

# THE PLIGHT OF FOREIGN PRISONERS IN SINDH: A FACT SHEET



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## I. Introduction

The Committee for the Welfare of Prisoners-Legal Aid Office (CWP-LAO) is a unique public-private partnership established in 2004 with the support of the Sindh Government to provide legal aid and representation to those most vulnerable in Sindh’s prisons. In addition to legal aid and welfare, CWP-LAO also highlights the plight of especially vulnerable prisoners for relevant stakeholders in the form of fact sheets and research papers. Previous topics of research have included a mapping of the socio-economic demographics of women and juvenile prisoners, an assessment of rehabilitative programs for prisoners, and an analysis of the mental health needs of women prisoners, to name a few.

This fact sheet will highlight the unique vulnerability of foreign national prisoners, a group in prison that is all too frequently neglected. (Foreign national prisoners are defined here as prisoners who are not citizens or residents of Pakistan.) Sindh’s prisons contain a sizeable foreign national population and a review of the existing literature reveals no prior mappings of the status of this group, their nationalities and case status, and the laws pertaining to their admission and removal.<sup>1</sup> In 2018, the National Counter Terrorism Authority (NACTA) conducted a study on overcrowding in prisons and reported the numbers of foreign prisoners across the country<sup>2</sup>:

| Province           | Foreign Prisoners | Total Prison Population |
|--------------------|-------------------|-------------------------|
| Punjab             | 255               | 50,289                  |
| Sindh              | 811               | 19,094                  |
| Khyber Pakhtunkhwa | 2                 | 10,811                  |
| Balochistan        | 49                | 2397                    |

Beyond these numbers, however, there seems to be a dearth of concrete information about foreign prisoners in Pakistan’s prisons. This fact sheet, therefore, provides a brief overview of the legal framework – both domestic and international – which governs the movement and stay of foreign nationals in Pakistan and discusses some of the practical obstacles which impede foreign prisoners’ access to their rights. It provides a current mapping of all foreign prisoners in Sindh’s prisons (which are far less than the 811 reported in 2018). This includes nationalities represented, case stages, detention lengths, and the status of their consular visits. Finally, it concludes with recommendations and observations for the Government and other stakeholders. Such information is a useful starting point for engaging not only the relevant authorities in Pakistan, but for building linkages with state

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<sup>1</sup> Justice Project Pakistan (“JPP”) has authored a report on Pakistani prisoners in Saudi Arabia: *Caught in a Web: Treatment of Pakistanis in the Saudi Criminal Justice System*, 2018. There appear to be no similar reports on the plight of foreign prisoners in Pakistan.

<sup>2</sup> *Addressing Overcrowding in Prisons by Reducing Pre-Conviction Detention in Pakistan*, NACTA, ICRC, and CODE Pak, 2018.

Available at: <http://codepak.org/wp-content/uploads/2018/05/Addressing-overcrowding-in-prisons-by-reducing-pre-conviction-detention-in-Pakistan.pdf>, p. 44.

and non-state actors in neighboring countries working on similar issues with respect to Pakistani prisoners abroad.

## II. Methodology

This fact sheet combines desk research on the legal landscape regarding foreign prisoners with data obtained from the relevant prisons in Sindh that house foreigners. All information and data was obtained between January and February 2020. To collect data on foreigner prisoners, the Inspector General, Prisons (“IGP”) was approached in December 2019, and a subsequent meeting was held in January 2020 to explain the scope of the project. The IGP subsequently directed the Superintendents of CP Karachi, CP Hyderabad, and DP Malir to provide data on foreign prisoners, including their nationalities, date of admission, criminal charges, and the status of consular visits. The original methodology included interviews with a selected number of foreign prisoners, however due to timing and security concerns, gaining access would not have been possible in the given time constraints. CWP-LAO hopes, however, that this initial foray into the legal and procedural problems of foreign prisoners serves as a useful starting point for further research and advocacy on behalf of this especially vulnerable population.

