

COVID-19 AND CHILDREN DEPRIVED OF LIBERTY IN PAKISTAN



COVID-19

Contents

1. Global Context and Pandemic	4
2. International Law, Global Standards and Best Practices	5
2.1 International Law	6
2.2 Global Standards and Guidelines related to Children Deprived of Liberty	7
2.3 Best Practices	8
3. Applicable Legal Framework on Children Deprived of Liberty	9
3.1 The Constitution	9
3.2 Juvenile Justice System Act, 2018	10
3.3 Recent Caselaw	11
3.4 The Code of Criminal Procedure, 1898	12
3.5 The Prison Rules, 1978	13
3.6 The Probation of Offenders Ordinance, 1960	14
4. Pakistan Prison Population	14
5. Children Deprived of Liberty in Pakistan	15
6. RECOMMENDATIONS	16
6.1 Short to Medium Term Recommendations	16
6.2 Long Term Recommendations	18

1. Global Context and Pandemic

Despite the obligation of States to ensure that children are deprived of their liberty only as a measure of last resort and for the shortest and appropriate period of time (Art 37, b, CRC), evidence shows that there is an increasing number of children being detained in correctional facilities and deprived of liberty worldwide. As a result, this presents an increased risk of violence, abuse and neglect that arises simply from being confined and deprived of one's liberty.

Infection of COVID-19 has been declared as a 'Public Health Emergency of International Concern' by the World Health Organization (WHO) early this year due to its disastrous effect on human generation. An outbreak of any communicable disease presents particular risks for detention facilities due to the vulnerability of the inmates and the difficulties in containing an outbreak. As closed, restricted and often congested places, particularly places of detention where children are kept and deprived of their liberty 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, let alone during a pandemic when the situation is sensibly worsening.

Children are also more vulnerable because of the confined conditions in which they live and the additional challenges they face in accessing a range of services, including health care, mental health, psychosocial support and education. During the current pandemic, children in detention facilities are more likely to have very limited information about the outbreak, including much needed awareness on how to protect themselves, identify symptoms, and seek treatment.¹ Hence, children who are deprived of liberty² are generally at a greater risk to contract the coronavirus disease (COVID-19).

While this pandemic keeps intensifying its outreach, countries around the world have already learnt useful lessons on how best to control the spread of the virus. Iran and India, which have large prison populations like Pakistan, are releasing thousands of inmates. Some countries were slow to react in placing 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.³

In addition, during the pandemic, some countries are enacting strict measures to ensure physical distancing with the objective of containing the disease. Such measures often require the closure of courts, suspension of trials, limitations on visits and movements of lawyers and family members to detention facilities. These measures are likely to negatively affect the situation of children deprived of

1 See Inter-agency technical guidance on COVID-19 and Children Deprived of their Liberty.

2 As per Rule 11 (b) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113 of 14 December 1990), "deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority."

3 UNODC Advocacy Brief I, Prisons and Pandemic

their liberty, sometimes causing delay in the release of children and extending the period of their detention.⁴

Therefore, when responding to the outbreak of the global COVID-19 pandemic, States need to take measures to ensure that the human rights of every child who is deprived of liberty are fully respected and fulfilled, including in all emergency situations. It is worth sharing information on how the world elsewhere continues to undertake action to reduce the number of children deprived of liberty 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 prioritize immediate administrative action for effective control, prevention and safeguarding measures.

- Measured and proportionate policy towards establishing children's 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).

2. International Law, Global Standards and Best Practices

The notion of '**deprivation of liberty**' as applicable to children⁵ is not defined in the **Convention on the Rights of the Child**. The term is defined in the **United Nations Rules for the Protection of Children Deprived of their Liberty, or the Havana Rules 1990**.

