittances, though its impact on illegal means of securing employment and attendance at pre-departure briefings is yet to be seen.

Moreover, the Emigration (Amendment) Bill 2022[[7]](#footnote-6) aims at increased penalties for criminals involved in exploiting Pakistani migrants and trafficking them abroad, as well as the posting of Labour Attaches at Pakistani embassies across the world to provide consular assistance to Pakistani nationals working abroad. These Labour Attaches would provide legal, medical and practical assistance to Pakistani workers and handle matters arising from the employer-employee relationship including contractual violations, cases of human trafficking and illegal recruitment, repatriation and legal issues. The Bill was presented before the Senate of Pakistan after receiving approval from the Senate Standing Committee on Overseas Pakistanis and Human Resource Development in January 2023. However, it has yet to be passed in the Senate and the National Assembly of Pakistan.

1. **Pakistanis Imprisoned Abroad**

According to official estimates, there are nearly 9,301 Pakistani citizens languishing in jails across the world[[8]](#footnote-7). Pakistanis are also part of the death row population in countries that carry out the death penalty, such as Saudi Arabia and Iran. Today there are approximately 2,539 Pakistani prisoners in KSA with 40 of these Pakistanis on death row, and at risk of imminent execution. There are currently a total of 88 Pakistanis on death row abroad. A majority of the Pakistanis imprisoned abroad have been arrested for non-lethal crimes such as drug-trafficking, theft and violations of immigration laws.

Pakistanis imprisoned abroad are at the mercy of local courts without access to lawyers, 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. Unfortunately, Gulf Countries contain the largest number of imprisoned Pakistanis.

1. **Heightened Executions of Pakistanis in Saudi Arabia**

An increase in diplomatic efforts on behalf of Pakistani prisoners in KSA briefly resulted in frequent repatriations of these prisoners, with 62 being repatriated in July 2021[[9]](#footnote-8). Moreover, in February 2022 a Prisoner Transfer Agreement (PTA) was signed between KSA and Pakistan.[[10]](#footnote-9)

However, in November 2022 following a three year hiatus in executions of Pakistanis in KSA, three Pakistani prisoners were executed for drug trafficking.[[11]](#footnote-10) These executions are the first carried out for drug-related crimes in the Kingdom since January 2021, when the Saudi Human Rights Commission announced a moratorium on executions for drug offences. The announcement highlighted Saudi Arabia’s intent to focus on “rehabilitation and prevention”, allowing non-violent offenders to escape the irreversible punishment of the death penalty.

The sudden and seemingly arbitrary executions of three Pakistani nationals highlight the fragility of such moratoriums, exposing the risk that the nearly 700 Pakistani nationals imprisoned in Saudi for drug offences are facing.

These executions were followed up by the execution of a Pakistani man in March 2023, and another in May 2023. The recent uptick in executions is alarming, and points to the need for drastically increased repatriation and consular assistance efforts by the Government of Pakistan to prevent the killings of its citizens. When JPP wrote to the Ministry of Foreign Affairs regarding this issue and requesting them to utilise the PTA to affect the repatriation of Pakistani prisoners KSA, a reply was received stating that the agreement did not cover those imprisoned for drug crimes in the Kingdom.

JPP filed a petition in the Lahore High Court in 2014, on behalf of families of ten men sentenced to death on drug-related offences in Saudi Arabia, none of whom had received adequate procedural or substantive access to justice for the violation of their rights. The recent cases of Pakistanis executed in Saudi are likely to have contained similar fair trial violations, leading to their unlawful killing. Pakistan must prioritise instituting a consular policy to protect the rights of its migrant workers and prisoners abroad, and ensure that front line officers are aware of their duties under the Vienna Convention on Consular Relations.

1. **Pakistanis on Death Row in Iran**

In August 2017, the Parliament and the Guardians Council of Iran abolished the death penalty for some drug-related crimes and in January 2018, the Iranian Supreme Court announced that those sentenced to death for drug crimes will have their sentences commuted only if they apply for such a commutation - verdicts will not be changed automatically. As a result of the new amendment, a significant number of Pakistani citizens that were facing execution in Iran became eligible for the commutation of their sentences from death to imprisonment.

Justice Project Pakistan, upon learning the initial details of the change in drug-related laws and the possibility of commutation of death sentences handed out to Pakistanis, reached out to various stakeholders in the Government of Pakistan and Iran, and filed a petition in the Lahore High Court seeking information on the Pakistanis imprisoned in Iran.[[12]](#footnote-11)

The Government of Pakistan eventually raised the issue with Javad Zarif, the Iranian Foreign Minister, who arrived on an official visit to Pakistan in August 2018. Following the visit of Iranian Foreign Minister Javad Zarif recently, the Pakistani Minister of Information, Fawad Chaudhry, announced that the Embassy in Tehran plans to work with the Tehran Prosecutor General to identify and support Pakistanis imprisoned there.

Since then, the government has not made any further public announcements on the issue. In the interests of transparency and the well-being of Pakistanis on death row in Iran, it is crucial that the Government of Pakistan make public the information it currently has on its citizens imprisoned and possibly facing imminent execution in Iran.