## III. International Legal Framework

The key international legal instruments and conventions governing the arrest, detention, and release of foreign prisoners are as follows: the Vienna Convention on Consular Relations,<sup>3</sup> the UN Convention against Torture<sup>4</sup> (“UN CAT”), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“the Principles”),<sup>5</sup> and the Model Agreement on the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners (“Model Agreement and Recommendations”).<sup>6</sup> Of these, Pakistan has ratified (and is therefore legally bound by) the Vienna Convention and UN CAT, while the Principles and Model Agreement and Recommendations constitute a series of standards and norms for all countries to ensure the protection of the human rights of foreign prisoners in their jurisdictions. A detailed analysis of each legal instrument and convention is beyond the scope of this fact sheet but there is a core set of protections that take into account foreign prisoners’ unique vulnerability, and must be granted.

First, the relevant country’s consular post<sup>7</sup> must be informed that one of its citizens is detained, in custody, or arrested. The Vienna Convention mandates that this information be communicated “without delay” and that the prisoner be informed of his/her legal rights.<sup>8</sup> Consular officers have

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<sup>3</sup> United Nations (1963), Vienna Convention on Consular Relations, [http://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf)

<sup>4</sup> United Nations (1984), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

<sup>5</sup> United Nations (1988), Body of Principles of All Persons under Any Form of Detention or Imprisonment, <https://www.ohchr.org/en/professionalinterest/pages/detentionorimprisonment.aspx>

<sup>6</sup> United Nations (1985), UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners <http://www.prisonwatch.org/assets/un-model-agreement-on-the-transfer-of-foreign-prisoners-and-recommendations-on-the-treatment-of-foreign-prisoners.pdf>

<sup>7</sup> Defined as any consulate-general, consulate, vice-consulate or consular agency by Article 1(1) of the Vienna Convention.

<sup>8</sup> Vienna Convention, Article 36(a)-(b)

the right to visit the prisoner wherever s/he is held, and to communicate with and arrange for legal counsel—should the prisoner also want such communication and representation.<sup>9</sup>

Second, Principle 16 enshrines the prisoner’s right to be “promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national...” Any communications addressed to the consular post by the prisoner must be forwarded on without delay, as well.<sup>10</sup> The Model Agreement and Recommendations state that the right to communicate with the consular post must be communicated in a language the prisoner understands,<sup>11</sup> and Article 14 of the Principles further stress that “a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to...and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.”

Finally, the Model Agreement and Recommendations recognize the inherent difficulties (cultural, linguistic, and religious) of being a foreign prisoner, and encourage all states to enter into bilateral transfer agreements to facilitate transfers of foreign prisoners to serve out the remainder of their sentences in their home countries.

#### **IV. Legal Framework in Pakistan**

The regulation of entry, movement, and removal of foreigners in Pakistan is largely governed by the Registration of Foreigners Act 1939, the Foreigners Act 1946 (last amended in 2016), and the Registration of Foreigners Rules 1966. A foreigner is defined by both Acts as a person who is not a citizen of Pakistan.<sup>12</sup> The 1946 Act grants the Federal Government the power to make further provisions to prohibit, regulate, and restrict the presence of foreigners, particularly as it relates to entry, stay, and exit.<sup>13</sup> The Registration of Foreigners Rules 1966 contains provisions for how foreigners arriving by sea, land, and air must register their arrival before the competent authorities and lays out the procedure for such registrations, as well as exemptions for certain classes of foreigners.<sup>14</sup>

The burden of proof for proving nationality where there is doubt lies solely with the foreign national,<sup>15</sup> and the penalty for knowingly entering Pakistan illegally is imprisonment for a term that can extend to ten years and a fine that may extend to ten thousand rupees.<sup>16</sup> Additionally, a person accused of such illegal entry cannot be released on bail “if there appear reasonable grounds for believing that he has been guilty of such an offense.”<sup>17</sup>

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<sup>9</sup> *Id.*, Article 36(c)

<sup>10</sup> *Id.*, Article 36(b)

<sup>11</sup> Model Agreement on the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners.