The Havana Rule 11(b) defines deprivation of liberty as "any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority." This very comprehensive

4 See also: UNODC Technical Assistance Services, Protecting Children Deprived of Liberty during the COVID-19 Outbreak, (2020), available here: https://www.unodc.org/pdf/criminal_justice/endVAC/Children_in_detention_COVID-19_Menu_of_services.pdf

5 A child means every human being below the age of eighteen years, in accordance with Article 1 of the Convention on the Rights of the Child (CRC).

definition applies to different forms of deprivation of liberty of children in all settings. **For the purpose of this brief, we will focus on children who are either in pre-trial detention or serving a prison sentence in a detention facility.**

2.1 International Law

The **Convention on the Rights of the Child (CRC)** is the principal legal international instrument that applies to all children in all situations, including during emergencies such as a pandemic. Pakistan was the first Islamic and the sixth country in the world to sign the treaty in 1989 and subsequently ratified in 1990. Being a State Party, Pakistan has an international obligation to respect, protect and fulfil rights of detained children in all situations, including during the COVID-19 pandemic.

The Convention on the Rights of the Child provides that in all actions concerning children, the best interests of the child shall be a primary consideration (art. 3). In particular on deprivation of liberty in administration of justice, the Convention strictly stipulates that **“the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”** (art. 37 (b))

Exceptionally, where detention or imprisonment of children is unavoidable, every child deprived of liberty must be treated with humanity and respect for their inherent dignity, in a manner that considers their age and specific needs (art. 40 (1)). According to article 24(1) of the Convention on the Rights of the Child, moreover, children are entitled to enjoy **“the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health”**. Further, **“States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services”** (art. 24(1)). Every child has inherent right to life and States must ensure survival and development of every child in all circumstances.⁶

Unrestricted physical access to sufficient and safe water for drinking and personal uses is indispensable for leading a life in human dignity, is prerequisite for realization of other rights of children deprived of their liberty. In the COVID-19 context, there is an increased need to have unrestricted access to safe water for drinking, hand washing, cleaning and hygiene purposes to prevent spread of COVID-19 in places of detention.

In addition, according to the CRC and other applicable international standards, the primary purpose of any action taken against children deprived of liberty justice system, including the deprivation of liberty, must be the rehabilitation and reintegration of the child rather than punishment or the protection of society (art. 40(1)).

2.2 Global Standards and Guidelines related to Children Deprived of Liberty

With the purpose to tailor standards and guidelines specifically to the needs of children deprived of liberty and provide further guidance to States in the area of children deprived of liberty, in addition to the Convention on the Rights of the Child and the Standard Minimum Rules for the Administration of children deprived of liberty, or Beijing Rules, 1985, the United Nations adopted rules for the Protection of children deprived of liberty, or the Havana Rules in 1990. These rules aim to establish minimum global standards for protection of children in detention or imprisonment in accordance with human rights and fundamental freedoms (Rule. 3).

The Havana Rules reinforce the principle set out by the CRC that the ‘deprivation of the liberty of a children deprived of liberty should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases’ (Rule 2). If deprivation of liberty is justified as necessary under the law, it should take effect in humane condition necessary for self-respect, sustained health, well-being, development and reintegration of detained children (Rule. 12). Children deprived of their liberty are also entitled to the civil, economic, political, social and cultural rights (Rule. 13).

More importantly, the Havana Rules specifically provide that children deprived of liberty **who are detained under arrest or awaiting trial are presumed innocent and detention before trial shall be avoided to the extent possible and limited to exceptional circumstances** (Rule. 17). Furthermore, Rule 31 provides that “juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity”.

Children within the justice system, and in particular those deprived of their liberty, are especially vulnerable to violence. Recognizing the pressing need to address the issue of violence against children and, in particular, the role of the criminal justice system, the General Assembly adopted in 2014 the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, or UN Model Strategies on Violence Against Children (VAC). These Model Strategies have recognized that children deprived of liberty face a high risk of violence and emphasize the need to prevent children from becoming involved in the justice system and introduce a number of measures to detect, protect and assist children who are victims of violence as a result of their involvement with the justice system, suggesting specific measures to prevent and respond to violence against children in places of detention.⁷

These international standards guide the discourse of justice for children and obligate State parties to fully respect, protect and fulfil rights of children deprived of liberty. These international standards equally apply to humanitarian context

⁷ See also: United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, A/C.3/69/L.5, para 3.

and emergencies like the COVID-19 pandemic. Children deprived of liberty are the most vulnerable as they are often confined in locked places, which are usually overcrowded with inadequate health and hygiene facilities and with extremely poor services. COVID-19 has exacerbated their situation as detention or imprisonment make it more difficult for children to self-isolate or practice physical distancing, especially in facilities that are overcrowded and unclean, and where security or infrastructure reduce access to water, sanitation and basic hygiene. They, therefore, are more likely to have or experience underlying psycho-social, physical and mental health issues, which increased the need of special protection for children in detention.

