

ADDRESSING OVERCROWDING IN PRISONS BY REDUCING PRE-CONVICTION DETENTION IN PAKISTAN

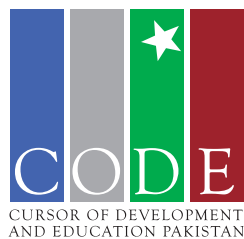
ADDRESSING OVERCROWDING IN PRISONS BY REDUCING PRE-CONVICTION DETENTION IN PAKISTAN



“My message to you all is of hope, courage and confidence. Let us mobilize all our resources in a systematic and organized way and tackle the grave issues that confront us with the grim determination and discipline worthy of great nation.”

— Muhammad Ali Jinnah

Addressing Overcrowding in Prisons by Reducing Pre-Conviction Detention in Pakistan



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Acknowledgment

This study has been developed by the National Counter Terrorism Agency (NACTA), in cooperation with Cursor of Development and Education Pakistan (CODE) and the International Committee of the Red Cross (ICRC), and written and researched by ICRC's Chamaine Enerva, Mariko Ivkov, Sahar Haroon, Zartasha Khan and Paula Milino, as well as CODE's Aarish U. Khan, Mohsin Ali Turk, Babur Ghani, Saba Imran and Sana Taha, and NACTA's Muhammad Jafer.

Along with the collection and analysis of legal and statistical data, a series of consultations were held to guide the process of completing the study and to review its recommendations both at an expert and practitioners levels. Thus, the main contributors of this study are the participants from the following meetings:

- Federal and provincial high-level criminal justice officials meeting, Islamabad, 27-28 July 2017;
- Prison officials meeting on the collection of statistical data from prisons, police and the prosecution, 6 October 2017;
- Khyber Pakhtunkhwa Judicial Academy meeting, Peshawar, 20 October 2017;
- Islamabad Bar Council meeting, Islamabad, 23 October 2017;
- Punjab Bar Council meeting, Lahore, 26 October 2017;
- Balochistan Bar Council meeting, Quetta, 21 November 2017;
- Sindh Bar Council meeting, Karachi, 22 November 2017;
- Khyber Pakhtunkhwa Bar Council meeting, 14 December 2017;
- Prison authorities meeting on the determination of minimum floor space per detainee, Islamabad, 15 December 2017;
- National judicial consultation, Islamabad, 19 December 2017;
- National consultation with experts from civil society and the academe, Islamabad, 14 March 2018; and
- National consultation with senior government officials of the criminal justice system, Islamabad, 29 March 2018.

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List of Acronyms

ADRs	Alternative Dispute Resolution Mechanisms
AJK	Azad Jammu & Kashmir
ANF	Anti-Narcotics Force
B.I.J.J.	Borstal Institution and Juvenile Jail
C&W	Communication and Works
C.P.	Central Prison
CJCC	Criminal Justice Coordination Committee
CNIC	Computerized National Identity Card
CODE	Cursor of Development and Education
CPC	Code of Civil Procedure
CPLC	Citizen-Police Liaison Committee
CrPC	Code of Criminal Procedure
D.P.	District Prison
DFID	Department for International Development
DLEC	District Legal Empowerment Committee
DPO	District Police Officer
DPP	District Public Prosecutor
FOSI	Foundation of Open Society Institute
FPSC	Federal Public Service Commission
GB	Gilgit - Baltistan
GDP	Gross Domestic Product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
H.S.P.	High Security Prison
ICRC	International Committee of the Red Cross
ICTs	Information and Communication Technologies
KW&SB	Karachi Water & Sewerage Board
LHC	Lahore High Court

LJCP	Law and Justice Commission of Pakistan
NAB	National Accountability Bureau
NACTA	National Counter Terrorism Authority
NADRA	National Database and Registration Authority
NAP	National Action Plan
NAPA	National Academy for Prison Administration
NASC	National Anti-Corruption Strategy
NAVTTTC	National Vocational and Technical Training Commission
NGOs	Non-government Organizations
NJPMC	National Judicial Policy Making Committee
NPSC	National Public Safety Commission
NWFP	North-West Frontier Province [now Khyber Pakhtunkhwa (KP)]
OECD	Organization for Economic Cooperation and Development
OPHI	Oxford Poverty and Human Development Initiative
P&D	Planning and Development
PATA	Provincially Administered Tribal Area
PILDAT	Pakistan Institute of Legislative Development and Transparency
PMIS	Prison Management Information System
PPC	Pakistan Penal Code
PPSC	Provincial Public Safety and Police Complaints Commission
SHO	Station House Officer
SOPs	Standard Operating Procedures
SPARC	Society for the Protection of the Rights of the Child
TEVTA	Technical Education and Vocational Training Authority
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime
UTPs	Under-trial Prisoners
W.P.	Women Prison
WHO	World Health Organization
Y.O.I.S.	Youthful Offenders Industrial School

Message from the Federal Minister for Interior and Narcotics Control

Providing justice to its citizens, safeguarding them against illegal coercion, and upholding the rule of law in a country through independent courts is an essential function of a government. While attuning the criminal justice system of a state according to the realities of given times is important at any juncture of the development of the state, it gains further pre-eminence if a state is faced with extraordinary circumstances of internal and external security.

It was in the backdrop of this need for reforming the criminal justice system in the face of a terrorist threat that revamping of the criminal justice system was inserted as Point 20 in the National Action Plan (NAP), a consensus document of the political leadership of the country to guide the way forward in the fight against terrorism. The National Counter Terrorism Authority (NACTA) has put in a tremendous amount of effort in monitoring the implementation of NAP since its approval in December 2014. National Coordinator NACTA Mr. Ihsan Ghani Khan deserves special credit for effectively leading it in fulfilling this important responsibility.



Since the criminal justice system encompasses all three pillars of the government, revamping of the criminal justice system is an ambitious undertaking assigned to a relatively new government institution of NACTA. I must say that NACTA has taken a very wise approach toward the gigantic task of revamping the criminal justice system in this study. It has premised it on reducing overcrowding in the prisons in Pakistan, a subject on which there is a broad consensus among all criminal justice institutions. By anchoring the study on something as established as overcrowding in prisons, NACTA—along with CODE PAKISTAN and the International Committee of the Red Cross (ICRC)—has been able to produce a very comprehensive study on the various required reforms of the criminal justice system of Pakistan that lead to high levels of pre-conviction detention and, thus, overcrowding in prisons.

I am sure that the finding of this study will go a long way in informing the policy and legislation on issues pertaining to revamping of the criminal justice system to make it more efficient and in line with the needs of the time. I would like to congratulate NACTA, CODE PAKISTAN, and the ICRC on the joint effort that has culminated in the production of this report. This process needs to be carried forward with a serious resolve toward implementing the recommendations of this report.

Prof. Ashan Iqbal
Federal Minister for Interior and Narcotics Control

Message from the National Coordinator, NACTA

Under NACTA's mandate for implementing the National Action Plan, Point No. 20 calls for "reforming and revamping the criminal justice system." Three of the four pillars of the criminal justice system, i.e., the police, prosecution and judiciary, have undergone various reforms over the years, but prisons have been invariably neglected by such reforms, making it the weakest pillar in the system. Without improving the plight, conditions and overall system of prisons in Pakistan, there is very little hope for reforming and revamping the criminal justice system.

The penitentiary system of the country suffers from a myriad of problems, resulting in ineffective and inefficient management of prisons and the prisoners. Poor service structure of the Prisons department makes it difficult to attract the best human resource. The gravest problem is our attitude towards the purpose of prisons, i.e., retribution rather than correction, and incapacitation rather than rehabilitation. We tend to forget about the prisoners once they are imprisoned—out of sight, out of mind—giving no real thought to their rehabilitation. Furthermore, prisons always draw the shortest straw when it comes to distribution of resources between the four pillars. Resultantly, all this further weakens the whole of the criminal justice system.



On top of all that and more, overcrowding in prisons is a major dilemma that has led to an almost overwhelming challenge on both the humanitarian and managerial fronts, resulting in deplorable living conditions, overburdened facilities, and a general dearth of resources to meet the minimum requirements of basic human dignity. Coupled with that, the inability of prison staff to effectively monitor prisoner activities provides the terrorist recruiters with very fertile grounds for radicalization.

This report presents a detailed analysis of the causes and possible mitigation strategies for overcrowding in prisons. It is the culmination of a year-long research involving, inter alia, a series of consultations with an extensive and diverse range of stakeholders from all provinces and regions, including police, prosecutions, prisons, judiciary, lawyers, social activists, humanitarian organizations and subject matter specialists. The analysis contained herein is based on the most up-to-date data collected from the provinces, and the conclusions are based on international best practices tailored for our local context, according to our specific situation and requirements.

Hence begins the arduous journey of converting these recommendations into actionable policies and implementable interventions. We will continue to work with all the relevant stakeholders from the provincial and federal government, civil society and humanitarian organizations, etc. to operationalize this document as a manual for reducing overcrowding in Pakistani prisons.

Finally, I would like to extend my sincerest gratitude to all those whose unflinching support and commitment to this noble cause has made this report possible, including all those who participated in the consultations, the provincial departments of the criminal justice system, the ICRC for funding and providing technical oversight, and CODE PAKISTAN for their efforts in organizing and managing the whole process, as well as distilling all wisdom into a single self-contained document. Thank you all very much.

Mr. Ihsan Ghani Khan
National Coordinator, NACTA

Message from the Secretary, Law & Justice Commission of Pakistan (LJCP)

I am pleased to endorse the report prepared by the Council of Development and Education Pakistan (CODE PAKISTAN) for addressing the issue of overcrowding in Prisons by Reducing Pre conviction Detention in Pakistan. I feel no hesitation in saying that the report reflects a comprehensive analysis, the extensive research and untiring effort done by CODE PAKISTAN. Overcrowding in Jails and increase in number of Under trial Prisoners are alarming issues prevailing world wide and this also exists in Pakistan as well; which is needed to be addressed by bringing it into the limelight. It is admirable that the National Counter Terrorism Authority (NACTA), CODE PAKISTAN, and the International Committee of the Red Cross (ICRC) have taken a great initiative by highlighting this problem which falls in the ambit of the Point 20 of the National Action Plan (NAP).



It cannot be denied that overcrowding not only makes the space in prisons congested but has its bearing on the whole of the criminal justice system. It not only results in greater suffering for the prison population but also increases caseload, decreases efficiency of cases management, as well as put extra burden on police and prosecution. Thus, overcrowding has far reaching implications on the criminal justice actors, the whole criminal justice system, and ultimately, the society as a whole. The cost of rehabilitating the prisoners and ensuring their smooth reintegration in society one of the many challenges that take their toll in the whole society, beyond the scope of the criminal justice system.

As the Secretary, LJCP, it is an honor for me to contribute to the greater good of society by taking whatever measures I may in capacity. On the issue of overcrowding in prisons, LJCP has done significant work in the past. Some of this work includes the Rights and Privileges of Prisoners in Pakistan. Another report was published in 2013 titled as Prisoners Vulnerability, Lacking Awareness. The LJCP is also committed to achieve excellence by improving the justice sector in Pakistan. For that purpose, I assure my full support to the authors and contributors of this report and the causes highlighted herein. The LJCP will do whatever it can within its capacity and within the ambit of law, for reducing overcrowding in Prisons in Pakistan, I wish NACTA, the CODE PAKISTAN team, and the ICRC Delegation in Pakistan best of luck in their future endeavors in this regard, and reiterate my resolve to fully support the cause in my own capacity.

Dr. Muhammad Raheem Awan
Secretary
Law & Justice Commission of Pakistan
Supreme Court of Pakistan Building
Islamabad

Message from the Head of the ICRC Delegation to Pakistan

Prison overcrowding is a very serious humanitarian concern, generating substandard and inhumane conditions of detention. Having witnessed firsthand the consequences of overcrowding on both the detainees and the authorities in many contexts around the world for many years, the ICRC knows that situations of overcrowding may trigger a downward spiral, having a negative impact on the entire criminal justice system as a result of overly-stretched infrastructure, staff demotivation and the development of parallel coping mechanisms like corruption.

Addressing the issue of overcrowding in prisons is a difficult and challenging undertaking, as it has multiple and cumulative causes, largely external to the prison system itself. It therefore requires a holistic and coordinated response from a broad range of authorities and stakeholders, including at the policy level and in society at large.

Over the years, the ICRC has observed the difficulties experienced by many states in their efforts to improve the complex interactions between different actors, such as the legislature, judiciary, police, prosecutors, court administrations and oversight bodies, which are essential if the cycle of overcrowding is to be broken. Questioning criminal policies, embarking on legislative or procedural changes and altering longstanding judicial practices are anything but, straightforward matters. Considerable sensitivity is also called for when confronting commonly held perceptions or investing in alternatives to detention while reassuring the public that measures are being taken to fight crime.

The ICRC is therefore pleased to support the Government of Pakistan in its resolve to tackle this perplexing issue. The ICRC has been helping detainees since 1870, working today in 98 countries around the world to secure humane treatment and conditions of detention for all detainees, regardless of the reasons for their arrest. We also seek to alleviate the suffering of their families, particularly by restoring communication between detainees and their relatives. With our experience in prisons, we work with governments to address both the consequences and the causes of the problems that affect prison systems. It is with this endeavor that the ICRC lends its technical capability to this study.

Taking a first step in the right direction, this study embarked on an evidence-based and legal evaluation of one of the major causes of prison overcrowding in the country – the high rate of pre-conviction detention. Indeed, research and data analysis are essential elements in understanding the causes of a problem and designing the appropriate solution, especially when it comes to prisons and criminal justice where data may not always shape the discourse and/or may be unreliable, inaccessible or simply not available.

An accurate interpretation of the data collected for this research would not have been possible without the contribution of numerous criminal justice officials and stakeholders who participated in consultations and individual interviews in the federal capital, four provincial capitals as well as two administrative territories. Indeed, this study is a joint effort aimed at a common objective to create conditions for detainees and prison staff that are compatible with human dignity by addressing the shortcomings of the criminal justice system.

With this, I would like to congratulate NACTA and CODE Pakistan for making the arduous task of presenting this study *Addressing Overcrowding in Prisons by Reducing Pre-Conviction Detention in Pakistan* possible. I look forward to the implementation of the recommendations that have come forward, as well as affirm my support in reaching the desired impact of this undertaking.



Mr. Reto Stocker
Head of the Delegation
ICRC Pakistan

Message from the Founder, CODE PAKISTAN

CODE Pakistan since its establishment in the year 2014 is now maturing into a foremost national policy research organization as it has undertaken various innovative and inter-disciplinary research and capacity building initiatives on various policy issues. Laying hand on the criminal justice system, which is always considered a sensitive subject, was in fact a serious challenge but I would appreciate the level of cooperation extended by all the criminal justice stakeholders, in accomplishing this assignment of national importance. This study, under the National Action Plan (NAP), is a product of efforts invested by various partners and people whose collaboration and dedication to hard work and reform has culminated in this publication.



The contribution of National Counter Terrorism Authority (NACTA) during the study remained unparalleled. I am exceedingly thankful to the National Coordinator Mr. Ihsan Ghani for his confidence, support, and guidance throughout this study. Under his leadership, NACTA has committed itself to pursuing its mandate of implementing the NAP with a renewed vigor to ensure that Point 20 of the NAP regarding the revamping of the criminal justice system is addressed. I also acknowledge the devoted efforts of Mr. Muhammad Jafer (Director General Counter Terrorism, NACTA) in supplementing our determination and providing his valuable feedback whenever required.

International Committee of the Red Cross (ICRC) has no doubt, provided phenomenal support in the process of conducting the study and publication of this report. Head of the Delegation Mr. Reto Stocker and his team were available throughout to contribute the value of their expertise on the subject of prisons and their insight in steering the study to the present form. Secretary Law and Justice Commission of Pakistan (LJCP) Dr. Muhammad Raheem Awan remained a key contributor to our journey. I also express gratitude to Mr. Masood Khan (Former Director General, Khyber Pakhtunkhwa Judicial Academy), for his efforts in guiding the incorporation of judicial opinion into the study.

Team CODE PAKISTAN deserves credit for their exhaustive labor in bringing to fruition months of hard work in the form of this publication. Thanks to the efforts of Mr. Aarish U. Khan (Vice President) for his tireless endeavors in drafting and revising various drafts of the report, Mr. Mohsin Ali Turk (Senior Advisor) for carrying and contributing with more than a decade of experience as a respected judge and extensive knowledge of the practices in criminal justice system; our Director Research Mr. Babur Ghani and Director Programs Ms. Saba Imran in managing the primary research and undertaking extensive travels for this study and our Research Associate Ms. Sana Taha for her crucial research support to the team. In the end, I thank everyone who has been part of this journey. The task was huge and difficult but during a year long journey we were introduced to a number of remarkable people whose passion for improving the criminal justice system of Pakistan and protecting the rights of marginalized people made every demanding moment worth the effort. The study integrates the views of all relevant criminal justice actors from across the country including judiciary, police service, prosecution service, prisons, Bar Councils, as well as Probation and Parole departments. The dedicated officials who made up this spectrum of criminal justice actors provided us with a revolutionary education on the subject of this study and gave us the confidence to accomplish this monumental task, which I hope will have an equally immense impact on reforming the criminal justice system of Pakistan.

Mr. Dilawar Khan
Founder and President CODE PAKISTAN

Executive Summary

As of October 1, 2017, there were 84,287 prisoners in the 112 prisons throughout Pakistan with an overall authorized capacity of holding 53,744 prisoners. This translates into an overall occupancy rate of 157 percent in Pakistan's prisons and an excess prison population of 57 percent, leading to a significant overstretch of resources. While certainly a matter of concern, it should be noted that the incarceration rate in Pakistan, i.e., prison population rate per 100,000 of national population, at 41 is lower than many other countries around the world. Another worrying aspect of Pakistan's prison population is that 66 percent or two-thirds of the total prisoners were still awaiting or undergoing trial as of October 1, 2017. At 66 percent, the rate of under-trial prisoners (UTPs) in Pakistan's prisons is much higher than the global median average rate of 27 percent. More so, while the overall ratio of women and juveniles in Pakistan's prisons at 1.8 percent and 1.3 percent, respectively, is demonstrably low, the proportion of UTPs among them is much higher at 68 percent for women and 91 percent for juveniles.

While it can be argued that the data pertaining to prison population has not remained specifically uniform, depending on source and date, the historical trends of Pakistan's prisons population consistently reveal that high occupancy and high UTP rates, are a constant feature of Pakistan's prison population. It also needs to be borne in mind that there is a considerable degree of variation in prison overcrowding and UTP rates across various provinces and Administrative Territories (ATs) in Pakistan and across various prisons in each province/AT. For instance, while the prison occupancy rate was the highest in Punjab province at 168 percent, the UTP rate was the highest in Sindh province at 78 percent. Similarly, some prisons in the country have occupancy rates as high as over 500 percent.

The aforementioned statistics indicate toward real life human suffering primarily for the prisoners but also for the state and society as a whole. Inadequate supply of food, water, sanitation, accommodation, healthcare, and correctional facilities because of overstretching of the prison resources leads to difficulties in managing prisons such as safety, security, and classification of prisoners, etc. This, in turn, could lead to difficulties in reintegration of prisoners into the society after their release, cause recidivism, spread communicable diseases, affect the families of the prisoners, and overburden state resources.