<sup>12</sup> Foreigners Act 1946, §2(a), Registration of Foreigners Act 1939, §2(a).

<sup>13</sup> Foreigners Act 1946, §3.

<sup>14</sup> The Foreigners Registration Rules 1966, §§3-8.

<sup>15</sup> Foreigners Act 1946, §9; Registration of Foreigners Act 1939, §4.

<sup>16</sup> Foreigners Act 1946, §14.

<sup>17</sup> *Id.*, §14(A)(2).

The Foreigner's Act also contains important provisions regarding the deportation of persons illegally present in Pakistan whose cases are still pending or are undergoing sentences of imprisonment. If a foreigner without permission to stay in Pakistan or whose deportation arrangements have been made may "with the consent of the Federal Government, be permitted by the Court trying him...to depart from Pakistan; or under the order of the Federal Government, be permitted to depart from Pakistan while he is undergoing any sentence passed under this Act."<sup>18</sup> This is only applicable to foreigners who are not required in connection with any other case.<sup>19</sup>

The scheme for implementation of the above laws falls with the Ministry of the Interior and its various directorates and agencies. The tracking of information, for instance, is undertaken by the Federal Investigation Agency (FIA), which consists of an Immigration Wing with an Anti-Human Smuggling Division and an Integrated Border Management System (IBMS) Division. The IBMS<sup>20</sup> is a database tracking the travel of all international travelers into the country to combat trafficking, smuggling, deception during immigration and overstay of foreigners. The IBMS is deployed at all 13 international airports, 4 land borders between neighboring countries, 2 railway stations on border with India, and 4 seaports. The National Database and Registration Authority (NADRA) also assists the FIA with more advanced technical features such as overstay calculation, the capacity to read International Civil Aviation Organization (ICAO) documents, including travel documents, nationality, and port-of-origin.<sup>21</sup>

After foreign nationals are arrested and charged with a crime, their cases proceed in criminal court pursuant to Pakistan's Code of Criminal Procedure. During the pendency of their cases, they are detained in prisons and like all other prisoners, must abide by the rules laid down by the prison administration. However, as discussed above, foreign prisoners have additional rights guaranteed to them by international conventions and treaties to which Pakistan is party. This includes the unimpeded right to communicate with their consular post, the right to be visited by the consular post, the right to be informed of these provisions in a language they understand, and the right to communicate with their family members. Predictably, paper and practice diverge significantly, as the next section will demonstrate. The numbers presented shine a light not only on the prisoners themselves, but on the occlusion of legal processes that prevent foreign prisoners from returning home.

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<sup>18</sup> *Id.*, §14(B).