Evidence suggests that COVID-19 has begun to strike the places of detention where children are deprived of their liberty ⁸ and in response many countries have taken measures to prevent and control COVID-19 in places of detention where children are kept. The COVID-19 response must respect rights of the children in detention and must comply with the above-mentioned international standards. On April 8, the UN Children’s Fund (UNICEF), and the Alliance for Child Protection in Humanitarian Action issued an Inter-Agency Technical Note on COVID-19 and Children Deprived of their Liberty.⁹ **It recommended three measures to respond COVID-19 emergency in places where children are detained and urged governments to adopt them.** These include following measures;

- i). **institute a moratorium on new children entering detention facilities,**
- ii). **release all children who can be safely released, and**
- iii). **protect the health and well-being of children who must remain in detention**

2.3 Best Practices

Considering the unprecedented threat and increased risk, some countries have released children from detention facilities in efforts to limit the impact of COVID-19.¹⁰ For example, the President of Afghanistan issued a ‘Decree’ releasing several categories of prisoners including children to contain the virus¹¹. In Brazil’s state of Sao Paulo, children deprived of liberty for non-violent crimes were released

8 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>

9 <https://alliancecpha.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty> (last accessed on 9/5/2020). In addition, please also refer to ‘CRC and the Minimum Standards for Child Protection in Humanitarian Action (CPMS)’ and WHO’s interim guidance on Preparedness, prevention and control of COVID-19 in prisons and other places of detention.

10 <https://reliefweb.int/report/world/detained-children-left-out-covid-19-response> (last accessed on 9/5/2020)

11 <https://www.reuters.com/article/us-health-coronavirus-afghanistan-prison/afghanistan-to-release-10000-prisoners-to-slow-spread-of-coronavirus-idUSKBN21D334> (last accessed on 9/5/2020)

amid COVID-19 emergency. Indonesia¹² and South Sudan¹³ also released children deprived of liberty to protect them from COVID-19.

Whilst some countries, as above, have been able to release children to shield them from the dangers of COVID-19, others have been reluctant to do so. In Portugal some 1500 adult prisoners were released but no children were included. The Justice Ministry argued that children detention facilities were under-capacity and therefore safe. The South African President authorized release for about 19000 “low-risk” detainees who were nearing the end of their sentences – but children were not included.

A recent Human Rights Watch report on the matter shows that at least 79 countries have released adult detainees in an effort to minimize the impact of the pandemic but only about 20 countries are known to have released children from detention facilities in an effort to minimize the impact of the pandemic. In most countries the children have been left out of release orders. **“Child detainees seem to be an afterthought, if they are considered at all, by many governments responding to COVID-19 crisis”**, said the report. Governments should act to reduce the number of children held in detention facilities. International practice is that detaining children should be a measure of last resort and only used where other options have failed.

In Pakistan, the Supreme Court, rather helpfully set out a framework within which release of detainees may be made, of both adults and children. The Juvenile Justice System Act 2018 (JJSA) also sees the detention of children as a last resort and also paves the way for diversion and alternatives to custody for children, particularly children under the age of 16 years.

3. Applicable Legal Framework on Children Deprived of Liberty

Pakistan’s national laws support release of children deprived of their liberty in many situations under different laws. These laws could be relied upon to release children from detention as a measure to protect them from the impacts of COVID-19. These are as follows;

3.1 The Constitution

Articles 35 and 25(3) of the Constitution of the Islamic Republic of Pakistan require that the state shall protect the child and make special provisions for the protection of children. Moreover, Pakistan is obligated under the UN Convention

12 <https://www.thejakartapost.com/news/2020/04/01/covid-19-indonesia-releases-more-than-5500-inmates-plans-to-free-50000.html> (last accessed on 9/5/2020)