The Government of Pakistan has increased the numbers of prisons and increased the capacities of the existing ones in recent years to alleviate the plight of prisoners in overcrowded prisons. The impact of this exercise, however, has not been astoundingly significant. The reason being, that the capacity of prisons only addresses the supply side of the equation, which is just one part of the enormous puzzle of factors that contribute to prison overcrowding. In other words, if the underlying causes of overcrowding in prisons are not addressed, the increase in prison capacities would serve as a mere cosmetic arrangement as ultimately, the newly constructed detention facilities would also start to overcrowd. Therefore, it is very important to ascertain and address the demand side causes of overcrowding, especially the high concentration of UTPs, for finding sustainable long-term solutions of prisons overcrowding. Several of those causes relate to criminal justice institutions other than the prisons, such as, the police, prosecution, judiciary, and the lawyers.

A major cause of high UTP rate, or pre-conviction detention, is the overuse of arrest and detention in criminal justice policies. The police in Pakistan have a tendency to over-arrest for a variety of reasons ranging from over-implication by the aggrieved parties in the First Information Reports (FIRs) to meeting performance evaluation targets and frivolous litigation. Not only are the police quick to arrest, they are also generally reluctant to use the available legal instruments like bail and release under Section 169 of the Criminal Procedure Code (CrPC) in cases of insufficient evidence. The police also contribute to prolonged detention in prisons because of resource constraints that inhibit their ability to produce prisoners and witnesses in courts. These resource shortcomings also affect the timely conclusion of investigation, the submission of final reports (challans) and often lead to procedural issues such as the non-appearance of police witnesses in courts due to quick transfers from one district to another. At times, involuntary irregularities by the police due to lack of sufficient education and training also contributes to undue delays in the process.

The Prosecution Department, which is, inter alia, required to assist the police in timely submission of *challans*, is also grossly under-resourced. As of October 1, 2017, there were 740 vacant positions of prosecutors in the four provinces of Pakistan and the federal capital, against the total 2,254 sanctioned positions amounting to a vacancy rate of 34 percent. Moreover, with the exception of the KP province, the Prosecution Department does not get involved in preparation of a *challan* with the police immediately after the submission of an FIR. This results in an uncalled-for process of back-and-forth between the police and the prosecution leading to extension in detention of prisoners. Although Section 494 of the CrPC empowers prosecutors to withdraw from prosecution with the consent of the court if the case so warrants, the prosecutor rarely exercises this power.

Limited accessibility to legal counsel is another symptom of resource constraints that often results in UTPs unfairly languishing in prisons. Although the government has established District Legal Empowerment Committees (DLECs) in every district across the country, lack of awareness about them among the general public and procedural hurdles are causing their under-utilization.

There are provisions in Pakistani laws for alternatives to detention in the pre-conviction stage in the form of bail for offenses classified as bailable under the CrPC. In practice, however, bail is granted inconsistently and not as a general rule. Moreover, for the underprivileged detainees, it is difficult to arrange lawyers and, otherwise, to furnish bail bonds even after the grant of bail.

Judicial delays caused by recurrent postponement of trials is another significant cause of prison overcrowding owing to high pre-conviction detention. Trials are frequently postponed because of requests for adjournments either by the prosecution or by the defense counsel, primarily attributed to non-production of witnesses, including police witnesses. Lawyers also resort to using judicial delay as a tactic to weaken the case of the prosecution. Moreover, repeated lawyers' strikes lead to delays in adjudication of cases. In addition to all these problems, the judiciary in Pakistan is also highly under-staffed, which markedly contributes to judicial delays in the criminal justice system. On October 1, 2017, more than one in four sanctioned judges' positions were vacant. Overstretching of prison resources is in itself reinforcing prison overcrowding as prisons are increasingly unable to play their corrective and reformative role for the prisoners, if overcrowded.

In view of the problems related to high pre-conviction detention leading to overcrowding in prisons, there is an urgent need for an assessment of prison conditions and judicial visits for granting of bail and other relief to deserving prisoners in the most overcrowded prisons. There is also a pressing need for introducing screening of every prisoner for the most prevalent communicable diseases at the time of admission through in-house pathology labs in all prisons. Besides special measures for juvenile UTPs, there is also an urgent need for real-time monitoring of prison population across Pakistan through a web-based monitoring application that would help in directing help to the most overcrowded prisons as urgently as possible. Children accompanying incarcerated mothers is one of the most neglected subjects of Pakistan's prison population and the government should take immediate measures to devise an institutional mechanism for their care, health, and education.

In the medium to long term, there is, inter alia, a need for the following measures:¹

- a. Addressing socio-economic causes leading to high pre-conviction detention, especially among children;
- b. Balancing the use of imprisonment in the criminal justice policies through decriminalization of petty offences, referral to alternatives to imprisonment such as probation and community service, and release of fine defaulters;
- c. Preventing unnecessary arrests and imprisonment at the police level by revising their performance criteria, improving investigation, and incentivizing the application of release by police officials;
- d. Maximizing police resource and modernizing investigation methods through legal reforms, trainings, material support, etc.;

¹ This is just a snapshot of key recommendations and does not include all recommendations. For a detailed discussion on the recommendations, the suggested administrative and legal reforms for implementing them, and proposed plans for monitoring the implementation of the given recommendations and their action plans, please see the concluding chapter of this report.

- e. Improving the working conditions of public prosecutors and their coordination with the police, as well as empowering them to efficiently use their discretionary powers in withdrawing cases where sufficient evidence is lacking;
- f. Improving access to legal counsel through the DLECs and other available platforms;
- g. Reinforcing alternatives to pre-trial detention by improving laws and procedures on bail, use of diversion measures provided in the Juvenile Justice Bill of 2018, and use of ADRs where they have a solid legal basis and are subject of judicial oversight;
- h. Removing obstacles and delays in accessing justice by introducing administrative actions against delays at the level of police and prosecution in submitting *challans*, taking measures against frequent adjournments of trials and excessive strikes by the lawyers, categorization of lawyers by specialty, empowerment of the disciplinary committees of the Bar Councils, strengthening the human resource of the judiciary, and institutionalization of a regular interface of the criminal justice stakeholders at the district, provincial, and national levels;
- i. Supporting effective prison management with a focus on moving from punitive detention to rehabilitation of prisoners, better implementation of laws regulating classification and separation of prisoners, structural changes to the existing framework of the Pakistan prison service and training manual, and digitization of prisoner records; and
- j. Ensuring the safety and well-being of criminal justice stakeholders acts through prompt investigation of harassment, threats, or physical assaults directed against criminal justice actors, including judges, prosecutors, lawyers, police, prison staff, prisoners, and witnesses.

Introduction

Overcrowding in prisons is a global concern,² with around 60 percent of countries all over the world exceeding their prisons' official capacity.³ It affects not only the requirements of adequate space for the prisoners but also their health, hygiene, nutrition, access to available resources, right to be housed separately from certain other categories of prisoners, as well as their safety and security.⁴ Prison overcrowding has serious consequences for both inmates and prison staff, putting them in highly precarious situations, which cannot be ignored.

The poor living and sanitary conditions within prisons are an outcome of overstretched resources, which may not be adequate to begin with. This may then have a spiraling effect and lead to spread of diseases, worsening of criminal operations inside prisons, and ill-treatment of detainees by prison guards. In a broader sense, overcrowding in prisons could lead to exacerbation of levels of crime, poverty, and communicable disease in the society.⁵

Recounting their personal experience of visiting prisons, criminal justice officials shared that prisoners were sitting in bathrooms, forcibly huddled together with their arms around their knees, because there was not enough space to lie down with most inmates shirtless in an attempt to ward off the heat.⁶ In one prison, three grown men shared a small single bed, which would have barely been comfortable for one,⁷ while in another prison, inmates were being kept in the mosque and made to sleep in the bathrooms due to lack of space.⁸ Prisoners were left to sleep standing because of insufficient space that the available space became a commodity to sell to prisoners willing to pay for it.⁹

Studies have shown that crime rates,¹⁰ socio-economic inequality, problems relating to access to justice, "tough-on-crime" policies leading to excessive arrests of marginalized communities, strict laws against drug offenders, inadequate use of alternatives to detention, inadequate prison infrastructures, and excessive under-trial detention are, inter alia, associated with overcrowding in prisons in one way or the other.¹¹

Countries with the highest levels of overcrowding also have prison populations with the highest proportions of prisoners who have not yet been convicted of a crime, which includes both pre-trial and under trial detainees.¹² In Pakistan, 66 percent of inmates were awaiting or undergoing trial.¹³ This is a considerably high rate, compared to the average median rate globally at 27 percent.¹⁴ As far as the global ranking for this rate of prisoners who are still awaiting or undergoing trial, Pakistan ranks 13th highest globally and third

2 'It is also arguably the biggest single problem facing prison systems around the world'; See Penal Reform International, 'Overcrowding' available at <https://www.penalreform.org/priorities/prison-conditions/key-facts/overcrowding/> (last accessed on October 7, 2017).

3 *World Prison Brief* available at <http://www.prisonstudies.org/world-prison-brief-data> (last accessed on January 18, 2018).

4 *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., pp.11-14.

5 *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., pp.14-17; See Gerald G. Gaes, 'The Effects of Overcrowding in Prison' *Crime and Justice*, Vol. 6. No. 1 (1985), pp.95-146 available at https://www.jstor.org/stable/1147497?seq=1#page_scan_tab_contents (last accessed on December 19, 2017); Yumna Rafi, "Overcrowding in prison leading to growing radicalization" *Dawn*, May 10, 2015.

6 Interview with a senior-level police officer in Islamabad on May 18, 2017; The same was also reported by Samaa TV wherein prisoners sleeping in bathrooms in Pakistan were covered; See 'Inmates at Peshawar Central Jail forced to sleep in bathrooms; Report' Samaa Web Desk, July 2, 2016, <https://www.samaa.tv/editor-s-choice/2016/07/inmates-at-peshawar-central-jail-forced-to-sleep-in-bathrooms-report/>.

7 Interview with a senior-level prisons official of the Government of Sindh in Karachi on June 6, 2017.

8 Interview with a senior-level prosecutor of KP in Peshawar on May 22, 2017; Also see 'Inmates at Peshawar Central Jail forced to sleep in bathrooms; Report' Samaa Web Desk, July 2, 2016, available at <https://www.samaa.tv/editor-s-choice/2016/07/inmates-at-peshawar-central-jail-forced-to-sleep-in-bathrooms-report/> (last accessed on December 22, 2017).

9 Interview with a senior-level prosecutor of KP in Peshawar on May 22, 2017.

10 Rates of imprisonment and crime may evolve independently of each other, or rising crime may impact on rates of imprisonment but not constitute the main factor that fuels ever increasing rate of incarceration. See *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., p.19.

11 *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., pp.19-37.

12 See Penal Reform International, 10-Point Plan. Available at https://www.penalreform.org/wp-content/uploads/2016/04/10-point-plan-Pre-trial-detention-WEB_final.pdf (last accessed on February 19, 2018).

13 Official data obtained from the provincial Home Departments through NACTA.

14 See *World Pre-trial/Remand Imprisonment List*, 3rd ed., (Institute for Criminal Policy Research, 2015).

among Asian countries.¹⁵ This indicates serious problems in the criminal justice system causing delays in dispensation of cases and, resultantly, creating a burden on the prison population.¹⁶

Thus, this paper endeavors to understand prison overcrowding and their consequences in Pakistan and examine high pre-conviction detention, i.e. imprisonment from the time of arrest to right before prisoners are pronounced guilty of a crime, as one of its main causes. By identifying and analyzing the reasons for high pre-conviction detention, this paper aims to contribute in the formulation of a national strategy to address overcrowding by reducing pre-conviction detention.

While there are already efforts to complete or construct new prisons,¹⁷ it has been emphasized by many commentators that, “where there are prisons they will be filled” and in the long term a constant expansion of the prison estate may even lead to an increase in imprisonment rates,¹⁸ which in the case of Pakistan is one of the lowest in the world. Thus, in order to come up with a sustainable strategy to combat prison overcrowding, the focus should be shifted to addressing its main causes, a major one being the high pre-conviction detention.

Since 1997,¹⁹ numerous studies have been carried out to improve the workings of the criminal justice system. This paper looks into the actions carried out, if any, as a consequence of those studies, how effectively were the proposed recommendations implemented, and what steps were taken to monitor them. A general prison population data was also collected as of October 1, 2017 and its analysis is presented in this report.

This report is, thus, divided into five chapters. Chapter 1 gives an overview of the overall structure of the government, explaining the division of powers between the federal (central) and provincial governments with respect to the criminal justice system. Chapter 2 gives an overview of the prisons and prison system in Pakistan, and a report on the general prison population in the country and its analysis. Chapter 3 of the report elaborates the consequences of overcrowding both inside and outside the prison walls, while Chapter 4 identifies and analyzes the causes of high pre-conviction detention forming the bulk of the report. Finally, Chapter 5 comprises of the conclusion and recommendations stemming out of this study, detailing the roles to be played by institutions such as the police, prosecution, judiciary, and the prison administration, as well as the lawyers.

15 *World Prison Brief*, Institute for Criminal Policy Research.

16 Hans-Jorg et.al., *Prison Overcrowding: Finding Effective Solutions, Strategies and Best Practices against Overcrowding in Correctional Facilities*, p. 76.

17 See Nasir Iqbal, “Three new prisons in Punjab being planned, SC Told” *Dawn*, September 2, 2017; ‘Chief Minister Khyber Pakhtunkhwa Pervez Khattak has inaugurated the high security Central Jail at Mardan’ *Information and Public Relations Department, Government of Khyber Pakhtunkhwa*; ‘CM Sindh Reviews Progress on Construction of ATC at Central Jail Karachi’ *Radio Pakistan* August 5, 2017.

18 *Handbook on Strategies to Reduce Overcrowding In Prisons*, op.cit., p. 162.

19 *Report on Jail Reform (Report No. 23)* Pakistan Law Commission, 1997.

1 Structure of the Government and the Criminal Justice Institutions

Pakistan is a federation with a parliamentary democracy,²⁰ which means that the Prime Minister—along with his Cabinet—is a member of the Parliament (known as *Majlis-e-Shoora*)²¹ enjoying the support of the simple majority of the Lower House (known as the National Assembly).²² In other words, there is no strict separation of powers between the executive and legislative branches of the government, which makes it more akin to the British political model than the U.S. one. Unlike the British political system, however, Pakistan has an Upper House (the Senate) with equal representation of the provinces.²³ Moreover, there is a division of powers between the federal (central) government²⁴ and the four provincial governments sitting in the four provincial capitals,²⁵ empowered to legislate within their respective territorial jurisdictions in accordance with the Constitution of Pakistan.²⁶

1.1 Empowerment of the Provincial Criminal Justice System

The 18th Amendment to the Constitution of Pakistan²⁷ gave greater autonomy to the provinces by amending the Legislative Lists,²⁸ as well as Article 142(b) of the Constitution.²⁹ Resultantly, prisons became a provincial subject, meaning that the provinces are now competent to legislate³⁰ as well as formulate policies in respect of prisons and oversee their implementation within their borders. Each of the four provincial governments (Balochistan, KP, Punjab, and Sindh)³¹ and the two governments in charge of the Administrative Territories (ATs), i.e., Gilgit-Baltistan (GB) and Azad Jammu Kashmir (AJK),³² are responsible for the establishment, maintenance, and improvement of prisons, along with recruitment and remuneration of the staff.³³

Any analysis of prisons is made difficult by the fact that the four provinces and the two ATs have their own Departments or Inspectorates of Prisons under their Home Departments.³⁴ In addition, in the Federally Administered Tribal Areas (FATA), the administration of justice in criminal matters is very different from the rest of the country and is primarily governed by the Frontier Crimes Regulation 1901 (FCR). Under these regulations, a tribal Jirga or Council of Elders may try suspects on reference by the Political Agent

20 Preamble of Constitution of Islamic Republic of Pakistan 1973.

21 See Article 50 of the Constitution of Islamic Republic of Pakistan 1973.

22 See Article 50 and 91 (4) of Constitution of Islamic Republic of Pakistan 1973.

23 See Article 59(1) of Constitution of Islamic Republic of Pakistan 1973.

24 See Article 97 (read with Article 141 and 142 (a) (b) and (d) and Federal Legislative List) of the Constitution of Islamic Republic of Pakistan 1973.

25 See Article 137 (read with Article 141 and 142 (b) and (c) and Federal Legislative List) of the Constitution of Islamic Republic of Pakistan 1973.

26 Article 106 (1) of the Constitution of Islamic Republic of Pakistan 1973.

27 Constitution (Eighteenth Amendment) Act 2010.

28 The Legislative Lists in the Fourth Schedule of the Constitution of Pakistan 1973 determine if a subject is going to be under federal control or provincial control. The 18th Amendment removed several subjects, including prisons, from the Federal Legislative List, making it, by exclusion, a subject matter of provincial jurisdiction.

29 Article 142 deals with power of the Parliament and the Provincial Assemblies to legislate; Article 142 (b) states that the Parliament and the Provincial Assemblies “shall have power to make laws with respect to criminal law, criminal procedure and evidence.”

30 Subject to Article 142 (c) read with the Federal Legislative List in the Fourth Schedule of the Constitution of Pakistan 1973, the subject of prisons falls under the provincial mandate. This, however, is subject to Article 142 (b) of the Constitution, which gives the Parliament and Provincial Assemblies, both, the power to make laws on ‘criminal law, criminal procedure and evidence’. Therefore, although prisons is a provincial subject, the Parliament can make and amend criminal laws, affecting prisons as well. In case of any conflict in federal and provincial laws, the federal laws would prevail; See Constitution of Pakistan 1973, Art.142 – 143. See also: International Crisis Group, *Reforming Pakistan’s Prison System*, Asia Report No. 212, 12 October 2011.

31 See Constitution of Pakistan 1973, Art. 1 (2) (a).

32 See Constitution of Pakistan 1973, Art. 1 (2) (d). For Gilgit-Baltistan (GB), see the the Gilgit Baltistan (Empowerment and Self Governance) Order 2009; and for Azad Jammu and Kashmir (AJK), see the AJK Interim Constitution Act 1974.

33 See Punjab Government Rules of Business 2011, Second Schedule, Home Department, Item 19. Sindh Government Rules of Business 1986, Second Schedule, Prisons Department. The Balochistan Government Rules of Business 2012, First Schedule, Section B, Home Department, Item 6. North-West Frontier Province Government Rules of Business 1985, Second Schedule, Home and Tribal Affairs Department, Item 11. Gilgit-Baltistan Government Rules of Business 2009, Second Schedule, Home and Prisons Department. Azad Government of the State of Jammu and Kashmir Rules of Business 1985, Second Schedule, Home Department, Section B – Prisons.