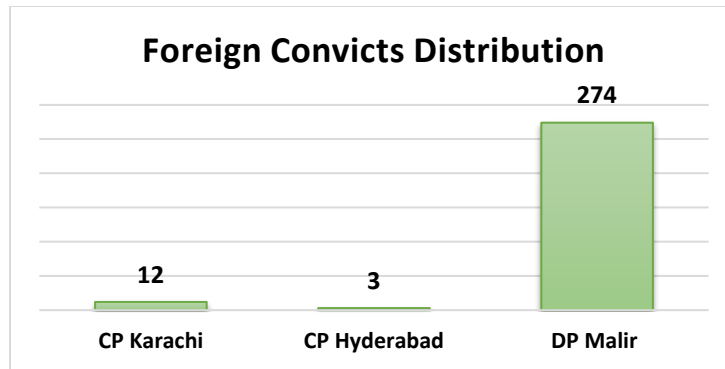
<sup>19</sup> *Id.*

<sup>20</sup> Available at: <http://www.fia.gov.pk/en/IBMS.php>

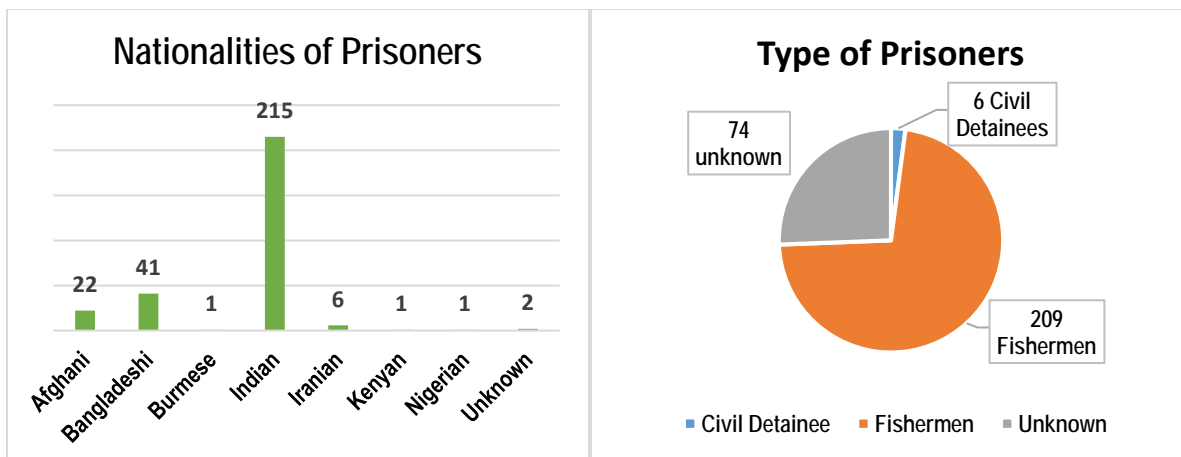
<sup>21</sup> NADRA, Integrated Border Management <https://www.nadra.gov.pk/solutions/e-governance/automated-border-control/>

## V. Data on Foreign National Prisoners in Sindh

This section highlights, through a series of charts, the data maintained in three prisons in Sindh that house the foreign convict population in the province: Central Prisons (CP) Karachi and Hyderabad, and District Prison (DP) Malir. The largest concentration of foreign convict prisoners is in DP Malir, as demonstrated below:<sup>22</sup>

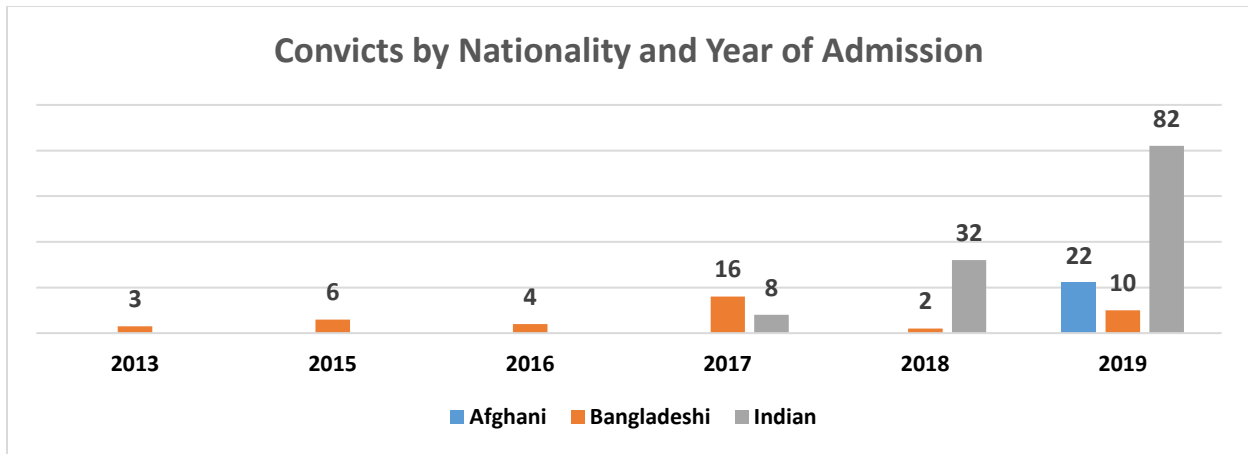


Of the total 289 prisoners, the largest represented nationality is Indians (215), followed by Bangladeshis (41) and Afghani (22).