13 <https://www.unicef.org/southsudan/press-releases/unicef-welcomes-release-85-children-detention-south-sudan>

on the Rights of the Child (CRC) to provide special measures for the protection and rehabilitation of children. Paragraph 2 of the the Juvenile Justice System Act (JJSA) 2018 “Statement of Objects and Reasons” makes it clear that the policy objective of the legislation is to provide special focus on disposal (how the cases are dealt with finally) of cases involving child alleged offenders through diversion and social reintegration of these children. Furthermore, the JJSA provides for special procedures not only for judicial proceedings but also for diversion and social reintegration of children who are alleged to have committed a crime “without resorting to formal judicial proceedings” (see Statement of Objects and Reasons) and providing alternatives to prosecution where they are in the best interest of the child and serve the child’s rehabilitation and reintegration.

It is submitted therefore, that deprivation of liberty and formal proceedings for most children must have been furthest from the minds of the legislators and the JJSA. It is in light of these policy objectives that the relevant substantive provisions of the JJSA should be understood.

3.2 Juvenile Justice System Act, 2018

The Juvenile Justice System Act 2018 (JJSA) provides the legislative framework in relation to the practice involving child alleged offenders. The Pakistan Penal Code section 82 sets the criminal age of responsibility at 10 years and provides that **“nothing is an offence which is done by a child under ten years of age”**. In the context of this Advocacy Brief, the primary provisions governing deprivation of liberty at the point of arrest are contained in section 6 of the JJSA and sections 9 and 10 that make provision for diversion This section of the Brief sets out the salient features of the bail and diversionary provisions. As a preliminary issue, it is perhaps important to capture here the legislative policy objectives underpinning the JJSA before going into the details.

The JJSA defines a **“minor offence”** as any offence that carries a maximum sentence of up to 3 years imprisonment with or without a fine under the Pakistan Penal Code (PPC). A **“major offence”** is defined as an offence that carries more than 3 years and up to 7 years imprisonment, with or without a fine. A **“heinous offence”** is one that is serious, gruesome, brutal, sensational in its character or shocking to public morality and one which is punishable with more than 7 years, life imprisonment or with death (s16 prohibits the death sentence to a person who was a child at the time of commission of the offence).

Under section 6, minor and major offences are bailable by the children deprived of liberty court with or without surety. The child may be detained if there are reasonable grounds to believe that he or she will associate with criminals or will be exposed to any other danger. In this situation, the child shall be placed in a children deprived of liberty Rehabilitation Centre (JRC) under the supervision of a probation officer. The child shall not “under any circumstances” be kept in a police station in custody of a police officer or jail in such cases (see section 6). Where this is not possible, the children deprived of liberty court may direct the

police to trace and locate the guardian into whose care and custody the child will be placed.

However, where a child who has attained the age of 16 years or more and has been arrested and detained for a heinous offence, he or she may not be released on bail if the children deprived of liberty court is of the view that there are reasonable grounds to believe that the child is involved in the commission of that heinous crime. Under section 6, a child shall be released on bail if he or she has been detained for a continuous period of 6 months and whose trial has not been completed within this period unless the delay can be attributable to the (in) actions of the Child or to any other person acting on behalf of the child.

Under section 10 of the JJSA the government, in consultation with the concerned Sessions Judge, is required to establish the Juvenile Justice Committee (JJC) in each session's division. The composition and membership will be a serving judicial Magistrate with powers under s30 Criminal Procedure Code 1898 (CrPC) who will be Head of JJC, District Public Prosecutor, member of local Bar with at least 7 years standing and appointed by the concerned Sessions Judge for a period of 2 years and serving probation officer or social welfare officer not below the rank of BPS-17. The JJC function is to dispose of the cases through diversion referred to it by the police, prosecution or children deprived of liberty court and within 1 month from the date of referral. The JJC mandate is also to inspect Observation Homes (OH's) and children deprived of liberty Rehabilitation Centres (JRC's) – set up under the JJSA – so that the welfare and social reintegration programme is kept under review for progress.