34 *Ibid.*

in FATA.³⁵ The Council of Elders then submits its recommendations regarding conviction or acquittal to the Political Agent.³⁶ In order to decide a matter, the Political Agent is not bound by these recommendations.³⁷ The orders of the Political Agent cannot be challenged before the higher courts in the country, as the remedy of judicial writs is inapplicable to FATA.³⁸ Appeals from the decisions of Political Agents lie to the Commissioner or Deputy Commissioner.³⁹ There is also a FATA Tribunal and Appellate Authority that can exercise the powers of Court of Sessions and High Court as under the Code of Criminal Procedure 1898 (CrPC).⁴⁰ In 2011, the then-President, Asif Ali Zardari, amended the FCR⁴¹ as a result of which an accused now has the right to bail and must be produced before the concerned authority within 24 hours of arrest.⁴² In November 2015, a six-member FATA Reforms Committee was constituted to deliberate upon reforming FATA and consider its merging with the province of KP. In March 2017, the Federal Cabinet approved this Committee's recommendations.⁴³ Some of the key recommendations of the Committee were to replace the FCR with a new Tribal Areas *Rewaj* (Custom) Regulation on the same model as already exists in the Provincially Administered Tribal Areas (PATA), giving representation to FATA in the KP Provincial Assembly, and gradually integrating FATA in the province of KP.⁴⁴ Although, the report and its recommendations were hailed by many, it was criticized for being difficult to implement.⁴⁵ The government was expected to table a FATA Reform Bill in the parliament based on the recommendations of the report in December 2017, but it was taken off the National Assembly's agenda to the dismay of the opposition, leading to much discontent.⁴⁶

As mentioned before, the provinces are empowered to legislate in relation to the criminal justice system.⁴⁷ By way of example, until 2003, there were no independent prosecution departments in Pakistan; however, between 2003 and 2009, the provinces enacted laws to set up independent prosecution services.⁴⁸

The provincial authorities seem aware of the shortcomings in the criminal justice system and willing to address them. For instance, in Punjab, the Standard Operating Procedures (SOPs) on Effective Police-Prosecution Cooperation (2011) aimed to address the issue of the lack of cooperation between the police and the prosecution during criminal investigations.⁴⁹ Efforts were made at the provincial level to build the capacity of the criminal justice actors. While the federal authorities (such as the National Police Academy, the Federal Judicial Academy, and the National Academy for Prison Administration) are in charge of the training of the criminal justice actors, the provinces are also developing their own training institutions for the past few years. As an example, Punjab province has its own Police Academy; it is in the process of constructing a Prison Staff Training Institute in Sahiwal⁵⁰ and has a Prison Staff Training Institute in Lahore.⁵¹ Similarly, all four provinces have their own provincial judicial academies.⁵²

35 Frontier Crimes Regulation 1901, Reg. 11.

36 Frontier Crimes Regulation 1901, Reg. 11 (3).

37 Frontier Crimes Regulation 1901, Reg. 11 (3).

38 Frontier Crimes Regulation 1901, Reg. 47. See also: Tribal Post, *No access to justice: Prisoners face pathetic conditions in FATA*, 22 August 2017.

39 Frontier Crimes Regulation 1901, Reg. 48.

40 Frontier Crimes Regulation 1901, Reg. 47, 55A.

41 Frontier Crimes (Amendment) Regulation, 2011.

42 Frontier Crimes Regulation 1901, Reg. 11- 11A. See also: International Crisis Group, *Reforming Pakistan's Prison System*, Asia Report No. 212, 12 October 2011.

43 Government of Pakistan, Report of the Committee on FATA Reforms 2016, August 2016.

44 Government of Pakistan, Report of the Committee on FATA Reforms 2016, August 2016, p. 10.

45 Riaz ul Haq, Hit by Divisions: Technical Glitches make FATA Reforms hard to implement, *The Express Tribune*, 3 September 2016.

46 Qadeer Tanoli, "Uproar in NA as govt pulls FATA reforms off agenda" *Express Tribune*, December 12, 2017, available at <https://tribune.com.pk/story/1581895/1-uproar-na-govt-pulls-fata-reforms-off-agenda/> (last accessed on December 19, 2017).

47 Constitution of Pakistan 1973, Art. 142 (b)- (c).

48 For example, Balochistan Criminal Prosecution (Constitution, Functions & Powers) Act 2005; Khyber Pakhtunkhwa Criminal Prosecution (Constitution, Functions & Powers) Act 2005; Punjab Criminal Prosecution (Constitution, Functions & Powers) Act 2006; Sindh Criminal Prosecution (Constitution, Functions & Powers) Act 2009; See also: Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014.

49 Government of Punjab, Standard Operating Procedure for Police Prosecution Cooperation in the Province of Punjab, 2011, available at <http://prosecution.punjab.gov.pk/system/files/Police%2520Prosecution%2520Cooperation.pdf> (last accessed on December 22, 2017).

50 Faisal Ali Ghunman, 'Prisons Staff Training Delayed but not Denied' *Dawn*, September 4, 2014.

51 "Training of Staff," *Punjab Prisons, Government of Punjab*.

52 Balochistan Judicial Academy, Quetta; Sindh Judicial Academy, Karachi; Punjab Judicial Academy, Lahore; and KP Judicial Academy, Peshawar.

1.2 Oversight at the Federal Level

Improvement of the overall criminal justice system is ensured by federal oversight of the provinces through designated supervisory bodies, which also provide the necessary check and balance. Each of the concerned supervisory authorities for police, prisons, prosecution and judiciary are discussed hereinafter.

It must be noted, that the ministries operate at the federal level, forming a part of the Federal Secretariat.⁵³ At the provincial level, the departments of the province form the Secretariat for that province, concerned with the business of the government as distributed amongst them.⁵⁴ The ministries and the departments are the highest executive authorities in the federation and provinces, respectively, whose powers and functions are provided in the respective Rules of Business for the governments⁵⁵ made under Article 99 and 139 of the Constitution of Pakistan 1973.⁵⁶

1.2.1 Police

1.2.1.1 Role of Ministries

At the federal level, the Ministry of Interior, Government of Pakistan, has an Interior Division and a Narcotics Division.⁵⁷ The Interior Division deals with internal security and, therefore, the police.⁵⁸ Like prisons, police departments are also primarily within the legislative jurisdiction⁵⁹ of provinces,⁶⁰ subject to the Home Department of each province.⁶¹ Each provincial Home Department is independent of federal control,⁶² coming under the supervision of their respective Chief Ministers.⁶³ The overall government structure has the ministries at the top, making the Ministry of Interior the highest authority with reference to the police. Moreover, legally speaking, the Ministry of Interior's regime runs parallel with the mandate of the provincial Home Department.

1.2.1.2 Role of Federal Public Service Commission

Police officers are recruited in accordance to their ranks in three tiers.⁶⁴ Recruitment to junior ranks of Constables is done via the district selection process. Assistant Sub-inspectors are appointed through the provincial Public Service Commission (PPSC).⁶⁵ The Assistant Superintendent Police (ASP) and above are recruited through the Federal Public Service Commission (FPSC),⁶⁶ which falls under the purview of the Federal Government.⁶⁷ Such police officers, as selected through the FPSC, comprise the Police Service of Pakistan (PSP),⁶⁸ and guided by the Police Service of Pakistan (Composition, Cadre and Seniority) Rules 1985. Therefore, appointments for posts such as ASP and higher on the police ranking order are directly

53 Rules of Business 1973, R. 3.

54 See Punjab Government Rules of Business 2011, R. 3. Sindh Government Rules of Business 1986, R. 3. The Balochistan Government Rules of Business 2012, R. 3. North-West Frontier Province Government Rules of Business 1985, R. 3.

55 [Pakistan] Rules of Business 1973. Punjab Government Rules of Business 2011. Sindh Government Rules of Business 1986. The Balochistan Government Rules of Business 2012. North-West Frontier Province Government Rules of Business 1985.

56 Article 99 empowers Federal Government to make rules for carrying on the functions of the Federal Government, whereas Article 139 devolves the same power to Provincial Governments.

57 Please see <https://www.interior.gov.pk/> (last accessed on December 19, 2017).

58 Schedule II, Item 18 (1), (12), (18) and (20) of Rules of Business 1973.

59 For example, the Police Order 2002, as applicable to Pakistan, except Islamabad Capital Territory, is respectively applied by the provinces with minor amendments. Punjab made significant changes to the Police Order 2002 by virtue of the Punjab Police Order (Amendment) Act 2013. KP promulgated the Khyber Pakhtunkhwa Police Act 2017 and repealed the relevant provision of Police Act 2002 as applicable to KP.

60 Section 9 (1) of the Police Order 2002; Superintendence of police vests in the appropriate government of the respective area.

61 The home department is responsible for maintaining law and order in each province; See 'Home Department' *Punjab Portal*; 'Introduction' *Home Department Government of Sindh*; 'Introduction' *Home and Tribal Affairs Department Government of Khyber Pakhtunkhwa*; 'Home and Tribal Affairs Department' *Government of Balochistan*.

62 The Constitution of Pakistan 1973 gives the federal government powers over certain matters, leaving the rest to the prerogative of the provinces. Law and order (hence, police) falls under the exclusive ambit of the provinces; see Schedule IV, Part I, Item 11 of the Constitution of Pakistan 1973.

63 See Government Rules of Business for each province respectively.

64 Section 7 (3) of the Police Order 2002.

65 Section 7 (3) of the Police Order 2002.

66 Section 7 (4) of the Police Order 2002 and Section 29 of KP Police Act 2017.

67 Schedule IV, Part I, Item 11 of the Constitution of Pakistan 1973.

68 'Police Service of Pakistan' *Civil Service of Pakistan* (Available at http://csspk.com/Police_Service_of_Pakistan.htm).

controlled by a federal institution.⁶⁹

1.2.1.3 Role of National Public Safety Commission and National Police Bureau

While the FPSC oversees the very specific matter of the recruitment of senior police officials, more specific federal oversight is exercised by the National Public Safety Commission (NPSC) and the National Police Bureau.

Half of NPSC's members are recommended by the Speaker of the National Assembly,⁷⁰ while the *ex officio* Chairman of the NPSC is the Federal Interior Minister.⁷¹ The NPSC oversees the functioning of federal law enforcement agencies and railway and highway police,⁷² and has very limited powers with respect to provincial police.⁷³ The NPSC's functions include recommending appointments and transfers of the heads of the federal law enforcement agencies or Capital City Police Officer if their performance is found to be unsatisfactory,⁷⁴ overseeing implementation of plans prepared by law enforcement agencies,⁷⁵ evaluating delivery of targets,⁷⁶ and recommending reforms for police, prisons, prosecution and probation officers, etc.⁷⁷ In the provinces, it is the Provincial Public Safety and Police Complaints Commissions (PPSC) that oversee matters of the provincial police,⁷⁸ leaving the NPSC with the role of "facilitating coordination" among the PPSCs.⁷⁹ Powers of the NPSC, with reference to provincial police are, therefore, recommendatory and facilitative in nature,⁸⁰ leading to major control residing with the provinces via the PPSCs.

The National Police Bureau works under the supervision of the Ministry of Interior and acts as the secretariat of NPSC.⁸¹ As the Secretariat of NPSC, it acts independently, but for its other purposes, it works under the direction of the Interior Division, Ministry of Interior.⁸² The National Police Bureau's functions are primarily that of research and development,⁸³ and any other functions that may be assigned to it by the federal government.⁸⁴ The impact that National Police Bureau may have on police and prisons would be through its policy initiatives and reforms as recommended to the Ministry of Interior.⁸⁵ It does not, however, have any direct power to ensure supervision.

1.2.2 Prisons

1.2.2.1 Role of Ministries

Prison laws, rules, and administration, by virtue of falling under the criminal justice system, are a provincial subject.⁸⁶ The provincial Home Departments oversee matters related to prisons, except Balochistan that has established a Prisons Department instead of making prisons a subject of the Home Department. While the provincial Departments are, by and large, allowed to run independent of federal supervision, the subject of prisons is one of the few areas where federal and provincial authority overlaps. In the context of federal powers, the Interior Division of the Ministry of Interior has the power to deal with "items

69 The Deputy Superintendent, however, is appointed at provincial level; see Section 29 of the KP Police Act 2017 and Section 7 of the Police Order 2002.

70 Section 86 of the Police Order 2002.

71 Section 87 of the Police Order 2002.

72 Section 92 of the Police Order 2002.

73 This is based on the fact that the functions of the National Public Safety Commission, as laid down in section 92 of the Police Order 2002, do not cover any function with respect to provincial police, except, facilitating coordination amongst the Provincial Public Safety Commissions.

74 Section 92(3) (a) and (c) of the Police Order 2002.

75 Section 92(3) (d) of the Police Order 2002.

76 Section 92(3) (e) of the Police Order 2002.

77 Section 92(3) (h) of the Police Order 2002.

78 Section 80 of the Police Order 2002.

79 Section 92 (i) of the Police Order 2002.

80 Section 92 of the Police Order 2002.

81 Section 96 of the Police Order 2002; See also: 'About Us- Introduction' *National Police Bureau*

82 Section 162 (6) of the Police Order 2002.

83 Section 162 (4) of the Police Order 2002.

84 Section 162 (5) of the Police Order 2002.

85 For discussion of its mandate, see: 'About Us- Introduction' *National Police Bureau*.

86 See Constitution of Pakistan, Article 142 read with Federal Legislative List in Fourth Schedule, and the Rules of Business 1973.

pertaining to prisons,” regardless of whether they form a part of provincial or federal lists.⁸⁷ This means that although the executive structure allows provinces to have autonomy over prisons, the law has given the Ministry of Interior, operating at the federal level the prerogative to address prisons as a subject, in terms of coordination and conducting special studies. The Ministry of Interior has, therefore, the prerogative to exercise advisory jurisdiction and act as coordinator between the provinces.

1.2.2.2 Role of National Academy for Prison Administration

Another authority at the federal level that used to collect data on prisons was the National Academy for Prison Administration, operating under the Ministry of Interior from Lahore, Pakistan.⁸⁸ Nevertheless, as mentioned above, LJCP, NJPMC, and the National Academy for Prison Administration are not supervisory bodies for prisons in the country. They can only collect data and report it to reflect the performance of prison officers or conditions of prisons and prisoners, and make recommendations as and when required.

1.2.3 Prosecution

The investigation and prosecution of special/specific cases falling within the ambit of Federal Investigation Agency Act 1974 comes under the Interior Division of the Ministry of Interior.⁸⁹ Likewise, the Prosecutor General Accountability and Deputy Prosecutor General Accountability is appointed by the Chairman of the National Accountability Bureau (NAB) for those cases that fall under NAB’s purview.⁹⁰ Other than these, for the investigation and prosecution of criminal matters that fall under general laws, prosecution is also a provincial subject dealt with by the Public Prosecution Departments of Punjab and Balochistan,⁹¹ and the Home Departments of Sindh and KP.⁹²

Until recently, the Prosecution Department was not recognized as an independent provincial government Department, but was instead amalgamated with various other departments, such as the Police Department.⁹³ In 2002, under the Access to Justice Program,⁹⁴ however, the Federal Government directed the Interior Division of the Ministry of Interior to establish independent prosecution service for each province.⁹⁵ For this purpose, criminal prosecution was placed under the control of the Home Department in each province,⁹⁶ albeit, Punjab and Balochistan later developed separate Prosecution Departments,⁹⁷ and KP developed a Prosecution Directorate under the Home Department.⁹⁸ No federal authority or institution exists for supervision of these provincial prosecution services.

1.2.4 Judiciary

Under the Constitution of Pakistan, the Supreme Court is declared as the apex court in the judicial hierarchy of the country.⁹⁹ As the judiciary operates separately from the executive in Pakistan,¹⁰⁰ the court structure does not come under the federal or provincial governments.

Although the Supreme Court is the highest court in the country, it does not have administrative control over other courts. The subordinate judiciary, i.e. the district judiciary, is subject to the administrative control and supervision of the provincial High Courts,¹⁰¹ who are empowered to make rules for the practice of procedure of the High Court itself, and the courts subordinate to it.¹⁰² This gives the High Courts in each province the power to supervise the subordinate judiciary.

87 Schedule II, Item 18 (28) of Rules of Business 1973.

88 ‘National Academy for Prison Administration, Lhr’, *Government of Pakistan, Ministry of Interior*.

89 Schedule II, Item 18 (32) of Rules of Business 1973.

90 Section 8 of the National Accountability Ordinance 1999.

91 See Punjab Government Rules of Business 2011 and Balochistan Government Rules of Business 2012.

92 See NWFP Government Rules of Business 1985 and Sindh Government Rules of Business 1986.

93 ‘Overview’ *Public Prosecution Department, Government of Punjab*.

94 The Access to Justice Program was initiated in 2002 after receiving loans from the Asian Development Bank. The purpose of this program was to ensure that justice became accessible, particular to those elements in Pakistan, who were especially particular given the current economic climate of Pakistan. The Access to justice program ws to make justice accessible by reducing vulnerabilities of various groups, e.g. those overridden by poverty, by minimizing institutional and administrative hindrances to justice; See: Asian Development, Independent Evaluation Report, Pakistan: Access to Justice Program, 2011.

95 ‘Overview’ *Public Prosecution Department, Government of Punjab*.

96 ‘Overview’ *Public Prosecution Department, Government of Punjab*.

97 See Punjab Government Rules of Business 2011 and Balochistan Government Rules of Business 2012.

98 ‘Directorate of Prosecution Khyber Pakhtunkhwa’ *Government of Khyber Pakhtunkhwa*.

99 Article 175 of the Constitution of Pakistan 1973.

100 Article 175 (3) of the Constitution of Pakistan 1973.

101 Article 203 of the Constitution of Pakistan 1973.

102 Article 202 of the Constitution of Pakistan 1973.

1.2.4.1 Power to Transfer Judges at Federal Level

The power to transfer judges at the federal level is restricted. While the High Court justices may be transferred from one province to another, by being transferred to another High Court, by the order of the President of Pakistan after consultation with the Chief Justice of Pakistan and Chief Justices of both High Courts affected by the transfer,¹⁰³ the same is not true for subordinate judiciary. This is because each province has its own Rules for appointment, promotion, and transfer of district judges.¹⁰⁴ The district judiciary comes under the ambit of civil service, and the Rules devised for the provincial district judges are under the provincial Civil Servants Acts,¹⁰⁵ except for Islamabad.¹⁰⁶ The appointing authority for district judges is the High Court of each province,¹⁰⁷ and inter-provincial transfer of judges is also not possible, leading to transfers being restricted within a province under the control of the respective High Court.¹⁰⁸

1.2.4.2 Judicial Oversight of Executive Action at Federal Level

The Supreme Court, acting upon the authority given in Article 184(3) of the Constitution, may ascertain the legality/vires of any matter of public importance related to the fundamental rights of the citizens,¹⁰⁹ to hear appeals against decisions of the High Courts,¹¹⁰ and to have all the courts and executive authorities in Pakistan act in its aid.¹¹¹ The oversight of the Supreme Court, hence, cannot be denied even though it is not administrative in nature, rather it is judicial oversight over executive and judicial actions in Pakistan.

The Supreme Court of Pakistan, as the apex court of the third organ of the state, is responsible for maintaining checks and balances with the other two organs, the Parliament (*Majlis e Shoora*) and the Executive (the government), and *vice versa*.¹¹² It is for this reason, that the Supreme Court has the power of judicial review¹¹³ and can order judicial and executive authorities from all across Pakistan to act in aid of the Supreme Court.¹¹⁴ Pursuant to these powers, the Supreme Court may, where it has been given the power to do so in the Constitution,¹¹⁵ assume jurisdiction over matters related to prisons, prosecution, and police.¹¹⁶ The Supreme Court is, therefore, a federal judicial oversight body over all these criminal justice institutions operating under provincial authority.