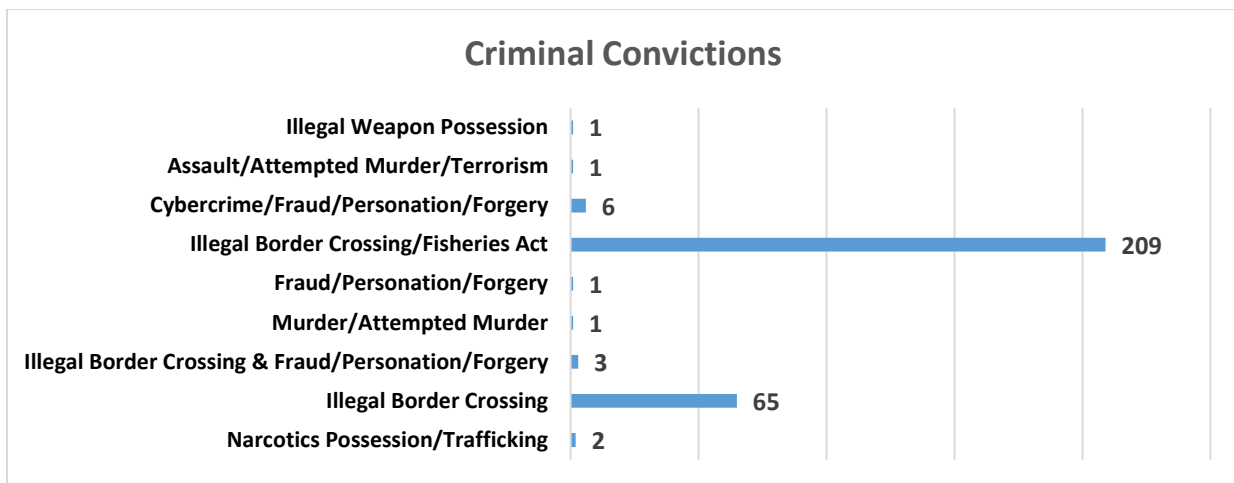
<sup>22</sup> There is currently only one foreign prisoner – a Nigerian – in Karachi’s Women Prison.

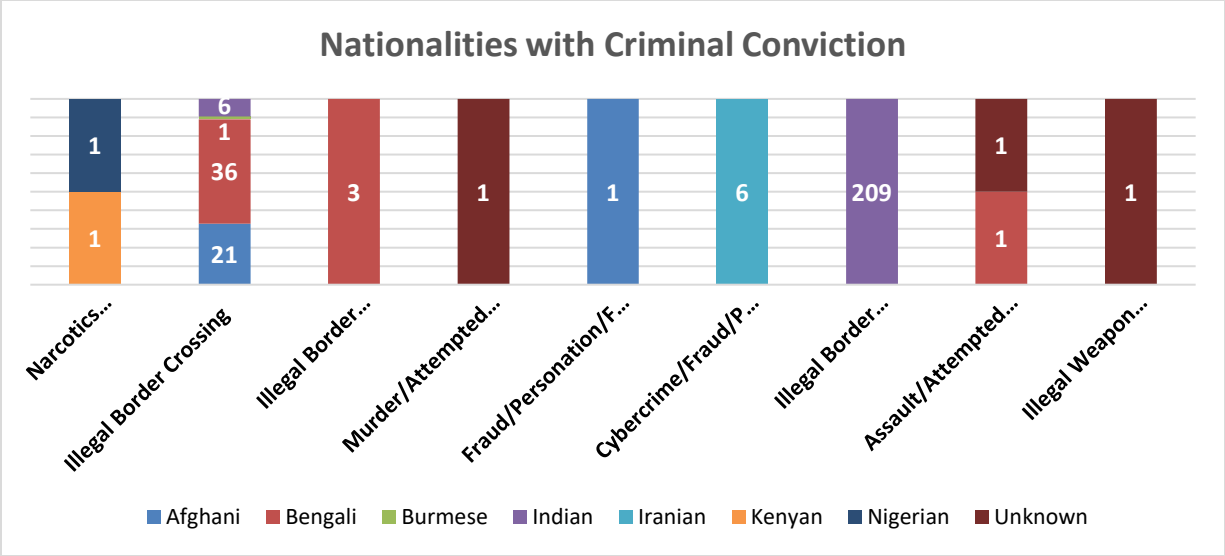
The chart below shows a steady increase in the numbers of Indian prisoners arrested over the years, from 2017 until 2019:



The problem of Indian and Pakistani fishermen who inadvertently cross territorial waters while fishing and are arrested and detained for years at a time is well-known. In Pakistani waters, foreign fishermen are intercepted by the Maritime Security Agency before being criminally charged and confined in prison pending conclusion of their cases.

The two charts below show that the majority of convictions are based on charges of illegal border crossings by Indian citizens (215), followed by Bangladeshis (36), and Afghanis (21).





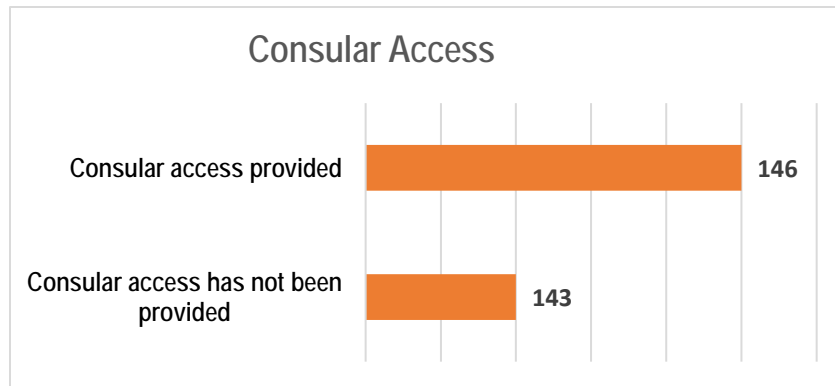
In addition to the data presented above, there are also a total of 47 foreign prisoners under trial as of February 2020. This number fluctuates on a month-to-month basis, and the largest represented nationality is, once again, Indians (18), followed by Afghans (9) and Bangladeshis (8). The remainder consist of Nigerians (4), Chinese (3), Iranis (3) and 1 person each from Tanzania and South Africa. The trends regarding discussed above hold true for the under-trial population, as well: a majority of prisoners (31) have been arrested for illegal border crossings; another four were arrested for immigration irregularities; and an equal number (3) were arrested for illegal border crossing with electronic fraud/personification/forgery, and for illegal border crossing with fraud/personification/forgery.

The largest number of foreign prisoners under-trial and convicted are Indian fishermen. To address the persistent problem of Indians and Pakistani fishermen getting arrested in foreign waters, the two countries have signed an Agreement on Consular Access in 2008 which mandates that each country will provide the other’s nationals with consular access within three months of arrest and detention,<sup>23</sup> a step necessary to begin the process of verifying nationality without which repatriation is impossible. While the three-month time range applies to Indian fishermen as a result of the Consular Agreement between India and Pakistan, prisoners from all foreign countries are guaranteed the right to consular visits pursuant to the Vienna Convention to which Pakistan is party.