1. **Pakistani Migrants’ Access to Healthcare in the GCC**

Migrant workers in the six states of the Gulf Cooperation Council (GCC) are subject to a wide range of cumulative risks to their health and quality of life, originating from the workplace, their living conditions, and the environment. These risks include: heat and humidity; pollution; abusive working conditions, which often include excessive working hours and heavy physical workloads; lax occupational health and safety (OHS) practices; exposure to long-term chronic psychosocial stress; and vulnerability to physical, psychological and sexual abuse. As many as 10,000 migrant workers from south and southeast Asia die in the Gulf every year and that more than 1 out of every 2 deaths is effectively unexplained. There is a lack of transparency in the reporting of deaths of overseas Pakistani workers in the Gulf.[[13]](#footnote-12) The only data available relates to death claims made to the State Life Emigrants Insurance Fund with no disaggregation.[[14]](#footnote-13) This data shows that death insurance claims have been rising significantly, with the ten years between 2008 and 2017 seeing a near threefold increase.

To further exacerbate the grim situation, the GCC states’ healthcare services are generally not tailored to the specific needs of the migrants, and there is evidence of discrimination in access to healthcare for them. Additionally, most of the Gulf states are gradually implementing mandatory private health insurance policies for those residing and working there. While this system theoretically ensures that health services are accessible for Pakistani migrants at all times, mandatory private health insurance may further restrict access to care owing to the discretionary nature of private insurance companies. Migrants face issues ranging from restricted coverage of health issues, a limited number of clinics where their insurance was valid, and a language barrier/discriminatory attitude displayed by health centre staff and insurance company representatives.[[15]](#footnote-14)

**Recommendations**

1. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
2. Approve and fully implement the National Emigration and Welfare Policy;
3. Increase government oversight over procedures of recruitment and monitoring of information passed through informal networks by strict checks on ‘Azad Visas’, enforcement of mandatory attendance of pre-departure briefings for prospective migrants under The Emigration Ordinance 1979, and heightened monitoring and enforcement of recruitment protections against OEPs, sub-agents and traffickers’
4. Enact a uniform consular protection policy for Pakistanis facing imprisonment and/or execution abroad;
5. Ensure each Pakistani prisoner on death row is guaranteed consular support and provided adequate legal representation, especially in countries with a significant number of Pakistani prisoners.
6. Coordinate information between the Ministry of Foreign Affairs and the Ministry of Overseas Pakistanis to ensure missions are carrying out their responsibilities as stated in the Supreme Court Guidelines
7. Take steps to ensure the safe repatriation of Pakistanis imprisoned in Saudi Arabia, particularly those on death row who are currently at risk of imminent execution;
8. Publicly press governments of the GCC states to improve access to healthcare for migrant workers: highlight existing barriers and urge their removal, and insist that undocumented or pregnant workers seeking healthcare will not be reported to the authorities.

1. Justice Project Pakistan “Migration, Remittance and Imprisonment Data Set (2020)“ <https://jpp.org.pk/report/migration-remittances-and-imprisonment/> [↑](#footnote-ref-0)
2. International Centre For Migration Policy Development, *‘National Emigration and Welfare Policy for Overseas Pakistanis’* <https://www.icmpd.org/file/download/48131/file/Policy%2520Brief_%2520National%2520Emigration%2520and%2520Welfare%2520Policy%2520for%2520overseas%2520Pakistanis%2520.pdf> [↑](#footnote-ref-1)
3. Ministry of Foreign Affairs, Government of Pakistan, *‘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*’, <http://www.mofa.gov.pk/documents/guidelines_sc.pdf> [↑](#footnote-ref-2)
4. The Nation, ‘*OPF complaint cell resolves 28,526 complaints*’ <https://www.nation.com.pk/29-Mar-2023/opf-complaint-cell-resolves-28-526-complaints> [↑](#footnote-ref-3)
5. Migrant Resource Centre, <https://www.mrc.org.pk/en/complaint-support/complaint-mechanism> [↑](#footnote-ref-4)
6. Justice Project Pakistan. (2019).*‘Through the Cracks: The Exploitation of Pakistani Migrant Workers in the Gulf Recruitment Regime*”.. <https://data.jpp.org.pk/ur/entity/zecwsxcg5z?page=19> [↑](#footnote-ref-5)
7. The Emigration (Amendment) Bill, 2022 <https://senate.gov.pk/uploads/documents/1664252551_676.pdf> [↑](#footnote-ref-6)
8. As per a reply submitted by the Ministry of Foreign Affairs in the National Assembly. [↑](#footnote-ref-7)
9. Desk, W. (2021, July 20). *PM Imran Khan announces repatriation of 62 Pakistani prisoners from Saudi Arabia*. thenews. Retrieved April 19, 2022, from <https://www.thenews.com.pk/latest/866872-pm-imran-announces-repatriation-of-62-pakistani-prisoners-from-saudi-arabia> [↑](#footnote-ref-8)
10. Wasim, A. (2022, February 8). *PM welcomes Pak-Saudi pact on transfer of offenders*. DAWN.COM. Retrieved April 19, 2022, from <https://www.dawn.com/news/1673855> [↑](#footnote-ref-9)
11. AAJ News, *‘Three Pakistanis Executed in Saudi Arabia’* (May 15, 2023) <https://www.aajenglish.tv/news/30304923> [↑](#footnote-ref-10)
12. Writ Petition No. 211750/2018 [↑](#footnote-ref-11)
13. Vital Signs *‘The Deaths of Migrant Workers in The Gulf’* (March 2022), <https://fairsq.org/wp-content/uploads/2022/06/Vital_signs-report-1.pdf> [↑](#footnote-ref-12)
14. See ‘Analysis Of Manpower Export’, Bureau Of Emigration And Overseas Employment (Hq) Islamabad (2018) [↑](#footnote-ref-13)
15. Vital Signs ‘The Cost of Living: Migrant Workers’ Access to Health in The Gulf’ November 2022 <https://fairsq.org/wp-content/uploads/2022/11/Vital_signs_2_A2Health.pdf> [↑](#footnote-ref-14)