The abovementioned may be illustrated by referring to the Supreme Court's order dated May 28, 2015, wherein the Federal Ombudsman offices were directed to "address systematic failures in the criminal justice system" and "enforce good standards of administration as envisaged by law."¹¹⁷ By virtue of this order, the Supreme Court not only assumed jurisdiction over the matter itself, but also held that the Ombudsman offices were empowered to form standing committees and inspection teams to determine the causes of systematic failures in the criminal justice system, and make recommendations to rectify such failures if they amounted to maladministration.¹¹⁸ This means that at the federal level, not only can the Supreme Court play the function of judicial oversight, but also the Federal Ombudsman (*Wafaqi Mohtasib*) may do so in its own

103 Article 200 (1) of the Constitution of Pakistan 1973.

104 Punjab Judicial Service Rules 1994, Khyber Pakhtunkhwa Judicial Service Rules 2011, and Sindh Judicial Service Rules 1994.

105 Section 26 of Sindh Civil Servant Act 1973, Section 26 of Khyber Pakhtunkhwa Civil Servant Act 1973, and Section 23 of Punjab Civil Servants Act 1974.

106 This is because Islamabad is the Capital Territory of Pakistan, and it does not come under any province. In Islamabad, section 6 of the Islamabad High Court Act 2010 empowers the High Court of Islamabad to make rules, and the Islamabad Judicial Service Rules 2011.

107 Rule 3 of Punjab Judicial Service Rules 1994, Rule 4 of Khyber Pakhtunkhwa Judicial Service Rules 2011, Rule 4 of Sindh Judicial Service Rules 1994, and Rule 5 of Islamabad Judicial Service Rules 2011.

108 Rule 12 Khyber Pakhtunkhwa Judicial Service Rules 2011, Rule 11 of Sindh Judicial Service Rules 1994, Rule 10 of Punjab Judicial Service Rules 1994, and Rule 24 of Islamabad Judicial Service Rules 2011.

109 Article 184, Constitution of Pakistan 1973.

110 Article 185, Constitution of Pakistan 1973.

111 Article 190, Constitution of Pakistan 1973.

112 Dr. Faqir Hussain, 'The Judicial System of Pakistan' *Supreme Court of Pakistan* (3rd Edition 2011).

113 The power to review the decisions of executive in case they are unconstitutional and hence, not legally enforceable; See Muhammad Bashir Jahangiri, 'Judicial Review of Administrative Actions' incomplete citation; See *also* *Marbury v Madison* (1803) US Supreme Court incomplete citation.

114 Article 190 of the Constitution of Pakistan 1973.

115 See Article 184 (3) read with Article 199 of the Constitution of Islamic Republic of Pakistan 1973.

116 For example, in *Suo Moto* Case no. 1 of 2006, the Supreme Court assumed jurisdiction over poor condition of women prisoners in Pakistan.

117 *Suo Moto* Case No. 1/2006, Order dated 28 May 2015. (please refer to exact page number of the order)

118 *Suo Moto* Case No. 1/2006, Order dated 28 May 2015.

capacity. This authority, as envisaged by the Supreme Court for the Federal Ombudsman, is administrative in nature;¹¹⁹ for addressing reasons of failure and for enforcing standards of administration. The standing committees formed by the Federal Ombudsman subsequently reported their findings in 2016.¹²⁰

1.2.4.3 Role of Law and Justice Commission of Pakistan and the National Judicial Policy Making Committee

The Law and Justice Commission of Pakistan (LJCP), is responsible for, *inter alia*, bringing “reforms in the administration of justice” in Pakistan,¹²¹ “co-ordination of judiciary and executive,”¹²² and for preparing “schemes for access to justice, legal aid and protection of human rights.”¹²³ All the executive authorities in Pakistan, be they federal or provincial, are bound by law to assist the LJCP in the performance of its functions.¹²⁴

Working with the National Judicial Policy Making Committee (NJPMC), the LJCP is the only federal authority that actively collects data from prisons and other criminal justice agencies all across Pakistan for the purpose of consolidation. The LJCP, however, cannot perform the role of supervision over these agencies directly, but by collecting data periodically including in prisons, a system of oversight and scrutiny may be maintained. Nevertheless, LJCP has the power to make adequate recommendations based on its observations while undertaking data compilation and publication. Hence, the LJCP is the first and foremost oversight body that has the power to collect data with respect to various facets of the criminal justice system in Pakistan.

The NJPMC, on the other hand, was established in 2002¹²⁵ for “improving the capacity and performance of administration of justice.”¹²⁶ The NJPMC is assisted by the Secretariat of the LJCP¹²⁷ and funded by the LJCP funds.¹²⁸ As it is also empowered to take policy initiatives, it drafted the *National Judicial Policy 2009* for the judiciary, which was then amended in 2012.¹²⁹ The direction for drafting the *National Judicial Policy* came from the then-Chief Justice of Pakistan.¹³⁰ This *National Judicial Policy* in respect to criminal justice system reforms and its implementation is discussed in specific sections of this report in relation to the causes of high pre-conviction detention in the country.

Despite existence of governmental bodies/agencies mandated to exercise oversight at the national level, however, not one was systematically collecting and analyzing accurate and coherent prison data at the Federal level. In order to ensure evidence-based planning and policy development, mechanisms need to be built into the criminal justice system for the collection and analysis of data and statistics related foremost to prisons, so that data is produced and analyzed on a regular basis, thereby accurately informing strategic plans and decision making.

Caution should be taken in forming policies in response to real or perceived public opinion based on limited accurate information. Otherwise, the result is usually more severe criminal justice policies and more imprisonment, without adequate consideration being given to long-term outcome and cost.

119 In the Order dated 28 May 2015 in *Suo moto* Case No. 1 of 2006 paragraph 31, the Supreme Court called the Federal Ombudsman the “external executive oversight body” mandated “to diagnose, investigate, redress and rectify an injustice done to a person through mal-administration”. On the basis of this mandate covering individual complaints, the Supreme Court held that ‘in view of the Ombudsman offices’ mandate, it is not sufficient to just address individual complaints, the Ombudsman offices must address systemic failures that are the root causes of “mal-administration” and formulate and enforce standards of “good administration” as envisaged by the law”.

120 Federal Ombudsman’s Office, Report of the National Committee on Prison Reforms, op.cit..

121 Section 6 (1) (vii) of the Law and Justice Commission of Pakistan Ordinance 1979.

122 Section 6 (2) (b) of the Law and Justice Commission of Pakistan Ordinance 1979.

123 Section 6 (2) (c) of the Law and Justice Commission of Pakistan Ordinance 1979.

124 Section 8 of the Law and Justice Commission of Pakistan Ordinance 1979.

125 See the National Judicial (Policy Making) Committee Ordinance 2002.

126 Section 4 (a) of the National Judicial (Policy Making) Committee Ordinance 2002.

127 Section 8 of the National Judicial (Policy Making) Committee Ordinance 2002.

128 Section 5 of the National Judicial (Policy Making) Committee Ordinance 2002.

129 National Judicial Policy 2009.

130 *National Judicial Policy*, Executive Summary.

2. Prisons and Prison Population in Pakistan

Overcrowding can only be gauged if the prison capacity and structure of a country are understood. This chapter compiles and analyzes prison laws, administrative regulations, official prison statistics obtained as of October 1, 2017, firsthand accounts of prison stakeholders during interviews and consultations, and publicly available reports and articles.

2.1 Mapping of Prisons

2.1.1 Types of Prisons

There are four kinds of prisons in the provinces:¹³¹

- **Central Prisons:** Each division in a province is required to have a Central Prison, which can accommodate more than 1,000 prisoners, irrespective of the length of sentence. The provincial government has discretionary authority to re-designate any Special Prison or District Prison as a Central Prison.¹³²
- **District Prisons:** Other than Central prisons or Special prisons, all prisons are designated as District Prisons,¹³³ which, in turn, are divided into three classes: first class, capable of accommodating 500 prisoners or more, sentenced up to five years; second class, capable of accommodating between 300 and 500, sentenced up to three years; and third class, capable of accommodating less than 300, sentenced up to one year.¹³⁴
- **Special prisons:** These include women's prisons, open prisons, borstal institutions¹³⁵ and juvenile training centers. The provincial government can establish a special prison at a time and place of its choosing or can declare any existing prison a special prison.¹³⁶ Another example of special prisons are the high security prisons established for terrorist suspects and convicts.¹³⁷
- **Sub-jails:** These are smaller facilities where criminal suspects may be detained on remand. A provincial government can declare any place "by general or special order" to be a "subsidiary jail."¹³⁸

As discussed in the previous chapter, prison management is a provincial subject in Pakistan.¹³⁹ The Home Departments are in charge of the administration of prisons in all four provinces, as well as the AJK and GB regions.¹⁴⁰ Under the supervision of their respective Home Secretaries, the Inspector General (IG) Prisons are each in charge of their provincial/administrative territory's prison administration.¹⁴¹ While there are some slight differences in the prison administrations of the four provinces, generally, each IG Prisons is assisted by some staff at the headquarters as well as a Deputy IG (DIG) Prisons for regions incorporating more than one district.¹⁴² The DIGs of the region, in turn, supervise the Superintendents of all Central Prisons in the

131 Prison Rules 1978, R. 4.

132 Prison Rules 1978, R. 5.

133 Prison Rules 1978, R. 7.

134 Prison Rules 1978, R. 8.

135 Borstals are custodial institutions for juvenile offenders.

136 Prison Rules 1978, R. 6.

137 The News International, High security jail in Mardan turned into central prison, 27 July 2017 https://article.wn.com/view/2017/07/27/High_security_jail_in_Mardan_turned_into_central_prison/ (last accessed on December 22, 2017).

138 Prisons Act 1894, S. 3 (1)(c).

139 See Constitution of Pakistan, Article 142 read with Federal Legislative List in Fourth Schedule, and the Rules of Business 1973.

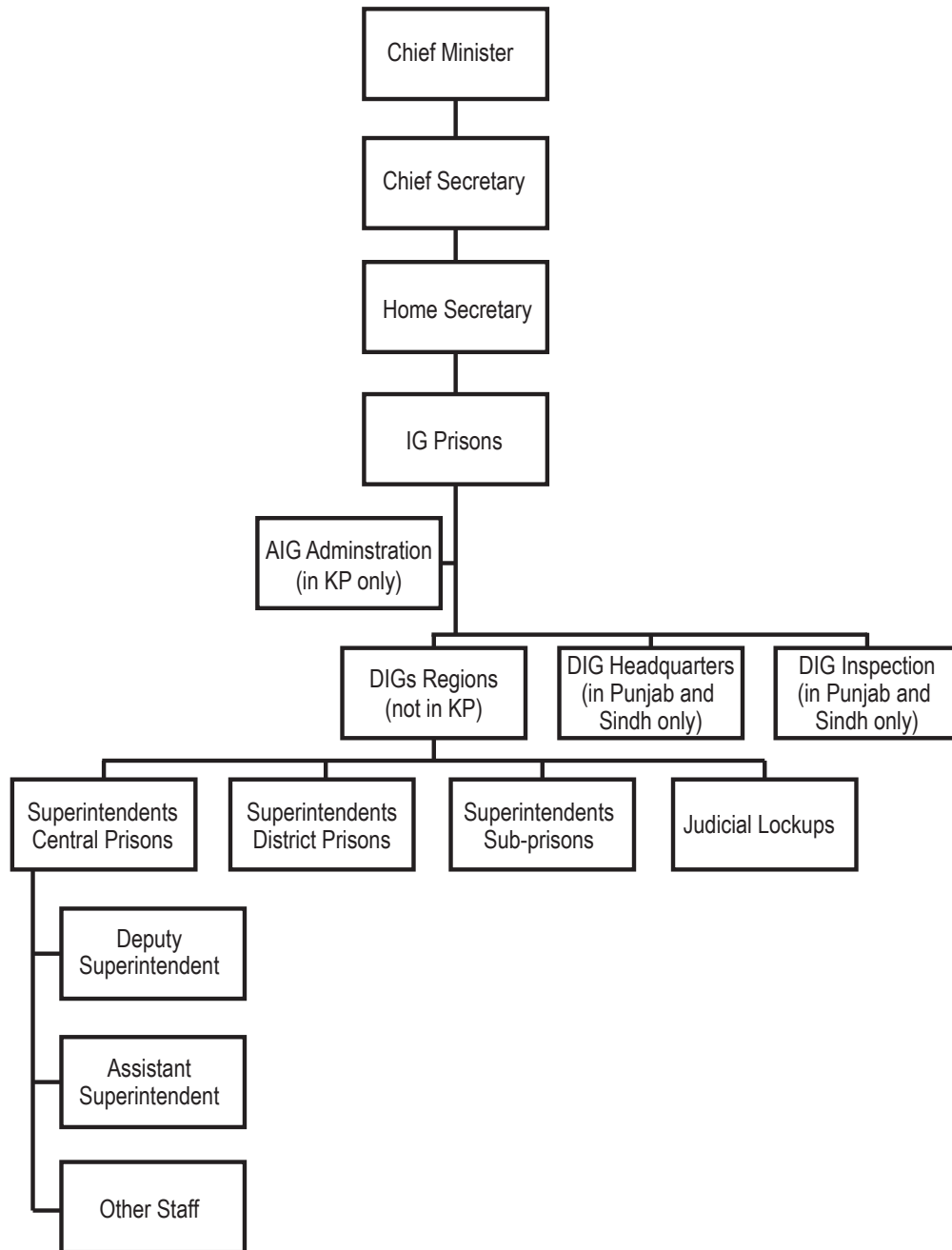
140 See Punjab Government Rules of Business 2011, Second Schedule, Home Department, Item 19. Sindh Government Rules of Business 1986, Second Schedule, Prisons Department. The Balochistan Government Rules of Business 2012, First Schedule, Section B, Home Department, Item 6. North-West Frontier Province Government Rules of Business 1985, Second Schedule, Home and Tribal Affairs Department, Item 11. Gilgit-Baltistan Government Rules of Business 2009, Second Schedule, Home and Prisons Department. Azad Government of the State of Jammu and Kashmir Rules of Business 1985, Second Schedule, Home Department, Section B – Prisons.

141 See Section 5 of Prisons Act 1894. There are minor variations in the Prisons Act 1894 as adopted by the provinces respectively, but each province has the post of Inspector General, in Punjab, known as the 'Director of Prisons' under section 5 of the Prisons Act 1894.

142 For example, see Section 11(2) and Section 14 of the Prisons Act 1894 as adopted in Khyber Pakhtunkhwa.

districts under his jurisdiction as well as the Superintendents of the District Prisons, Sub-jails, and Judicial Lockups (see Illustration 1 below).¹⁴³

Illustration 1: Organizational Structure of Prisons in each Province/Administrative Territory



2.1.2 List of Prisons in Pakistan

Based on official data shared by prison authorities, as of October 1, 2017, there were 112 prisons in Pakistan: 26 Central Prisons, 60 District Prisons, 12 sub-jails, four prisons for women, seven prisons for juveniles, two High Security Prisons or Special Prisons, and one Open Prison. (See Table 1 for the breakdown of different types of prisons in the country)

¹⁴³ See Section 888 and 889 of Pakistan Prison Rules 1978.

Table 1: Breakdown of Different Types of Prisons in the Country

	Punjab	Sindh	KP	Balochistan	GB	AJK	Total by type of prison
Central Prison	9	5	5	5	0	2	26
District Prison	25	11	9	6	5	4	60
Sub-jail/Judicial Lockup	2	0	8	0	1	1	12
Women Prison	1	3	0	0	0	0	4
Juveniles prison	2	5	0	0	0	0	7
High Security / Special Prison	1	1	0	0	0	0	2
Open Prison	0	1	0	0	0	0	1
Total	40	26	22	11	6	7	112

From Table 1 above, the following observations are noted:

- There is no prison in Islamabad Capital Territory (ICT) and in FATA.
- In general, all other provinces/administrative territories have Central Prison(s) and District Prisons (except GB, where there was no Central Prison). According to Rule 5 of the Pakistan Prison Rules,¹⁴⁴ there should be one central prison in each division of a province. In reality, however, every division does not necessarily have a central prison.¹⁴⁵
- The prison setups differ from one province/administrative territory to another. Punjab and Sindh have special prisons for women and for juveniles, such as Borstal Institutions or Youthful Offenders Industrial School (YOIS), whereas, similar prisons for these categories of detainees do not exist in other provinces/ autonomous territories, notably KP, Balochistan, GB and AJK.
- Balochistan and Sindh do not have sub-jails or judicial lock-ups.
- The lack of special prisons in Pakistan needs attention, especially with respect to open prisons and high security prisons.
 - The concept of ‘High Security Prison’ is not common. There are only two high security prisons: one each in Punjab and Sindh. The Central Prison in Mardan, KP, was initially established as a High Security Prison, but was later converted into a Central Prison.¹⁴⁶
 - The concept of Open Prison is even more uncommon. There is an Open Prison in Badin (Sindh), with over 2,000 acres of land, but it remained inoperative as of October 1, 2017.¹⁴⁷ In October 2016, however, the Chief Minister of Sindh had directed the Inspector General (IG) of Prisons in Sindh to prepare a plan for shifting detainees to the open prison in Badin, directing that “by involving Tando Jam Agriculture University, these prisoners should be taught new cropping methods, gardening and other such things.”¹⁴⁸ Such use of open prisons can have a major impact of reducing overcrowding and play a role in rehabilitating offenders at the same time.

Table 2 on the next page lists the names of each prison in Pakistan by province and categorized according to the type of prison they belong.

144 All provinces have adopted Pakistan Prison Rules 1978. The name of the Rules have not been changed, except in Khyber Pakhtunkhwa where they are known as the ‘NWFP Prison Rules 1985’. Amendments at provincial level are made in the Rules via notifications, e.g. the Punjab government made amendments in 1985 via Order of the Governor of Punjab No. No.3/23-SO (Prs:) II/HD/81 and Order of the Governor of Punjab No.3/23-SOPrs. II-HD/81. Similarly, the Rules were amended in KP via Notification No. 4/44-SO(Prisons)HD/2004. As major changes have not been made to the Prison Rules in these provincial variations, here onwards, the Prison Rules as applicable to all provinces will be referred to as Pakistan Prison Rules 1978.

145 Comments made by a senior-level prisons official of the Government of KP during consultations with prison officials on Rule 745 of the Prison Rules at NACTA on December 15, 2017.

146 The News International, High security jail in Mardan turned into central prison, 27 July 2017 https://article.wn.com/view/2017/07/27/High_security_jail_in_Mardan_turned_into_central_prison/ (last accessed on December 22, 2017).

147 Based on data obtained by CODE PAKISTAN from the provincial Home Department of the Government of Sindh through NACTA.

148 The Express Tribune, [Out of space: CM orders measures to reduce overcrowding in prisons](#), 6 October 2016 (last accessed on December 22, 2017).