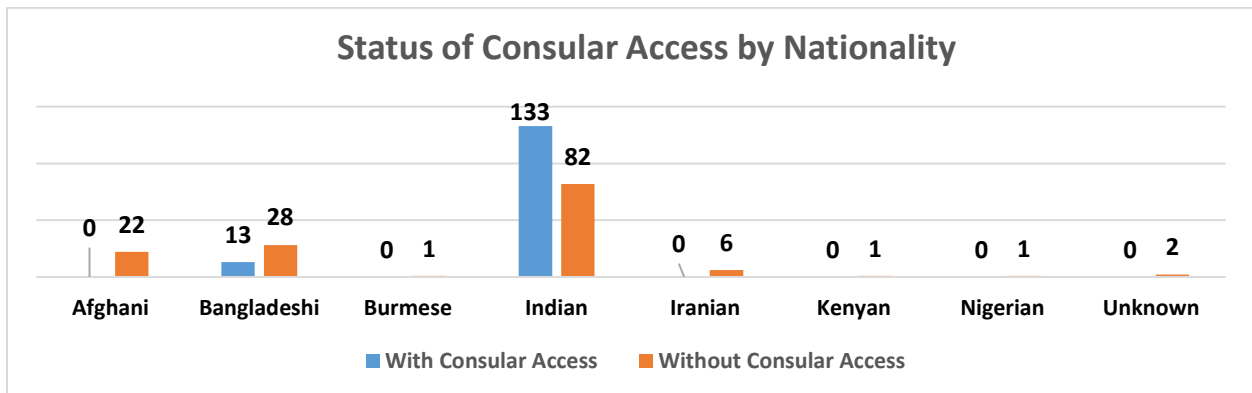
<sup>23</sup> Agreement on Consular Access, 2008. Available at: <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/54471/Part/I-54471-08000002804b7dde.pdf>



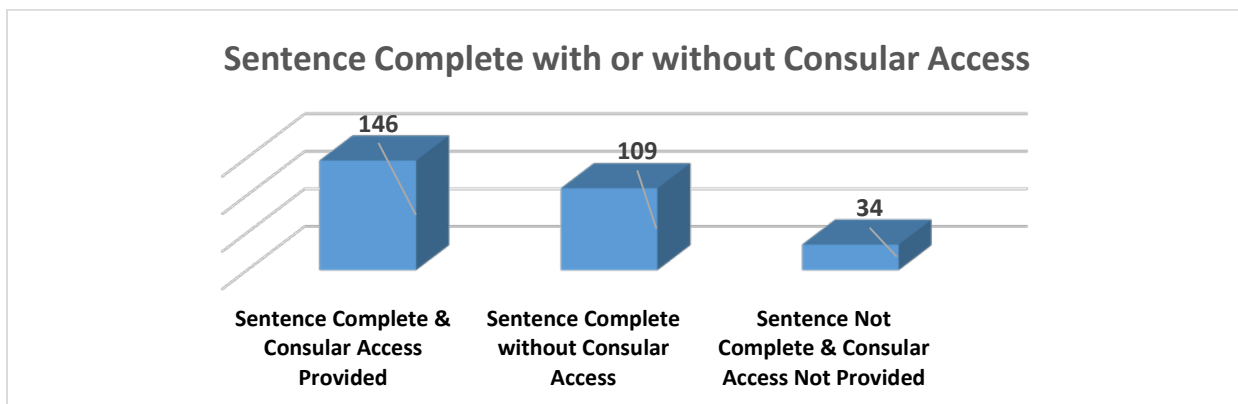
However, of the total population of 289 foreign prisoners, 143 have not yet met with anyone from their consulate:



This includes not only Indians (88), but also Afghani (22), and Bangladeshi (29), as shown by the charts below. An official in DP Malir, when asked about the status of consular visits in the jail, noted that Bangladesh was the worst offender in terms of not providing their citizens with consular visits to assist them in the eventual process of repatriation after serving out their sentences.



Perhaps most disturbing is the fact that many of those who have not received consular visits have already served out the full term of their sentences (109) but cannot leave because their nationalities have not been confirmed and consular access has not been provided:



Of the number of people whose sentences are complete but cannot leave Pakistan due to lack of consular access, it appears Indian fishermen are suffering the most. As the chart below shows, there are currently at least 82 prisoners for whom arrangements to return home should have been made, but are still languishing in Pakistani prisons:



The process of repatriation after completion of sentences point to further problems. In practice, timely repatriation is an extremely complex process that requires the coordinated efforts by the Ministry of Interior, the Ministry of Foreign Affairs, and the various agencies and ministries of the foreign countries in question. On the Pakistani side, the Federal Review Board, which consists of a panel of Supreme Court justices, convenes meetings every few months to obtain an update from the Ministry of Foreign Affairs and the Ministry of the Interior about the status of foreign prisoners' repatriation.<sup>24</sup>