Section 9 of the JJSA makes provision for disposal of cases through diversion. Cases will be referred to the JJC for disposal through diversion where the child in question or the relevant guardian consents for consideration for such disposal. Diversion can be exercised at any stage of the process – by the police during investigation, the prosecution during trial and the court. The section 173 CrPC report (which effectively is the case documentation) shall be postponed until the JJC has made decision on diversion. For this reason, the JJC is required to decide within 1 month of referral. The JJC and with consent of the victim may divert the case away from formal proceedings by ordering restitution, reparation, written or oral apology, community service, payment of fines and cost of proceedings, placement in JRC and a written or oral reprimand. Diversion is available, where any child is accused of a minor offence and where a child is accused of committing a major offence and at the time of the commission of the offence he or she had not attained the age of 16 years.

3.3 Recent Caselaw

In the case State District Administration – In the Matter of Threat of COVID-19 outbreak and overcrowding in Adiyala Jail Rawalpindi (Islamabad High Court verdict) heard in March 2020, the court was informed by the District Administration that in the wake of the COVID-19 pandemic, the Federal Government had formulated comprehensive National Action Plan to combat the

challenges posed by the pandemic. The Deputy Commissioner informed the court that the policy was to reduce the prison population and to regulate visitation. It must be understood that this verdict and Order was not child-specific and only applies within the jurisdiction of the Islamabad High Court. However, the court did take note of the policy and said it was justified in the circumstances and in light of the challenges posed by COVID-19 outbreak. The observations, it is submitted, are pertinent to children deprived of liberty also. The court further recognized that social-distancing was not always possible in overcrowded prisons and therefore could pose a risk to life – **“the most fundamental amongst human rights”** (see paragraphs 4 and 5 of the verdict). In addition, the court also said that the outbreak of COVID-19 was **“definitely”** a fresh ground for further bail consideration.

While hearing an appeal against the Order of the Islamabad High Court, the Supreme Court suspended the order and halted the implementation of the order of the Islamabad High Court (IHC) on March 30, 2020. On April 7th 2020, the Supreme Court announced a criterion for release of prisoners including children in the context of COVID-19 pandemic. The Hon. Court ordered to grant bail to all Under-Trial Children or alleged offenders who are accused of offences falling under non-prohibitory clauses or under vagrancy law or offences carrying less than three years sentence. The order also mentions that the Provincial governments under section 401 of the Code may release those convicted children who have completed 75% of their sentence and have no history of past convictions or who were sentenced to a term of one year or less. Thus, the provisions of the Juvenile Justice System Act 2018 and criterion approved by the Supreme Court apply to children deprived of liberty during COVID-19 emergency and the bail is granted as a matter of right in allailable offences.

3.4 The Code of Criminal Procedure, 1898

The Code of Criminal Procedures, 1898 (hereinafter called as ‘the Code’) recognizes different cases where an accused may be granted bail¹⁴. Section 496 of the Code empowers in-charge of a police station or officer of the court to release a person who is arrested or detained without warrant for alleged commission ofailable offence¹⁵. The Code further explains that even children accused of commission of non-ailable offences¹⁶ may also be released on bail if their age is less than sixteen years at the time of alleged commission of non-ailable offense¹⁷. Thus, these provisions are applied to the children deprived of their liberty who are arrested or detained for alleged commission ofailable or non-ailable offences.

14 Chapter XXXIX – OF BAIL (Sections 496-502)of the Code of Criminal Procedure explains different cases when a bail may be granted.

15 For the purpose of the Code,ailable offense are those offences which carry imprisonment which may extent to 03 years either with or without fine.

16 For the purpose of the Code, non-ailable offences are those offences which are heinous in nature and may carry punishment of death, or life imprisonment or imprisonment for ten years.

17 Section 497 of the Code.

3.5 The Prison Rules, 1978

Prisons in Pakistan are regulated and administered under the Pakistan Prisons Act (Act II of 1984) and Pakistan Prison Rules, 1978 (hereinafter called as 'the Prison Rules'). The Prison Rules is a compilation of over 1250 rules that deal with all matters relating to prisons and prisoners. Chapter 12 of the Prison Rules, governing "juvenile and youthful offenders,"¹⁸ mandates the separation of children and adults, the engagement of children in "sustained work," and the provision of recreational facilities.¹⁹ For convicts, it requires classes in reading, writing, and arithmetic, religious instruction for Muslim children, and vocational training.²⁰ The Rules further require "careful individual attention" for all children, as well as "careful arrangements for their future after discharge," and advise prison officials that "[t]he stimulus of personal touch and interest will be found far more effective than a rigid insistence on prison routine."²¹