Table 2: List of Prisons in Pakistan

Province and No. of Prisons	Central Prisons (C.P.)	District Prisons (D.P.)	Sub-jails and Lock-ups	Special Prisons
<p>Punjab 40 prisons in total - 9 Central Prisons - 25 District Prisons - 2 Sub-jails - 4 Special Prisons</p>	<p>1. C.P. Lahore 2. C.P. Gujranwala 3. C.P. Sahiwal 4. C.P. Multan 5. C.P. Bahawalpur 6. C.P. Dera Ghazi Khan 7. C.P. Rawalpindi 8. C.P. Faisalabad 9. C.P. Mianwali</p>	<p>1. D.P. Lahore; 2. D.P. Sheikhpura; 3. D.P. Kasur; 4. D.P. Sialkot; 5. D.P. Multan; 6. D.P. Rajanpur; 7. D.P. Vehari; 8. D.P. Rahim Yar Khan; 9. D.P. Bahawalnagar; 10. D.P. Muzaffar Garh; 11. D.P. Attock; 12. D.P. Jhelum; 13. D.P. Mandi Bahauddin; 14. D.P. Gujrat; 15. D.P. Faisalabad; 16. D.P. Jhang; 17. D.P. Toba Tek Singh; 18. D.P. Sargodha; 19. D.P. Shahpur; 20. D.P. Narowal; 21. D.P. Layyah; 22. D.P. Okara; 23. D.P. Pakpattan; 24. D.P. Hafizabad; 25. D.P. Bhakkar.</p>	<p>1. Sub Jail Chakwal 2. Sub Jail Shujabad</p>	<p>1. Borstal Institution and Juvenile Jail Bahawalpur 2. Borstal Institution and Juvenile Jail Faisalabad 3. Women Jail Multan 4. High Security Prison Sahiwal</p>
<p>Sindh 26 prisons in total - 5 Central Prisons - 11 District Prisons - 10 Special Prisons</p>	<p>1. C.P. Karachi 2. C.P. Hyderabad 3. C.P. Sukkur 4. C.P. Larkana 5. C.P. Khairpur</p>	<p>1. D.P. Malir Karachi 2. D.P. Badin 3. D.P. Mirpurkhas 4. D.P. Shaheed Benazirabad 5. D.P. Sanghar 6. D.P. Dadu 7. D.P. Sukkur 8. D.P. Shikarpur 9. D.P. Naushahroferoze 10. D.P. Ghotki 11. D.P. Jacobabad</p>		<p>1. Y.O.I.S. Karachi 2. Y.O.I.S. Hyderabad 3. Y.O.I.S. Dadu 4. Y.O.I.S. Sukkur 5. Y.O.I.S. Larkana 6. Women Prison Karachi 7. Women Prison Hyderabad. 8. Women Prison Larkana. 9. Special Prison Nara Hyderabad 10. Open Prison Badin</p>
<p>Khyber Pakhtunkhwa 22 prisons in total - 5 Central Prisons - 9 District Prisons - 8 Sub-jails and lock-ups</p>	<p>1. C.P. Peshawar 2. C.P. Haripur 3. C.P. Bannu 4. C.P. DI Khan 5. C.P. Mardan</p>	<p>1. D.P. Mansehra 2. D.P. Kohat 3. D.P. Timargara 4. D.P. Abbottabad 5. D.P. Chitral 6. D.P. Swat 7. D.P. Lakki Marwat 8. D.P. Daggar 9. D.P. Karak</p>	<p>1. Sub Jail Upper Dir 2. Sub Jail Dasso Kohistan 3. Sub Jail Battagram 4. Sub Jail Charsadda 5. Judicial Lockup Malakand 6. Judicial Lockup Nowshera 7. Judicial Lockup Tank 8. Judicial Lockup Swabi</p>	<p>HSP Mardan was converted to Central Prison</p>
<p>Balochistan 11 prisons in total - 5 Central Prisons - 6 District Prisons</p>	<p>1. C.P. Mach 2. C.P. Khuzdar 3. C.P. Gadani 4. C.P. Mastung 5. C.P. Zhob</p>	<p>1. D.P. Quetta 2. D.P. Sibi 3. D.P. Turbat 4. D.P. Dera Murad Jamali 5. D.P. Loralai 6. D.P. Nushki</p>		
<p>Gilgit-Balistan 6 prisons in total - 5 District Prisons - 1 Sub-jail</p>		<p>1. D.P. Bagh 2. D.P. Kotli 3. D.P. Phallandri 4. D.P. Rawlakot</p>	<p>1. Sub-jail Jutial</p>	
<p>Azad Jammu Kashmir 7 prisons in total - 2 Central Prisons - 4 District Prisons - 1 Sub-jail</p>	<p>1. C.P. Mirpur 2. C.P. Muzaffarabad</p>	<p>1. D.P. Bagh 2. D.P. Kotli 3. D.P. Phallandri 4. D.P. Rawlakot</p>	<p>1. Sub-jail Bhimbher</p>	

2.2 Minimum Floor Space per Prisoner

The floor space per prisoner is provided in Rule 745 of Pakistan Prison Rules of 1978.

Capacity of buildings in prisons:

Rule 745. (i) The accommodation capacity of wards, barracks, cells and other buildings intended for the occupation of prisoners, shall ordinarily be regulated by the scale of superficial and cubic space and lateral ventilation prescribed in respect of each prisoners as shown below:-

	Floor per head Spr. Meters.	Space Cubic per head Cu. Meters	Space Lateral ventilation Sq. Meters
(a) Barracks—			
(i) Plains	18	220	7
(ii) Hills	16	162	2 ^{1/2}
(b) Cells			
(i) Plains	31	366	9
(ii) Hills	24	244	3 ^{1/2}
(c) Hospital —			
(i) Plains	31	366	9
(ii) Hills	24	244	3 ^{1/2}

(ii) In calculating the cubic space account shall not be taken of any air space above 3 Metres —96 Cm. and in no case the height shall exceed 4 Metres 66 Cm.

(iii) No building shall be within 4 Metres— 87 Cm. of an enclosure wall.

Rules 746 to 751 of the Pakistan Prison Rules of 1978 list requirements with respect to ventilation of wards and cells, their fitness for occupation, sleeping berths, and height of walls of cell yard, etc.¹⁴⁹ Rule 752 requires that authorized accommodation available in each barrack shall be mentioned in the lock-up register,¹⁵⁰ so that the Superintendent of Prisons may see whether any particular barrack is overcrowded or not.

According to the experience of the International Committee of the Red Cross (ICRC) and as confirmed in consultations with relevant stakeholders,¹⁵¹ the recommended minimum floor space per detainee in dormitories is 3.4 square meters. If the floor space prescribed in Rule 745 would serve as the basis for determining official capacity in Pakistan's prisons, even with a 400 percent occupancy rate, the detainees would still have a floor space of at least 4 square meters each, an area that is still well within the ICRC recommendation.

To clarify how prison officials define official capacity in relation to Rule 745 of the Pakistan Prison Rules of 1978, relevant prison officials from all four provinces, AJK and GB were consulted on 15 December 2017. The discussion led to the overall conclusion that although there is no confusion about Rule 745 of the

¹⁴⁹ *Pakistan Prison Rules, 1978*, Rule No. 746-751.

¹⁵⁰ Under Rule 1240 of the Pakistan Prison Rules, all prisons are required to maintain various registers, including a 'general lock-up register' that shall specify the name or circle of barrack, its' authorized accommodation and the actual occupancy against a date of entry made in the register.

¹⁵¹ ICRC Roundtable on Prison Accommodation, Geneva, Switzerland, October 14-16, 2009.

Pakistan Prison Rules, most prisons were not constructed according to the criteria laid out in the rule. More specifically, the consultations highlighted the following:

- The criteria of construction and determination of capacity were not uniform across provinces and prisons.
- Some prison projects were undertaken by the Planning and Development (P&D) Department and constructed by the Communication and Works (C&W) Departments using their own engineering protocols to prison construction.
- Other prisons that were ostensibly constructed in compliance with the rule, misinterpret the standards set out by taking the entire covered area, including washrooms, ablution areas, prayer space, kitchen area, and the corridors in front of the barracks as a baseline for determining floor space per prisoner.
- **Rule 749 seemed to have been the guiding standard for prison construction and for determining official capacity of a prison with a focus on sleeping space rather than total space.**¹⁵²
- Deficiency of land and funds were also a contributing factor to why Rule 745 was not effective in practice.
- Moreover, it was agreed that the rule needed to be reexamined in light of international standards and the national context.
- Participants conceded that non-observance of relevant rules was one of the main reasons for overcrowding in prisons, poor living conditions, and shortage of living space in detention facilities.

In support of the argument that Rule 749 on sleeping berth is the standard used to determine official capacity, it was explained that—

Each barrack, which ordinarily provides living space of 30 persons, consists of berths of the size of 197 centimeters long and 91 centimeters wide, with a space of 91 centimeters between each two berths. Barracks were constructed in rectangular shape with berths on two sides and a reasonable space of about two meters in the middle, for passage of the inmates.¹⁵³

Based on these measurements, the minimum floor space per prisoner would then amount to around 5.5 square meters. While this floor space is more realistic, no actual measurements of prisons were made for this report.

In the assessment of most situations in prison, account is taken only of the ratio of the number of prisoners to the floor space that is actually available to them when they are locked in their quarters, i.e., the true occupancy rate. The figure obtained by this method must be weighed together with other parameters such as ventilation, lighting, access to sanitary facilities, the number of hours prisoners spend locked in their cells or dormitories, number of hours spent in the open air, and whether they have opportunity to take physical exercise or to work, etc.

In practice, there are often significant disparities in the amount of space available to different prisoners in the same establishment. Therefore, the space actually allocated per person must be calculated by dividing the area of each dormitory and cell by the corresponding number of occupants.

152 Rule 749 of the Pakistan Prison Rules provide that – Every ward, barrack or cell shall be provided with masonry sleeping berth according to the capacity of the barracks. Each berth shall be 1 Metre-97 Cm. long 91 Cm. broad, and 37 Cm. high and shall be provided with a masonry pillow at one end. The space between two berths shall, ordinarily, be not less than 91 Cm. In upper floors, the height shall be reduced to 30 Cm.—5 Mm. be provided in cells for condemned prisoners.

Explanation.—The arrangement of berths in barrack will depend upon the position of gratings and the facilities provided for ventilation and their number will depend on the accommodation available.

153 Comments made by a senior-level prisons official of the Government of Sindh during Consultations on Rule 745 held in NACTA on December 14, 2017.

The figures obtained in this way are then compared with the accommodation standards laid down by the administration or by the international organizations concerned with conditions of detention.

Unfortunately, these standards cannot always be applied immediately in all contexts. In such cases, the following principles should be respected as a minimum.

The detainees must be able to:

- lie down to sleep;
- move around freely within their cells or dormitories;
- have space for their personal effects.

In cases where the floor space per person in the prisoners' living quarters is very limited, it is essential that the following conditions be fulfilled in order to avoid a major health crisis.

Detainees held in conditions such as these must have:

- well-ventilated quarters;
- 10-15 liters of water each per day;
- access at all times to drinking water stored in appropriate containers;
- a balanced diet comprising food which is adequate in terms of quality and quantity and which is prepared in accordance with proper standards of hygiene;
- a sufficient number of toilets in working order;
- access to exercise yards or any other place in the open air during the day;
- access to medical care.

It is also essential for emergency evacuation procedures to be adapted accordingly.

At a higher policy level, it is worth re-examining the minimum floor space per prisoner and other rules related to accommodation and official capacity in the Pakistan Prison Rules in light of international standards and the national context, in order to come up with clear and practical national guidance and standards. In this process, a mapping of current prison infrastructure taking into consideration the actual floor space per prisoner when they are actually locked in their quarters would be recommended. Relevant stakeholders involved in the implementation of the national guidance and standards, including the departments of P&D and C&W, should be made part of the process.

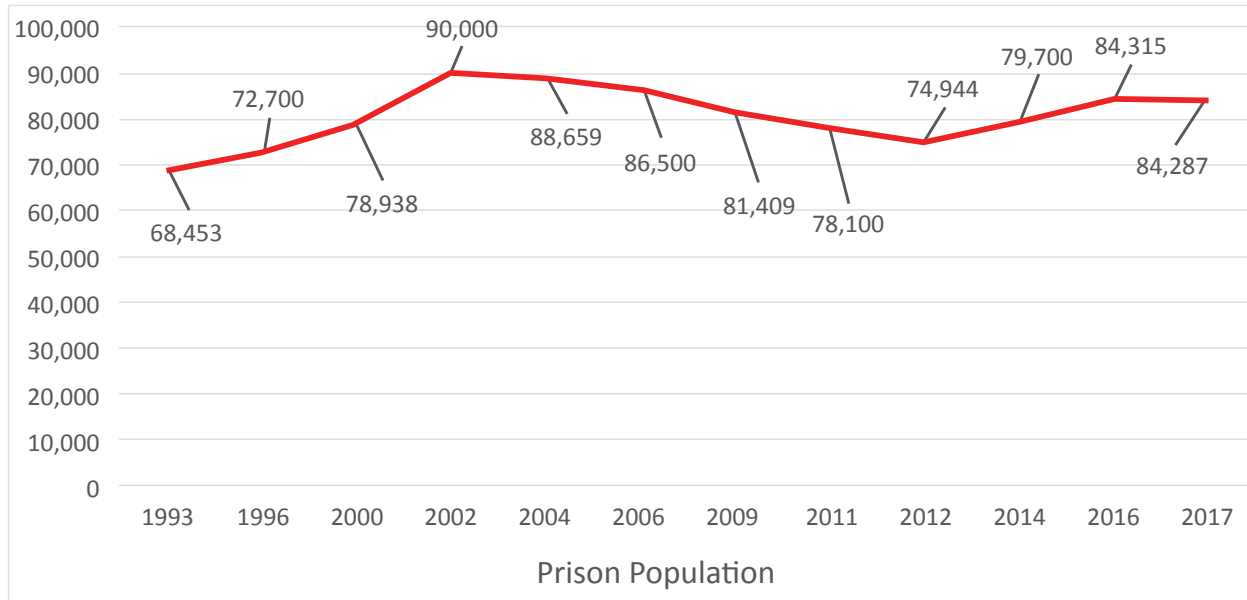
2.3 General Prison Data of Pakistan

Number of prisons/institutions	112
Prison population total	84 287
Official capacity of prison	53 744
Occupancy rate	157%
Incarceration rate (per 100,000 of national population)	41
Under trial prisoners (percentage of national prison population)	66%
Female prisoners (percentage of national prison population)	1.8%
Female under trial prisoners (percentage of total female prisoners)	68%
Juveniles (percentage of national prison population)	1.3%
Juvenile under trial prisoners (percentage of total juveniles)	91 %
Foreigners (percentage of prison population in all four provinces only) ¹⁵⁴	1.4%

¹⁵⁴ Law and Justice Commission of Pakistan website, http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf, (last accessed on February 14, 2018).

According to official data, as of October 1, 2017, there were 84,287 inmates in all 112 prisons administered by provinces and administrative territories except for FATA in Pakistan. This figure, when compared to the World Prison Brief's compilation of prison population in the country from the year 2000, would show an increasing trend from 2000 to 2002, followed by a decreasing one from 2002 to 2012, only to increase again from 2012 to 2016, and finally a stabilization from 2016 to 2017 (see Figure 1 below.)

Figure 1: Evolution of Prison Population in Pakistan (1993-2017)



Given the growth trend in prisoners from 1993 to 2017, a forecast of the growth of the prisoners in the next ten years could statistically be extrapolated. A yearly growth rate of 0.0087077 (or 0.87 percent) was calculated using the formula below:

$$i = n \sqrt[n]{\frac{Pop_{End}}{Pop_{Beginning}}} - 1$$

Where:

- Pop_{End} = Population in 2017 (84,287)
- Pop_{Beginning} = Population in 1993 (68,453)
- i = Growth Rate (unknown)
- n = Number of Years (24)

With an annual growth rate of 0.0087077 (or 0.87 percent) and should there be no major changes in the criminal justice system policies and implementation, as well as peace and order situation, etc., the country can expect the rise of prison population to 91,921 prisoners in ten years, using the formula below:

$$Pop_{Future} = Pop_{Present} (1+i)^n$$

Where:

- Pop_{Future} = Future Population (unknown)
- Pop_{Present} = Present Population (84,287)
- i = Growth Rate (0.0087077)
- n = Number of Years (10)

Table 3 on the next page shows the breakdown of prison population in Pakistan by province/administrative territory as of October 1, 2017. Among the provinces, Punjab takes most of the share at more than 60

percent of total prisoners, while Balochistan holds less than three percent. The administrative territories of AJK and GB hold less than one percent of the total population.

Table 3: Prison Population by Province/Administrative Territory

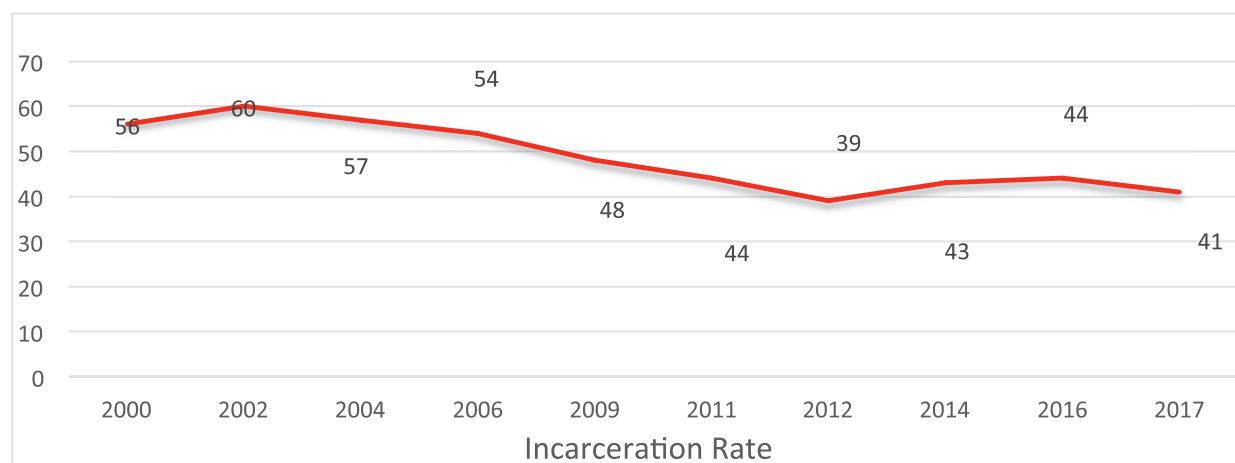
	Prison population as of October 1, 2017	Percentage of Total
Punjab	50,405	60.6 %
Sindh	18,998	22.8 %
KP	11,330	13.6 %
Balochistan	2,427	2.9 %
AJK	753	0.9 %
GB	374	0.4%
Total	84,287	100 %

2.3.1 Incarceration Rate

Incarceration rate, otherwise known as prison population rate per 100,000 of national population, is computed by dividing the total prison population by the total population of the country and multiplying the quotient by 100,000. As provided in the preceding section, the total prison population in Pakistan is 84,287, while according to the 2017 census, the total population of Pakistan is 207,774,520 (excluding the administrative territories of AJK and GB for which latest population census figures are not yet available).¹⁵⁵ Applying the formula, the incarceration rate in Pakistan as of 2017 is about 41.

This incarceration rate, when compared to the World Prison Brief’s compilation of prison population rate in the country from the year 2000, would show an increasing trend from 2000 to 2002, followed by a decreasing one from 2002 to 2012, then an increase from 2012 to 2016, and finally a decrease in 2017 (see Figure 2 below.)