While a detailed analysis of each country's repatriation scheme is beyond the scope of this factsheet, it is worth mentioning that India and Pakistan – who imprison a large number of the others' citizens – constituted a Joint Judicial Committee in 2008 which consisted of retired judges from both countries whose mandate was to meet every six months, seek early repatriation prisoners whose sentences were complete, and to ensure that the basic human rights of all such prisoners were upheld by both countries. This Committee has been inactive due since October 2013 due to government delays, but there have been cross-border discussions about reviving it for the humanitarian needs of foreign prisoners. India's Ministry of External Affairs has nominated judges,<sup>25</sup> and while Pakistan's Ministry of Foreign Affairs has greenlighted the Committee's reconstitution, Pakistan has yet to nominate judges.<sup>26</sup> Consequently, while both India and Pakistan periodically release large numbers of prisoners as gestures of goodwill,<sup>27</sup> there appears to be no streamlined process followed that ensures the rights of foreign prisoners are systematically upheld rather than on an *ad hoc* basis.

<sup>24</sup> See e.g., "Completion of Term: SC Board Orders Release of Foreign Inmates," The Express Tribune, April 27, 2014; "SC Orders Release fo Six Foreign Prisoners," Pakistan Today, March 30, 2014.

<sup>25</sup> India Pakistan to Revive Joint Judicial Committee, DNAIndia, May 18, 2018. Available at: <https://www.dnaindia.com/india/report-india-pakistan-to-revive-joint-judicial-committee-2616377>

<sup>26</sup> Pakistan India Agree on Proposal to Release each other's Disabled, Elderly Prisoners,

<sup>27</sup> See e.g., "Pakistan, India agree on proposal to release each other's disabled, elderly prisoners," Dawn, March 7, 2018, available at: <https://www.dawn.com/news/1393771>;

## VI. Recommendations

There is an international legal framework in place to accommodate the needs and rights of foreign prisoners in Pakistan, but the above figures show that lack of implementation, coordination, and a failure of collective political will is leading to families being separated from their loved ones for years on end. It is also causing Pakistan to bear the cost of maintaining foreigners in its already crowded prisons. To rectify these many problems, the Government must:

- Provide a comprehensive framework detailing the procedures for repatriation in its entirety and clarify the role of each ministry in this process, as necessary;
- Sign bilateral agreements with countries like Bangladesh and Afghanistan with whom no such agreement currently exists for the transfer of foreign prisoners. This is an important step for international relations and regulates the role of consular officials;
- Work with the relevant foreign government to develop comprehensive campaigns that focus on short-term relief and long-term policy changes to facilitate the quicker transfer of prisoners back to their home countries;
- Ensure that the key officials involved in the repatriation process at every stage are trained to know the existence of any and all prisoner transfer schemes and provided with information on how these are operationalized;
- In the case of Indian prisoners, in particular, the Government should:
  - Comply in full with the Agreement on Consular Access and facilitate Indian High Commission officials' access to Indian prisoners within three months of arrest;
  - Develop a more efficient means of identification verification (for both, Pakistani and Indian fishermen), such as biometric cards that are recognized on either side of the border;
  - Nominate judges for the Joint Judicial Committee so that it can, once again, become functional; and
  - As a member of SAARC, advocate and campaign for the development of a fisheries policies that all South Asian countries can adopt to prevent this vulnerable population from getting arrested in each other's countries for doing nothing more than pursuing their livelihoods.
- The prisons in which foreigners are detained must ensure that they are:
  - Informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations;

- Informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly;
- Provided with competent legal counsel who can guide them through the legal process and inform them of their rights under international and domestic law;
- Given the same access as national prisoners to education, work, and vocational training as nationals; and
- Allowed to observe their religious precepts and customs without any hindrance or prejudice, and assisted with contacting their families in their home countries.