Children deprived of their liberty are extremely vulnerable during the COVID-19 emergency and require increased protective services. Public health measures to prevent and control COVID-19 in places of detention where children are deprived of their liberty may exacerbate their vulnerability and expose them to greater risk of contracting and spreading COVID-19 as it is very difficult to maintain physical distance and provide unrestricted access to adequate health facilities and health services. Therefore, those convicted children who qualify for remission of their sentences may be released.

The Prison Rules recognizes remission system in Chapter 8. Children who are convicted for imprisonment for more than 4 months, have served two-third of their sentence by way of good conduct and industry may be released by granting remission in remaining one-third of their sentence.²²

In Pakistan, most of the places of detention where children are deprived of their liberty are overcrowded, which contributes to weak implementation of Prison Rules and resulted in emerging issues of poor health and hygiene, high risk behaviour (e.g suicide, unprotected and forced sexual contact, drug misuse), and poor prison management leading to torture, riots and corruption.²³

18 The Prison Rules define "juvenile" as a male prisoner "who at the time of conviction was under eighteen years of age," and "youthful offender" as "a male juvenile who, when convicted was fifteen years of age." Pakistan Prison Rules, Rule 280. Rule 230 states that "[w]omen prisoners will be classified in the same manner as is provided in the case of male prisoners."

19 Ibid., Rules 294-296, 299.

20 Ibid., Rules 297, 298.

21 Ibid., Rule 295.

22 Ibid., Rule 199.

23 Please refer to the Prison Reform Report by the Ministry of Human Rights, Govt. of Pakistan available at <http://mohr.gov.pk/SiteImage/Misc/files/PrisonsReforminPakistan.pdf> (last accessed on 9/5/2020)

3.6 The Probation of Offenders Ordinance, 1960

The Probation of Offenders Ordinance, 1960 provides two alternatives to a prison sentence; conditional discharge or a probation order. Probation may apply to convicts of any age including children but is excluded in the case of specified serious offences. Thus, a Court can release a convicted child on conditional discharge or on probation if the offender is convicted for the first time for minor offense.²⁴

4. Pakistan Prison Population

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

Pakistan's places of detention where children are deprived of their liberty 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-19 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.
- Children, 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.

²⁴ Section 4 and 5 of the Probation of Offenders Ordinance, 1960. Please also see section 5(b) of the Juvenile Justice System Act, 2018.

5. Children Deprived of Liberty in Pakistan

In Pakistan, the provision of separate facilities for children deprived of their liberty varies from one province to another. While in Sindh, there are four dedicated juvenile prison facilities, and in Punjab there is only one. In Khyber Pakhtunkhwa (KP) and Balochistan, no dedicated/separate facilities are provided, thus, children deprived of their liberty, are held in separate spaces within adults prisons.

At the time of data gathering in late August 2020, there were 62 children serving prison sentences and 1147 children Under-Trial (a total of 1209). This translates as 95% children in custody are UTP's (Under-Trial Prisoners).

The above indicates that there are 62 children serving a sentence of which 47 children are serving a sentencing for offences that carry more than 7 years – others serving a sentence for offences that carry a sentence for less than 7 years (of which 5 are serving sentence for offences that carry less than 3 years and 1 child serving sentence for offences that carries up to 1 year imprisonment).

There are 1147 children in total as Under-Trial Prisoners (UTP's). The number of children deprived of liberty in custody as alleged perpetrator of offences that carry 3 to 7-year imprisonment is 377 and those in custody as alleged perpetrator of offences that carry less than 3 years is 158 (i.e. 535 children are in custody for “bailable offences” under 6, see above). This translates as 46% of children under-trial are in custody for bailable offences [note that “bailable offences” do not mean automatic bail]. Total number of children under-trial that are in custody for offences that carry more than 7 years imprisonment is 428. Of the children under-trial, 400 have been in custody for more than 6 months (ie 35%) and 432 whose trials have not been completed within 6 months (i.e. 38%). So far 474 children were tested for COVID-19 in Pakistan places of detention, where children are deprived of their liberty (39% of total). Seventeen tested positive (3.6%) and all recovered (100%)²⁵.