Figure 2: Evolution of incarceration rate in Pakistan from 2000 to 2017



¹⁵⁵ See Census Report available at: <http://www.pbs.gov.pk/content/provisional-summary-results-6th-population-and-housing-census-2017-0>, last accessed on 31 January 2018.

Comparing the evolution of prison population in Pakistan to that of its incarceration rate shows that although the trend in both prison population and incarceration rate are similar from 2000 to 2017, the drop in incarceration rate in 2017 is significant. This may be attributed to the result of an actual population census in 2017, as opposed to population estimations in the previous years.

With the 2017 incarceration rate of 41 prisoners per 100,000, Pakistan would then stand 207th out of 222 countries in the list of “Highest to Lowest: Prison Population Rate” made by the *World Prison Brief*.¹⁵⁶ As noted in the *Handbook on Overcrowding*, however, “low imprisonment rates do not necessarily indicate that prisons are not overcrowded. In a number of countries, prisons are acutely overcrowded despite low imprisonment rates.”¹⁵⁷

Table 4 below shows the incarceration rate in the four provinces in 2017, based on official prison population data and the population census data in 2017. The average incarceration rate in the four provinces also stands at 41 persons per 100,000 of total population. Among the four provinces, Punjab had the highest incarceration rate at 46, whereas Balochistan had the lowest at 20.

Table 4: Province-wise Incarceration Rate in Pakistan

Province	A. Prison population as of October 1, 2017	B. Population census 2017 ¹⁵⁸	C. Incarceration rate $C=A*100,000/B$
Punjab	50,405	110,012,442	46
Sindh	18,998	47,886,051	40
KP	11,330	30,523,371	37
Balochistan	2,427	12,344,408	20
Total/average	83,026	200,766,272	41

2.3.2 Prison Occupancy Rate

Occupancy rate, also known as population density, is determined by calculating the ratio of the number of prisoners present on a given day to the number of places specified in the official capacity.¹⁵⁹ According to official data from all Home Departments, except in FATA, as of October 1, 2017, there were 84,287 inmates in 112 prisons administered by the governments of the provinces/administrative territories, while the combined authorized official capacity is 53,744 in Pakistan. Therefore, prison occupancy rate in Pakistan stood at 157 percent, which translates to 57 percent overcrowding rate.

Figure 3 on the next page may give a glimpse of the level of overcrowding by province/administrative territory in Pakistan. In terms of occupancy rate, Punjab leads at 168 percent, followed by Sindh at 155 percent, then KP at 149 percent and AJK at 147 percent, however, not all individual prisons in Punjab, Sindh in KP are housing more than their official capacity. In the same vein, while Balochistan and GB have less total number of prisoners than their total official capacity, it does not automatically mean that there could be no overcrowding in any of their prisons. In fact, one central prison and three district prisons in Balochistan are accommodating prisoners beyond their official capacity.

156 *World Prison Brief* Website: <http://www.prisonstudies.org/> (last accessed on August 10, 2017)

157 *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., 2013.

158 The results of the population census are available at <http://www.pbscensus.gov.pk/> (last accessed on September 6, 2017). Since the population figures of AJK and GB have not been made public yet, incarceration rates for those two Administrative Territories could not be calculated.

159 *Handbook on Strategies to Reduce Overcrowding in Prisons*, p. 8, 2013.

Figure 3: Comparison of Prison Occupancy Rates of All the Provinces/Administrative Territories as of October 1, 2017

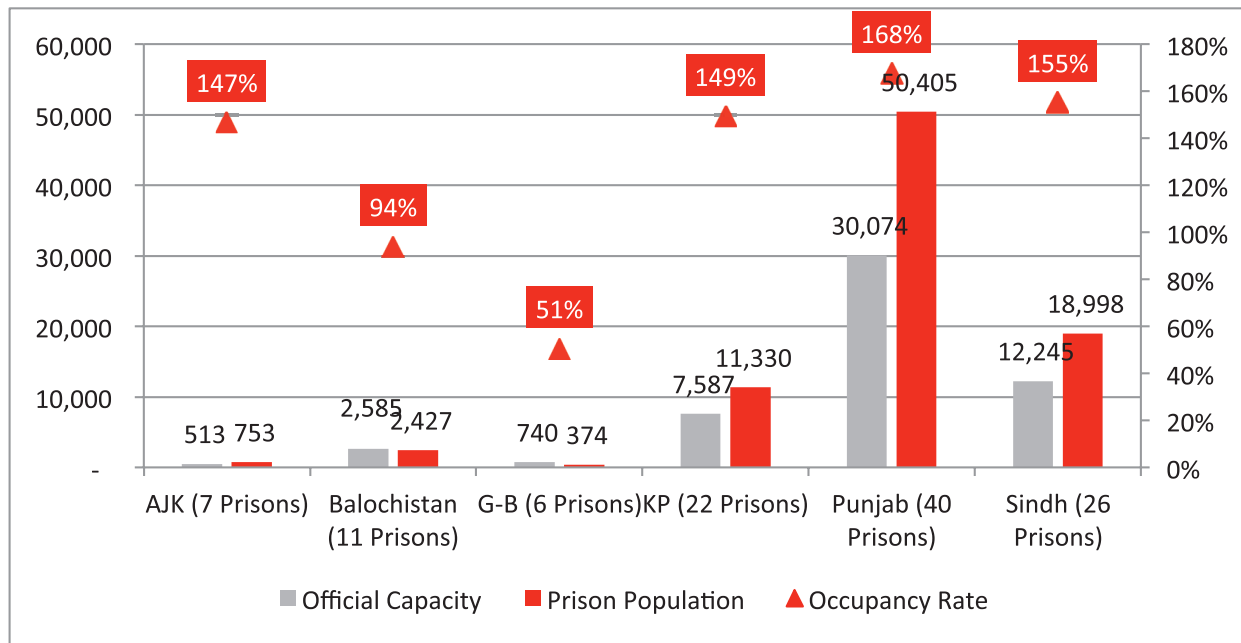
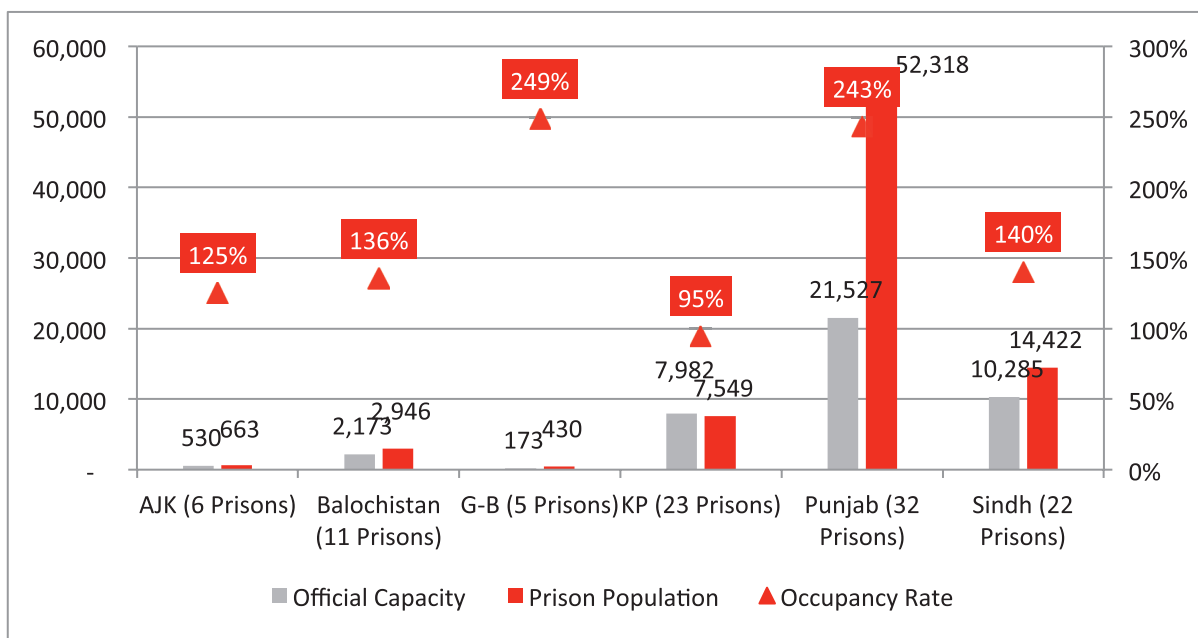


Figure 4 below shows a similar comparison of the occupancy rates in all provinces and the two administrative territories, but this time in 2012, based on an academic article citing the National Academy for Prison Administration as source.¹⁶⁰

Figure 4: Comparison of Prison Occupancy Rates in All the Provinces/Administrative Territories as of 2012



Comparing the occupancy rates of 2012 in Figure 4 with that of 2017 given in Figure 3 shows that:

¹⁶⁰ Mohammad Siddique Akbar and Mazhar Hussein Bhutta, *Prison Reforms and Situation of Prisons in Pakistan*, University of the Lahore, Punjab, 2012 (last accessed on December 22, 2017).

- The occupancy rate in Punjab, Balochistan, and GB remarkably declined, primarily because of the decrease in prison population and an increase in the overall official capacity of the prisons in these provinces/administrative territories as a result of construction of new prisons/facilities. While Punjab still had a high occupancy rate, Balochistan and GB successfully managed to bring it lower than 100 percent.
- KP's occupancy rate increased considerably as its prison population increased by more than 50 percent and its official capacity decreases due to structural damage in existing prisons.
- The occupancy rate in Sindh and AJK increased because while there is an increase in their official capacity, their prison population increased more.

2.3.3 Under-trial Prisoners

Technically, under-trial prisoners are those whose trial is in progress. Pre-trial detainees on the other hand, refer to those prisoners who are detained during pending investigation and the trial courts have not taken cognizance of their cases. For the purpose of this report however, as it is generally conceived, the term under trial prisoners would include both under trial prisoners and pre-trial detainees. This is due to the fact that prison authorities do not differentiate between pre-trial detainees and under-trial prisoners when collecting prison data.

Even though the law allows for granting of bail to convicts who challenge the decision against them in a superior court,¹⁶¹ many such persons who have applied for appeal remain in detention throughout the appeal process from Sessions Court onwards.¹⁶² However, since a UTP is the one who has not been convicted of the crime by any court of law, the detainees who have been convicted by the lower courts but are awaiting decisions on their appeals in the provincial High Courts or the Supreme Court of Pakistan is excluded from this statistical report.

According to official data, UTPs form 66 percent of the total prison population of the country as of October 1, 2017. The total number of UTPs in Pakistan's prisons at 55,426 is even higher than the combined official capacity of all prisons in the country at 53,744. This implies that the high pre-conviction detention rate in Pakistan is a major source of overcrowding in its prisons. A committee constituted by the Federal Ombudsman in furtherance of the direction by the Supreme Court of Pakistan, in its report submitted to the court in May 2016, put the figures of under-trial prisoners at as high as 80 percent in one province.¹⁶³ The high prevalence of UTPs in Pakistan's prisons was acknowledged by senior-level criminal justice officials of the country as a major cause of overcrowding.¹⁶⁴

Table 5 on the next page compares this recent data with that of data compiled by the *World Prison Brief* for 1999, 2004, 2009 and 2015. The comparison shows that the high percentage of under trial prisoners in Pakistan was not a new phenomenon. During these years, the percentage of pre-trial/remand prisoners was between 67 and 78 percent.

161 See section 426 of Code of Criminal Procedure 1898; PLD 1995 SC 576; *Sajjad Bashir V/S The State; Soba Khan v the State* PLD 2016 SC.

162 Interview with a senior-level official of the Home Department of the Government of Punjab in Lahore on May 24, 2017.

163 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit., p.7 and p.25.

164 Interview with a senior-level police officer in Islamabad on May 18, 2017; Interview with a senior-level prosecutor of KP in Peshawar on May 22, 2017; Interview with a senior-level official of the Home Department of the Government of Punjab in Lahore on May 24, 2017; Interview with a senior-level police officer of Punjab in Lahore on May 25, 2017; Interview with two senior-level prisons officials of the Government of Sindh in Karachi on June 6, 2017; Interview with two senior-level prisons officials of the Government of Balochistan in Quetta on June 8, 2017; Interview with two senior-level prosecutors of Balochistan in Quetta on June 9, 2017.

Table 5: Number of pre-trial/remand imprisonment, 1999-2017

Year	Number in pre-trial/remand imprisonment	Percentage of total prison population	Pre-trial/remand population rate (per 100,000 of national population)
1999	61,241	77.6%	43
2004	51,433	67.8%	33
2009	57,556	70.7%	34
2015	55,429	69.1%	30
2017	55,426*	65.8%**	27***

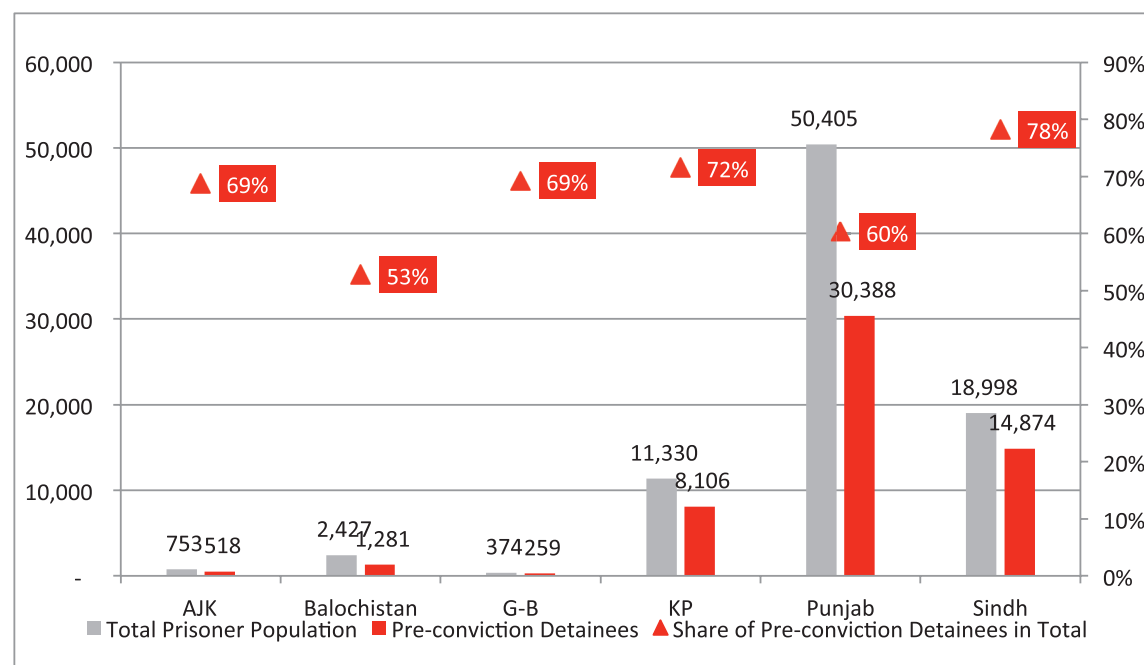
* Number of UTPs as of October 1, 2017.

** Calculated based on prison population of 84,287.

*** Calculated based on 2017 partial results of census on national population at 207,774,520.

Figure 5 below illustrates that the average percentage of UTPs among the total prison population all over the country is 66 percent but the range upon which the four provinces and the two administrative territories fall is between 53 to 78 percent. These rates are very high taking into account that the median percentage of the world's under trial prisoners as against the total prison population in the world stands already at 27 percent, while the South Asia Region is at 54 percent.¹⁶⁵ It is also important to note here that although Punjab has the highest prevalence of overcrowding in its prisons, the percentage of UTPs in its prisons is lower than all other provinces/administrative territories, except Balochistan.

Figure 5: Ratio of UTPs in the Total Prison Population in Each Province/Administrative Territory as of October 1, 2017

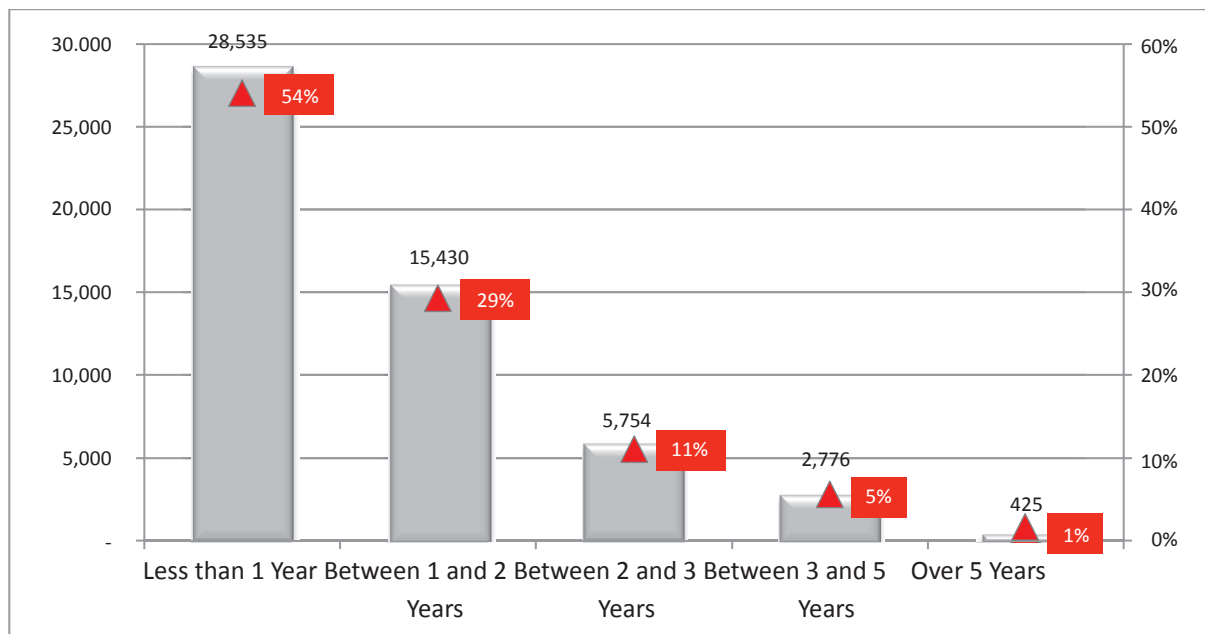


An aspect of high pre-conviction detention rate in Pakistan is that majority of UTPs, at 54 percent, have been languishing in prisons for less than a year as of November 2017, based on figures published on the

¹⁶⁵ The median percentage of pre-trial/remand prisoners in the world is culled from Roy Walmsley's World Pre-Trial/Remand Imprisonment List, Third Edition, 2016, a World Prison Brief publication. Note that pre-trial/remand prisoners refer to persons who, in connection with an alleged offence or offences, are deprived of liberty following a judicial or other legal process but have not been definitively sentenced by a court for the offence(s). This category of prisoners include not just UTPs but also those who have been convicted where sentencing has not been decided with finality, including those under appeal.

website of the Law and Justice Commission of Pakistan. As can be gleaned from the statistics in Figure 6 below, those staying for a year or more in prison, or the remaining 46 percent, include those who had been there for more than two years at 17 percent. The significance of these figure will be re-visited in the discussion on prescribed time limits for pre-conviction detention.¹⁶⁶

Figure 6: Percentage of UTPs in All Provinces of Pakistan by Time Spent in Prison¹⁶⁷



2.3.4 Female Prisoners

Based on official data, 1,527 out of 84,287 prisoners were female (i.e., 1.8 percent of the prison population in Pakistan) as of October 1, 2017. As historically presented in Table 6 below, the number of female detainees and their percentage in the total prison population remained low (below 2.1 percent).¹⁶⁸

Table 6: Number of female detainees

Year	Number of female prisoner	Percentage of total prison population	Female prison population rate (per 100,000 of national population)
1999	1,203	1.7%	0.9
2003	1,518	1.8%	1.0
2007	1,328	1.4%	0.8
2010	931	1.2%	0.5
2015	1,650	2.1%	0.9
2017	1,527*	1.8 %**	0.7***

* Official number of female prisoners as of October 1, 2017.

** Calculated based on prison population of 84,287.

*** Calculated based on 2017 partial results of census on national population at 207,774,520.

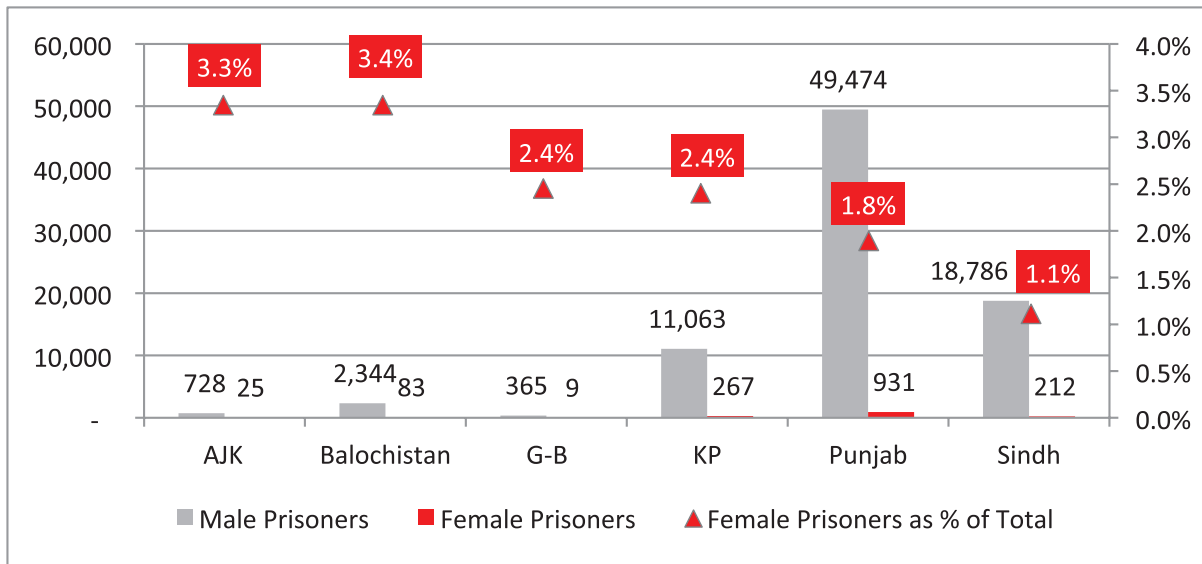
166 Law and Justice Commission of Pakistan, available at http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf, (last accessed on February 14, 2018).

167 Law and Justice Commission of Pakistan, available at http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf, (last accessed on February 14, 2018).

168 World Prison Brief, op. cit.

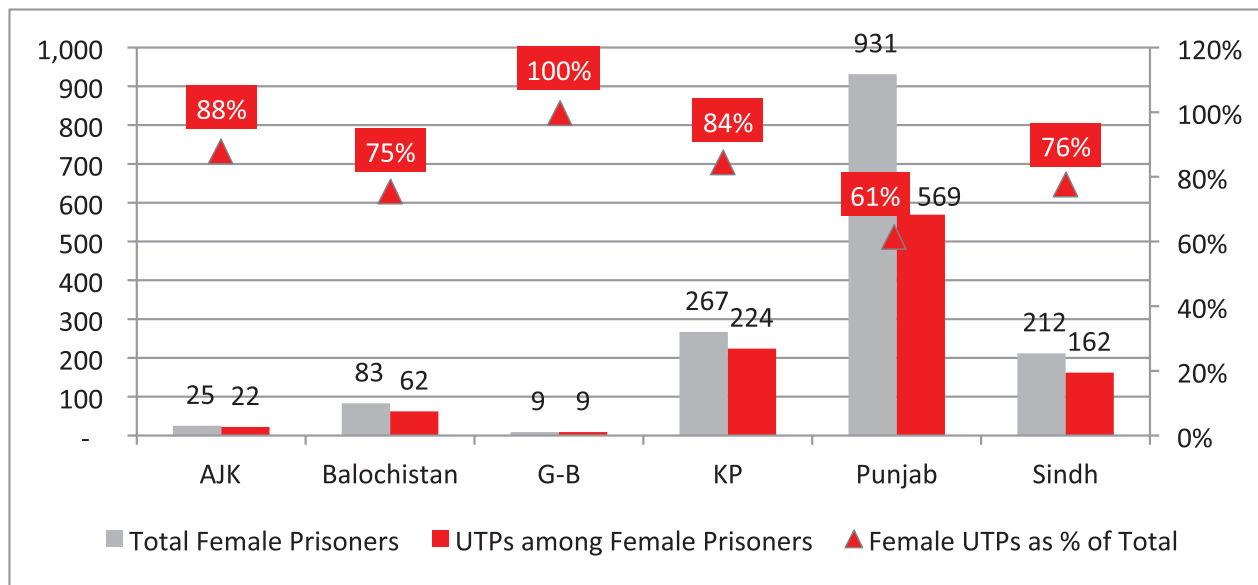
Figure 7 below shows the ratio of female prisoners in total prison population per province/administrative territory. Balochistan and AJK leads with 3.4 and 3.3 percent respectively, followed by KP and GB in a tie at 2.4 percent, then Punjab at 1.8 percent, and Sindh at the bottom with 1.1 percent..

Figure 7: Ratio of Female Prisoners in Total Prison Population as of October 1, 2017



Regarding their judicial status, 1,045 out of 1,527 female detainees (i.e., 68 percent of the total female prison population in the country) were UTPs. This shows that the proportion of UTPs among the female population was slightly higher in Pakistan’s prisons than the male prisoners at 66 percent. Figure 8 below shows the ratio of female UTPs in total female prisoner population in each province/administrative territory, where in all provinces, except Punjab, female UTP rates (75 to 100 percent) were considerably more than the total UTP rate of the country.

Figure 8: Ratio of Female UTPs in Total Female Prisoner Population in Each Province/Administrative Territory as of October 1, 2017



2.3.5 Juvenile Prisoners

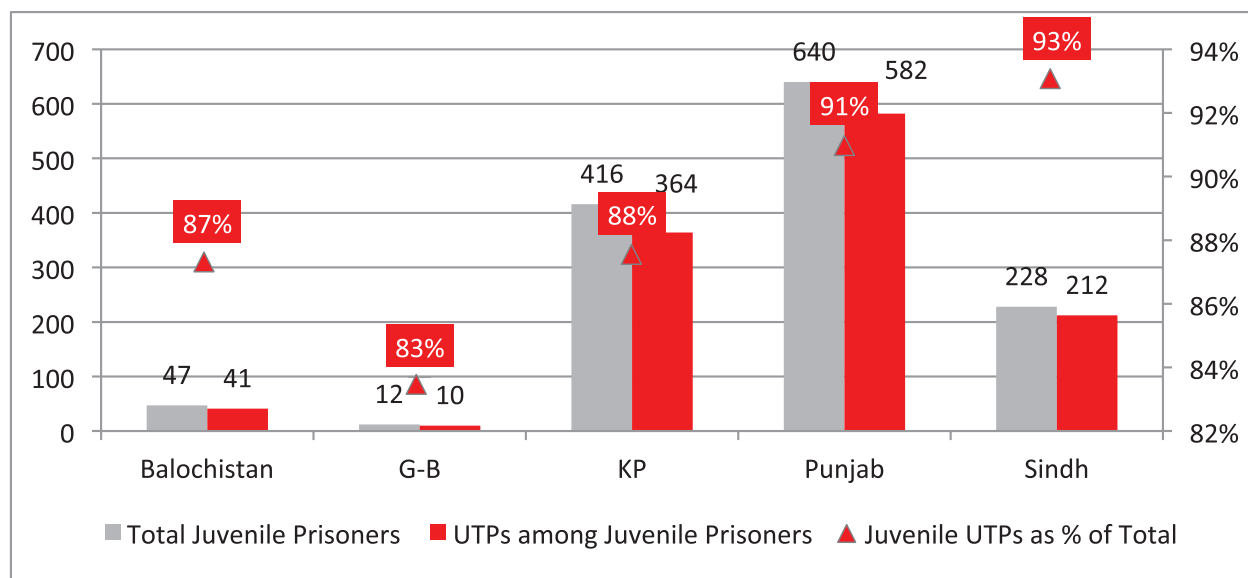
Juvenile means any prisoner who had not attained the age of 18 years.¹⁶⁹ For judicial purposes and determination of jurisdiction of court, the age of accused is reckoned on the day of commission of offence but jail administration has nothing to do with the date of commission of offence. For the purpose of segregation and admission in prison, age of the accused is computed on the day of his admission in jail. Eventually, for this study, juvenile prisoners mean those prisoners whose age on October 1, 2017 was less than 18 years.

According to official data as of October 1, 2017, 1,343 out of 84,287 prisoners in Pakistan are juvenile, i.e., 1.6 percent. Out of 1,343 juveniles, only four were female, all detained in KP.

It is pertinent to note that 1,209, or 90 percent of the juvenile prisoners in Pakistan’s prisons, are UTPs. The proportion of UTPs among juvenile prisoners is, therefore, much higher than both the national UTP rate (66 percent) and the slightly higher female UTP rate (68 percent).

Figure 9 below shows province/administrative territory-wise figures for juvenile prisoners as of October 1, 2017, and the proportion of UTPs among them. While AJK did not have any juvenile prisoners, Sindh and Punjab are on top with 93 and 91 percent, respectively, of juvenile UTPs, followed by KP and Balochistan at 88 and 87 percent, respectively, and finally GB with 83 percent.

Figure 9: Ratio of UTPs in Total Juvenile Prisoner Population in Each Province/Administrative Territory as of October 1, 2017



2.3.6 Foreigners in Prison

In the prison statistics compiled by LJCP for November 2017, the total of foreigners in prison in all four provinces is 1,117. Compared to its total prisoners of 82,591, the rate of foreigners in prisons in the four provinces stood at 1.35 percent. Table 7 on the next page shows the breakdown of foreigners in provincial prisons and their percentage against the provincial prison population. Sindh stands out at 4.25 percent.

¹⁶⁹ See Rule 3(vii) of Pakistan Prison Rules of 1978.

Table 7: Breakdown of Foreigner Prisoners in Provincial Prisons

Province	Foreigners in Prison	Prison Population	Percentage
Punjab	255	50,289	0.51
Sindh	811	19,094	4.25
KP	2	10,811	0.02
Balochistan	49	2,397	2.04
Total/Average	1,117	82,591	1.35

2.3.7 Prison Data of Punjab

Province	Punjab
Department responsible	Home Department
Prison administration	Prisons Department under Home
Number of prisons/institutions	40
Prison population total	50 405
Official capacity of prison	30 074
Occupancy rate	167.6%
Incarceration rate (per 100,000 of provincial population)	46
Under trial prisoners (percentage of provincial prison population)	60.3%
Female prisoners (percentage of provincial prison population)	1.8%
Female under trial prisoners (percentage of provincial female prisoners)	61%
Juveniles (percentage of provincial prison population)	1.3%
Juvenile under trial prisoners (percentage of provincial juveniles)	91%
Foreigners (percentage of provincial prison population) ¹⁷⁰	0.5%

While the province of Punjab has an overall occupancy rate of 168 percent, Figure 10 on the next page shows that the range of occupancy rate in individual prisons in Punjab varies from 17 to 352 percent, and 30 out of 40 prisons have exceeded their occupancy rate.

¹⁷⁰ Law and Justice Commission of Pakistan, available at http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf (last accessed on February 14, 2018).

Figure 10: Occupancy Rate of Punjab Prisons

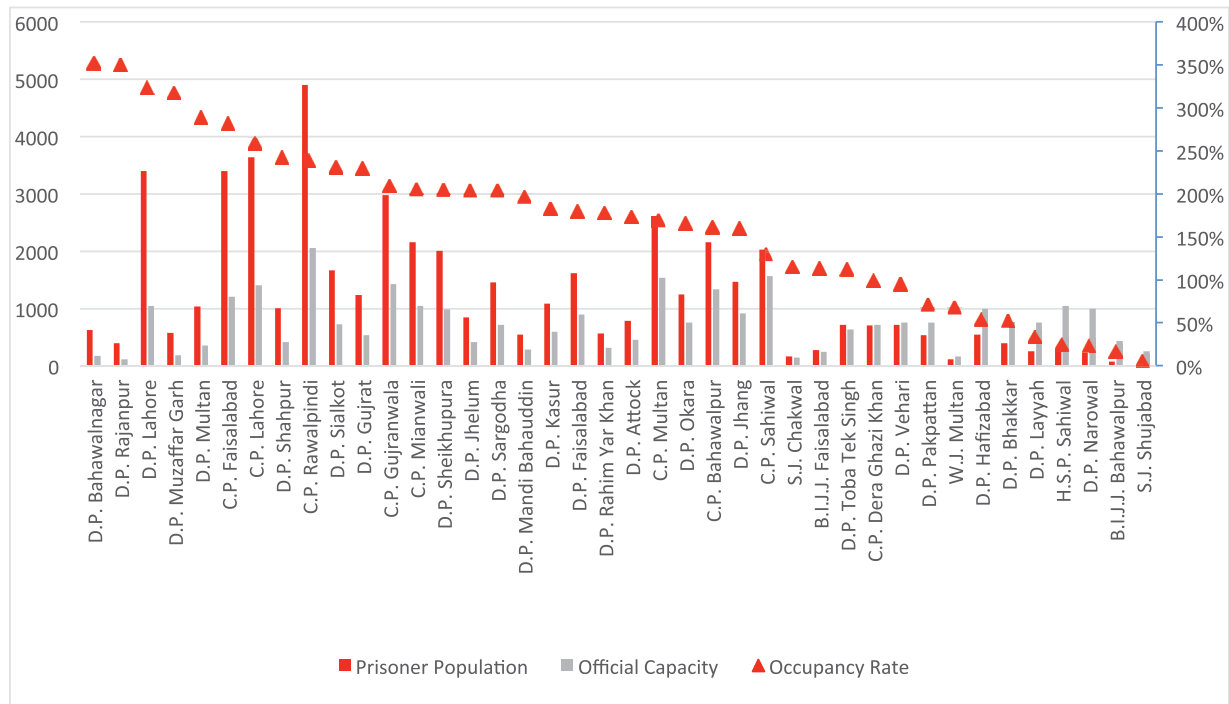
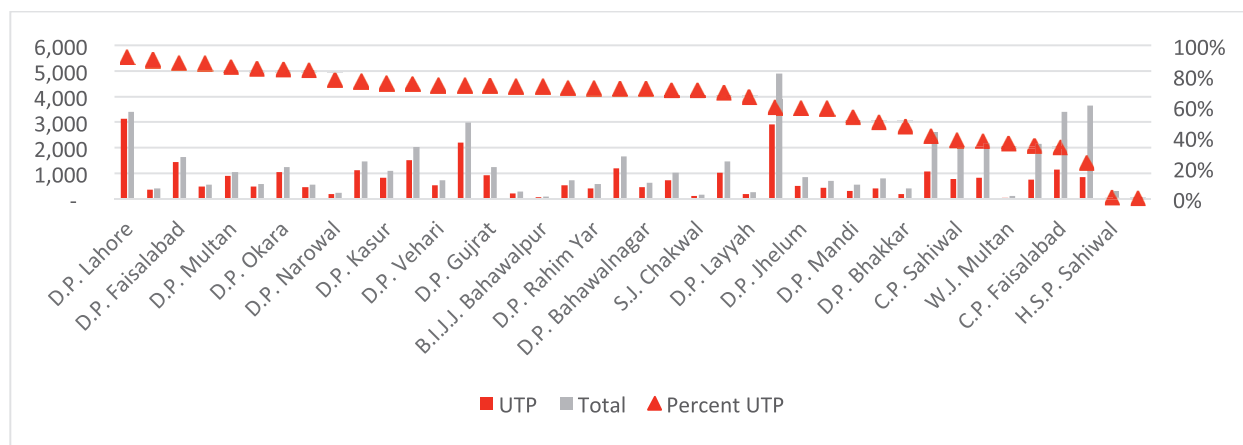


Figure 10 above also shows that almost all Central Prisons in Punjab exceeded their official capacity, with the sole exception of that in Dera Ghazi Khan, while district prisons experienced the same phenomenon except for the ones in Vehari, Pakpattan, Hafizabad, Bhakkar, Layyah, and Narawal. On the other hand, special prisons like the juvenile prisons, women prisons, and the High Security Prison in Sahiwal still have room based on their official capacity.

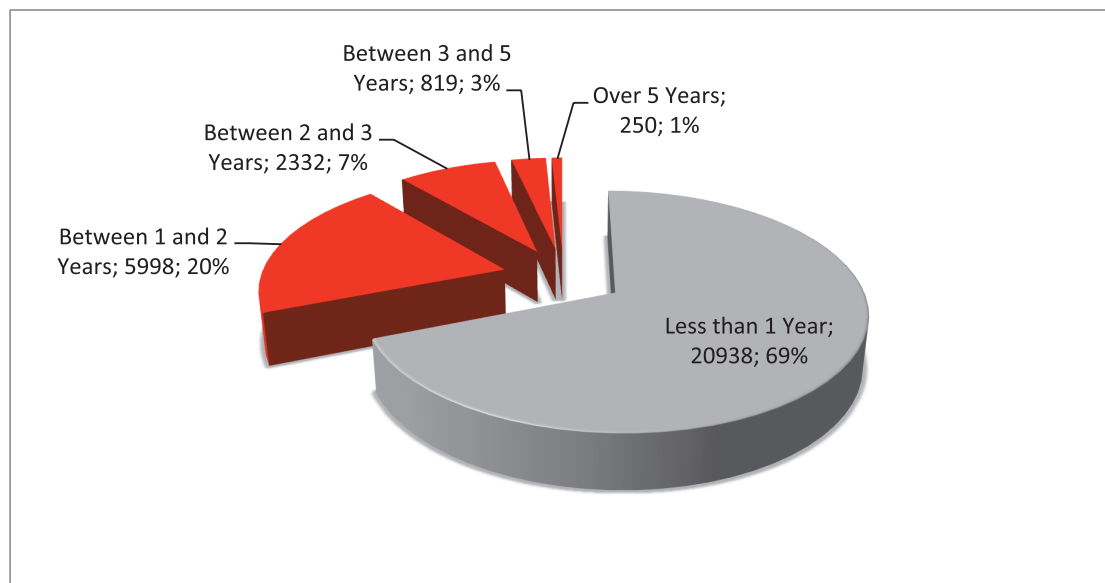
It is important to stress that in prisons where there is no overcrowding based on official capacity, a further reduction of the number of prisoners would also be achieved if the high number of UTPs is reduced. This is due to the fact that all prisons in Punjab actually housed UTPs, as shown in Figure 11 below.