The data set matrix prepared in support of this Advocacy Brief and the data gathered reflects, so far as was possible, the legislative framework discussed above.

CONVICTED CHILDREN DEPRIVED OF LIBERTY

Description	Punjab	KPK	Sindh	Balochistan	Total
Total number of convicted Juveniles (province wise)	28	28	6	0	62
children deprived of liberty convicted of offences that carry a punishment of imprisonment from 03 years up to 07 years ?	2	2	1	0	5
children deprived of liberty convicted of offences that carry punishment of imprisonment of less than 03 years?	1	1	3	0	5
children deprived of liberty convicted with imprisonment of up to 01 year?	1	0	0	0	1
How many children deprived of liberty convicted of offences that carry death sentence or life imprisonment or imprisonment for more than 07 years, who are 16 years or above?	23	22	2	0	47

²⁵ Direct data collection from all provinces of Pakistan

6. RECOMMENDATIONS

This section puts forth some short to medium term as well as long term recommendations including those relevant to other criminal justice actors to protect children deprived of their liberty in Pakistan from the impact of COVID-19. These recommendations are based on international standards and national laws discussed above complementing the verdict of Supreme Court and Inter-Agency Technical Note on 'COVID-19 and Children Deprived of their Liberty'.

6.1 Short to Medium Term Recommendations

6.1.1 Prioritizing Children for Immediate Release

Pakistan should release children who can safely return to their families and communities. Where it is safe to do so and in consideration of the best interests of the child, including the increased risk of illness in detention, and taking into account the views of the child, Pakistan should prioritize children deprived of their liberty for immediate release to their families, extended families, other family-based care, communities, or appropriate health care facilities. Early release schemes for the following specific categories of children should be developed:

- All children and their caregivers who are deprived of their liberty together as a result of criminal process against the caregiver for nonviolent, minor or petty offences, and those due for release or nearing the end of their sentences;
- All children held in pre-trial detention as they are presumed to be innocent; thereby, respecting the right to liberty and the presumption of innocence.
- All children who are deprived of their liberty for status offences (offences not considered a crime if committed by adults);
- All children at highest risk of complications due to infection, including those with pre-existing physical and mental health conditions;
- All children in immigration detention;
- Any other children for whom it has been determined feasible and safe to be released.
- Make the JJSA 2018 fully functional – the effect of this will be to bring the process in line with international norms and Pakistan legislative requirements.

Support needs to be provided to families and caregivers that need to be engaged in the process to enable the safe reintegration of children to their families and communities, in line with their best interests, using case management processes, including travel authorizations, access to health care, mental health and psycho-social services, services for violence prevention, educational services and others.

In addition to engaging families and caregivers, strategies and mechanisms of coordination between governmental and non-governmental institutions and actors may be established to apply early release of children to their families

and communities or into appropriate health care facilities or alternative care. Procedures and management of legal aid programmes for children, with a particular focus on children currently deprived of their liberty, to ensure children's access to legal counsel during the COVID-19 outbreak in order to allow them to prepare and file petitions for early release or alternative measures to formal proceedings and deprivation of liberty may also be developed.²⁶

6.1.2 Preventing Admission of New Children to Detention Facilities

In order to reduce the number of children deprived of liberty during the COVID-19 pandemic, States should undertake all appropriate measures to prevent new admissions of children to places of detention. States may place an immediate moratorium on arrests, rounding up of children in street situations, overnight holds, and other new admissions of children to detention facilities. In addition, these measures may also include the development of schemes to promote alternatives to pre-trial detention and the commutation or temporary suspension of certain sentences to reduce new admissions to detention facilities.²⁷ Hence, where a competent authority determines, considering the best interests of the child, that an admission to a situation of deprivation of liberty is legal, necessary, and proportionate, States must, in line with recommendations provided by the Inter-Agency Technical Note on COVID-19 and Children Deprived of their Liberty:

- Screen all children and take steps in line with public health protocols issues by the WHO;
- Where physical distancing, isolation or quarantine of the child is warranted for health reasons, these measures should be enforced at home or in a health care facility, not in a detention facility.

6.1.3 Protecting the Health and Well-being of Children in Detention

Where detention is unavoidable and release of children is not possible, State Parties are duty-bound to protect the health and well-being of children deprived of liberty in during and beyond the pandemic. It should take all appropriate measures to ensure that no child is deprived of his or her right to highest attainable standard of health and access to health care services in line with the recommendations provided by the Inter-Agency Technical Note on 'COVID-19 and Children of their Liberty:

- Regularly monitor children's health for COVID-19 symptoms and when a child deprived of liberty exhibits symptoms, place him or her in medical isolation at home or medical care facility based on clinical decision as warranted by the law. Children deprived of liberty must not be quarantined in solitary confinement.

²⁶ See also: UNODC Technical Assistance Services, Protecting Children Deprived of Liberty during the COVID-19 Outbreak, (2020), available here: https://www.unodc.org/pdf/criminal_justice/endVAC/Children_in_detention_COVID-19_Menu_of_services.pdf

²⁷ See also: UNODC Technical Assistance Services, Protecting Children Deprived of Liberty during the COVID-19 Outbreak, (2020), available here: https://www.unodc.org/pdf/criminal_justice/endVAC/Children_in_detention_COVID-19_Menu_of_services.pdf

- Provide access to water and soap or hand sanitizers or supplies which are essential for hand washing, hygiene, and cleaning of surfaces in order to prevent and manage the outbreak of COVID-19.
- Provide gender-sensitive and age-appropriate Mental Health and Psycho-social Support Services (MHPSS) to children deprived of liberty and their families to manage distress and fear about COVID-19.

6.1.4 Protecting Children from Violence, Abuse and Exploitation

States should safeguard the rights of children and protect them from violence, abuse and exploitation. The COVID-19 pandemic and public health measures have increased the vulnerabilities of children deprived of liberty and exposed them to increased risk of violence, abuse and exploitation. Therefore, a well-coordinated comprehensive plan should be developed, different essential departments for child protection services should be engaged and referral pathways should be identified to protect children from violence, abuse and exploitation. In addition, State must ensure remote judicial proceedings, administrative hearing, online monitoring by independent human rights bodies and health authorities and facilitate frequent contact of children in detention with family and legal representatives to protect them from violence, abuse and exploitation.

6.2 Long Term Recommendations

Pakistan should review applicable standards and rules and formulate comprehensive Standard Operating Procedures (SoPs) dealing with all types of public health emergencies and pandemics. In addition, it should also formulate comprehensive rules and regulation to prevent and protect children deprived of liberty from all types of violence, abuse, exploitation and to establish well-coordinated referral system and conduct a research or assessment on the justice system and the situation of children deprived of liberty. Furthermore, States should establish children deprived of liberty Courts, children deprived of liberty Committees, and children deprived of liberty Rehabilitation Centers throughout the country as envisaged in the Juvenile Justice System Act 2018. State should build capacity of all relevant criminal justice actors regarding children deprived of liberty and run awareness raising campaigns for children deprived of their liberty and their families, prison's staff and other criminal justice actors in this regard.








This advocacy brief is prepared by the UNODC's Criminal Justice and Legal Reforms Sub-Programme-II (SP-II).

The Criminal Justice and Legal Reforms Sub-Programme-II (SP-II) works as a strategic partner and advisor to the Government of Pakistan, delivering reforms across the criminal justice chain of institutions. The objective is to promote evidence-based programming to enhance the effectiveness, coordination and capacity of the criminal justice institutions towards administering fair, efficient and transparent access to justice and rule of law for the citizens. The SP-II also promotes robust and preventive measures to foster effective AML/CFT regimes in Pakistan to disrupt and prosecute financial crimes. A gender-sensitive approach cuts across the criminal justice reforms led by SP-II to empower the vulnerable and the less privileged groups through awareness of legal rights and access to justice.

The comprehensive approach of UNODC 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.



www.unodc.org/pakistan

 /UNODCPakistan  /UNODC.Pakistan  yt.vu/+unodcpakistan  ask.sp2@un.org  +92 51-2601461-2