Figure 11: UTPs in Punjab Prisons



As can be gleaned from the statistics of Punjab province given in Figure 12 on the next page, those staying for a year or more in prison, or the remaining 31 percent, include those who had been there between one to two years at 20 percent, between two and three years at 7 percent, between three and five years at three percent, and one percent for more than five years.

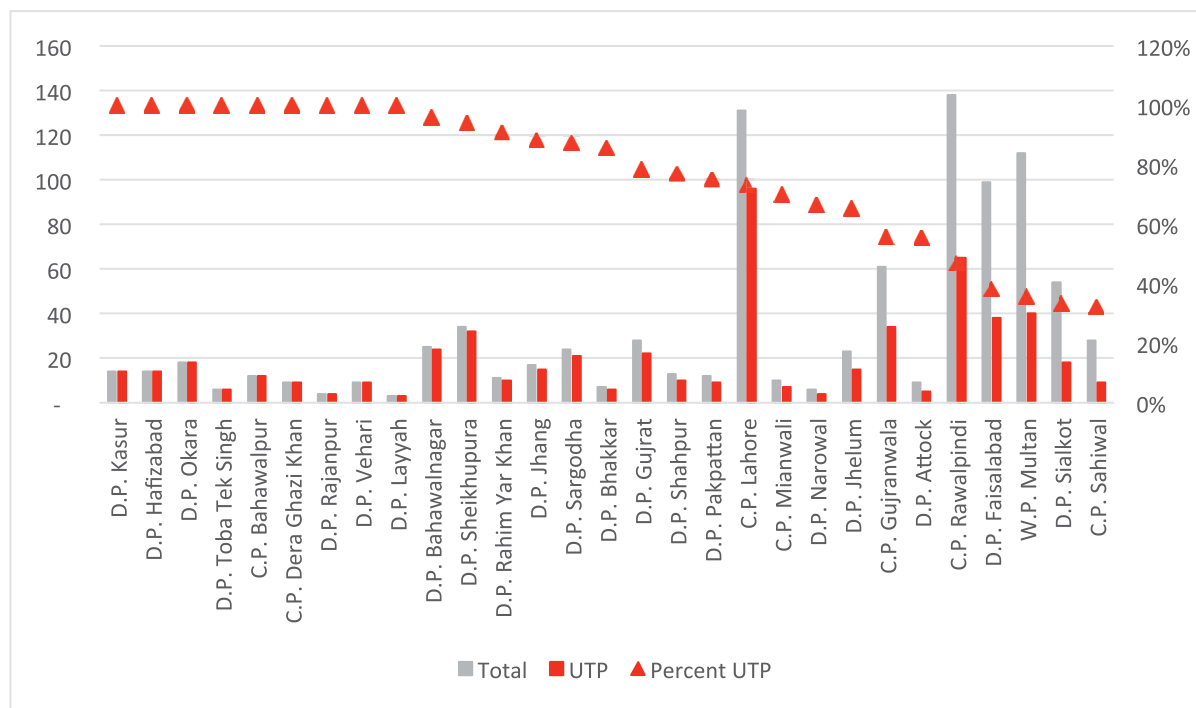
Figure 12: Percentage of UTPs in the Prisons of Punjab by Time Spent in Prison¹⁷¹



2.3.7.1 Female Prisoners in Punjab

In Punjab, 931 out of the total 50,405 prisoners, i.e., around 1.85 percent, were female as of October 1, 2017. Since there is only one special prison for women in the whole of Punjab, female prisoners are accommodated in 28 general prisons in quarters separated from the male prisoners across the province, in addition to the one Women Prison in Multan (See Figure 13 below).

Figure 13: UTPs among Female Prisoners in Punjab

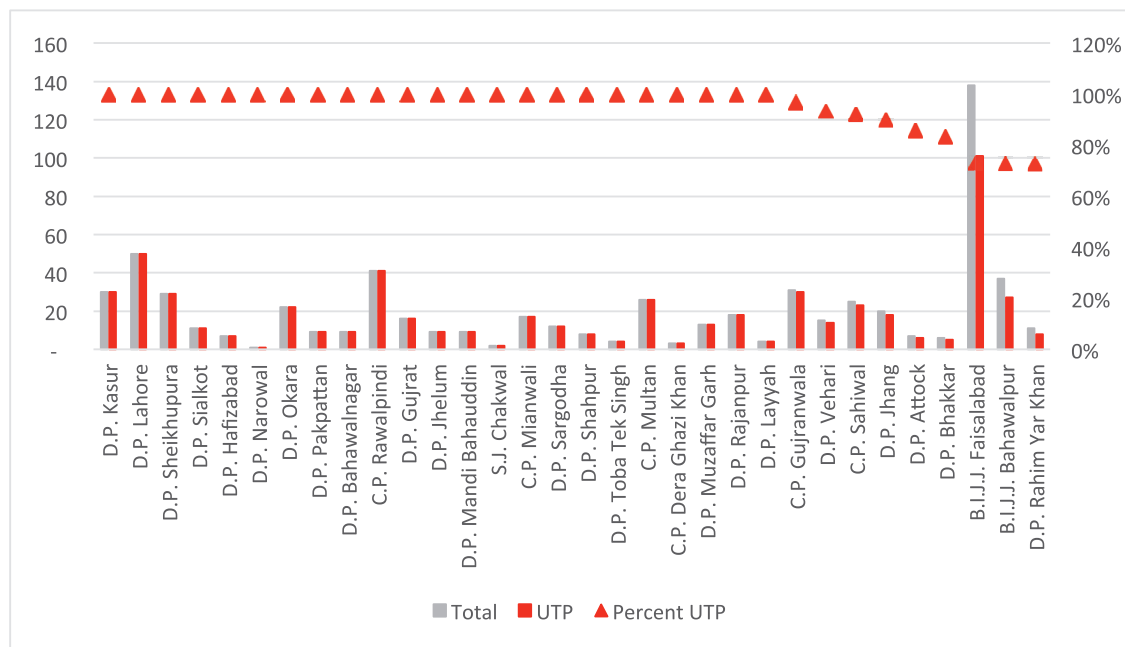


¹⁷¹ Source: Based on data obtained by CODE PAKISTAN from the provincial Home Department of the Government of Punjab for the report

2.3.7.2 Juvenile Prisoners in Punjab

In Punjab, 640 out of the total 50,405 prisoners, i.e., around 1.27 percent, were juveniles as of October 1, 2017. All the juvenile prisoners in Punjab were male. Although there are two specialized detention facilities for juvenile prisoners in Punjab—one each in Bahawalpur and Faisalabad, called Borstal Institutions and Juvenile Jails—juvenile prisoners were accommodated in 30 general prisons in the province as well (See Figure 14 below).

Figure 14: UTPs among Juvenile Prisoners in Punjab



2.3.8 Prison Data of Sindh

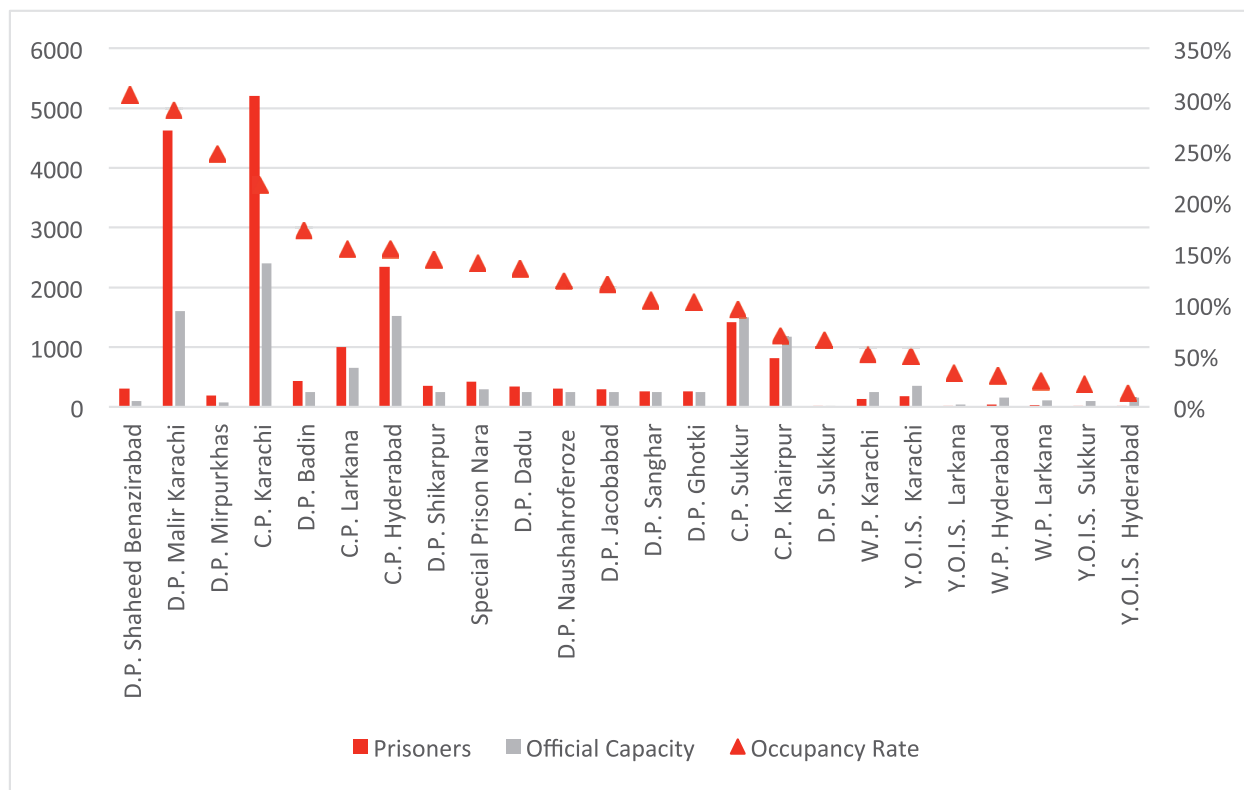
Province	Sindh
Department responsible	Home Department
Prison administration	Prisons Department under Home
Number of prisons/institutions	26
Prison population total	18 998
Official capacity of prison	12 245
Occupancy rate	155.1%
Incarceration rate (per 100,000 of provincial population)	40
Under trial prisoners (percentage of provincial prison population)	78.3%
Female prisoners (percentage of provincial prison population)	1.1%
Female under trial prisoners (percentage of provincial female prisoners)	76%
Juveniles (percentage of provincial prison population)	1.2%
Juvenile under trial prisoners (percentage of provincial juveniles)	93%
Foreigners (percentage of provincial prison population) ¹⁷²	4.2%

¹⁷² Law and Justice Commission of Pakistan, available at http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf (last accessed on February 14, 2018).

Out of the total 26 prisons in Sindh, two were inoperative (Y.O.I.S. Dadu and Open Prison Badin).

Thus, while the overall occupancy rate in the 24 operational prisons of Sindh was at 155 percent, there was considerable variation in the occupancy rates ranging from 13 to 304 percent, as shown in Figure 15 below.

Figure 15: Occupancy Rate of Sindh Prisons



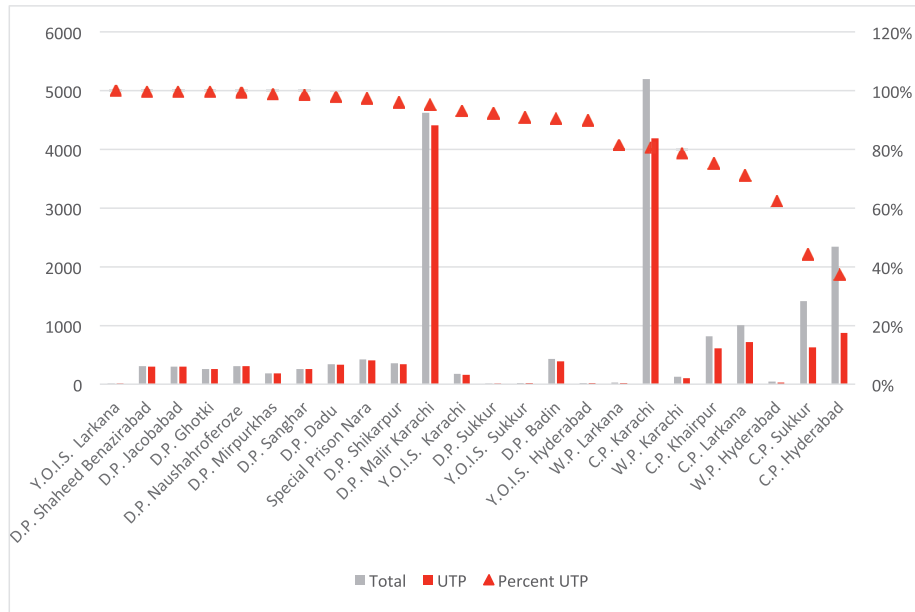
Out of the 24 operational prisons, 14 have exceeded their official capacity, all categorized as Central or District Prisons. The only Central or District Prisons that have less prisoners than their official capacity were the Central Prisons in Sukkur and Khairpur and the District Prison in Sukkur. Occupancy in all juvenile and women’s prisons did not exceed their official capacity

Interestingly, the Karachi Region had only four prisons compared to eleven prisons each for Hyderabad Region and Sukkur Region. In the Karachi Region, C.P. Karachi and D.P. Malir Karachi had the highest prison population in Sindh Province, and both were overcrowded. The lack of prison capacity in Karachi was also noted in the *Federal Ombudsman’s Report*.¹⁷³

With the highest UTP rate compared to other provinces/administrative territories, it is not surprising that all 24 operational prisons of Sindh have UTPs in their prison population. As shown in Figure 16 on the next page, more than half of the prisons in Sindh have over 80 percent UTP concentration, and the range of UTP percentage of the prison population is from 37 to 100 percent. Thus, all operational prisons in Sindh had higher UTP percentage compared to the world’s median percentage of 27 percent.¹⁷⁴

173 Federal Ombudsman’s Office, *Report of the National Committee on Prison Reforms*, May 17, 2016, in pursuance of the directive of the Supreme Court in *Suo moto* Case No. 1/ 2006
 174 See *World Pre-trial/Remand Imprisonment List*: Third Edition, Institute for Criminal Policy Research, 2015.

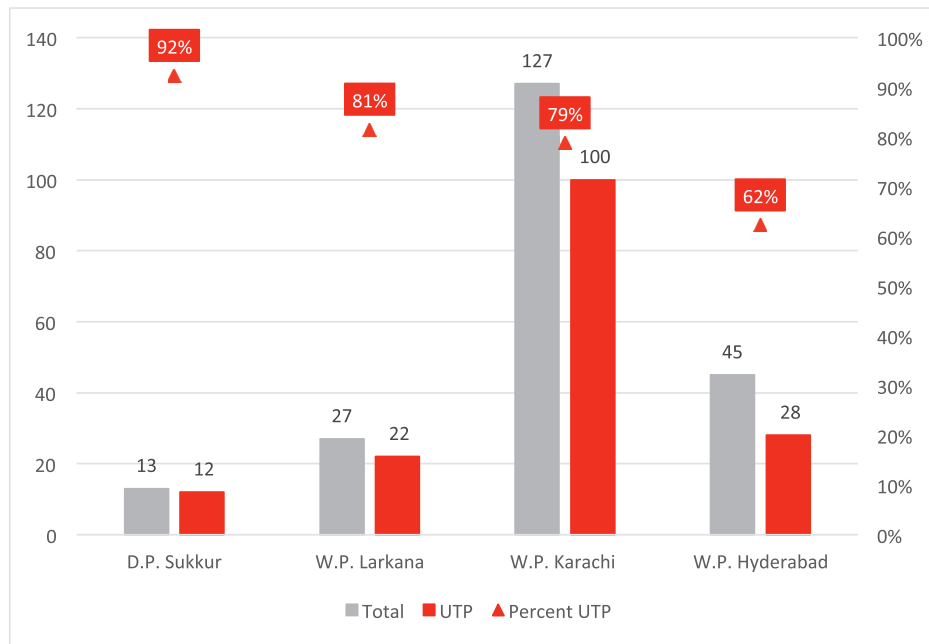
Figure 16: UTPs in Sindh Prisons



2.3.8.1 Female Prisoners in Sindh

In Sindh, 212 out of the total 18,998 prisoners, i.e., around 1.12 percent, were female as of October 1, 2017. The province had three specialized prisons for female prisoners: the Women Prisons in Hyderabad, Karachi, and Larkana. District Prison Sukkur also accommodated female prisoners exclusively (see Figure 17 below).

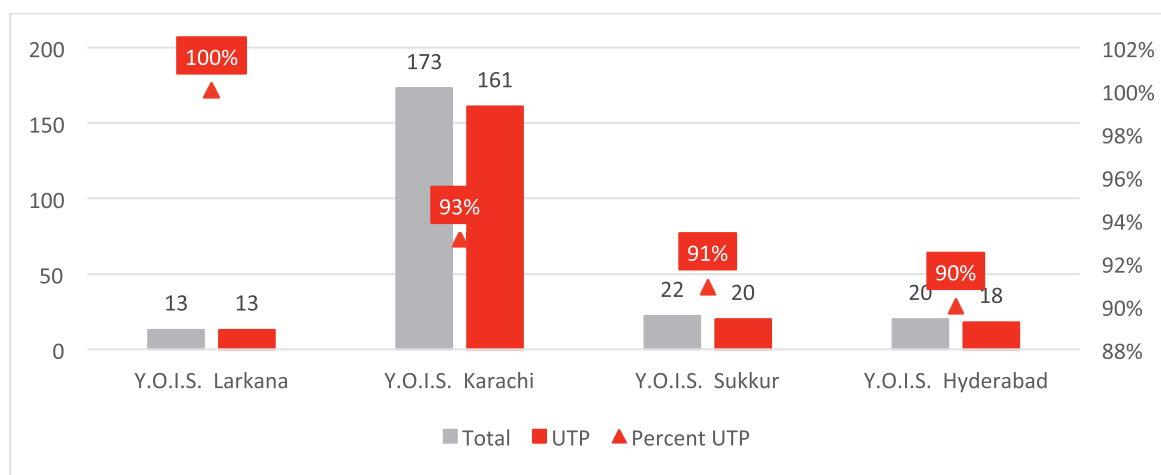
Figure 17: UTPs among Female Prisoners in Sindh



2.3.8.2 Juvenile Prisoners in Sindh

In Sindh, 228 out of the total 18,998 prisoners in Sindh, i.e., around 1.2 percent, were juveniles as of October 1, 2017. All the juvenile prisoners in Sindh were male. Since Sindh has four operational juvenile detention facilities called Youthful Offenders Industrial Schools (Y.O.I.S.) in Hyderabad, Karachi, Larkana, and Sukkur, all juvenile prisoners of the province are accommodated in those specialized prisons for juveniles (See Figure 18 below).

Figure 18: UTPs among Juvenile Prisoners in Sindh



2.3.9 Prison Data of KP

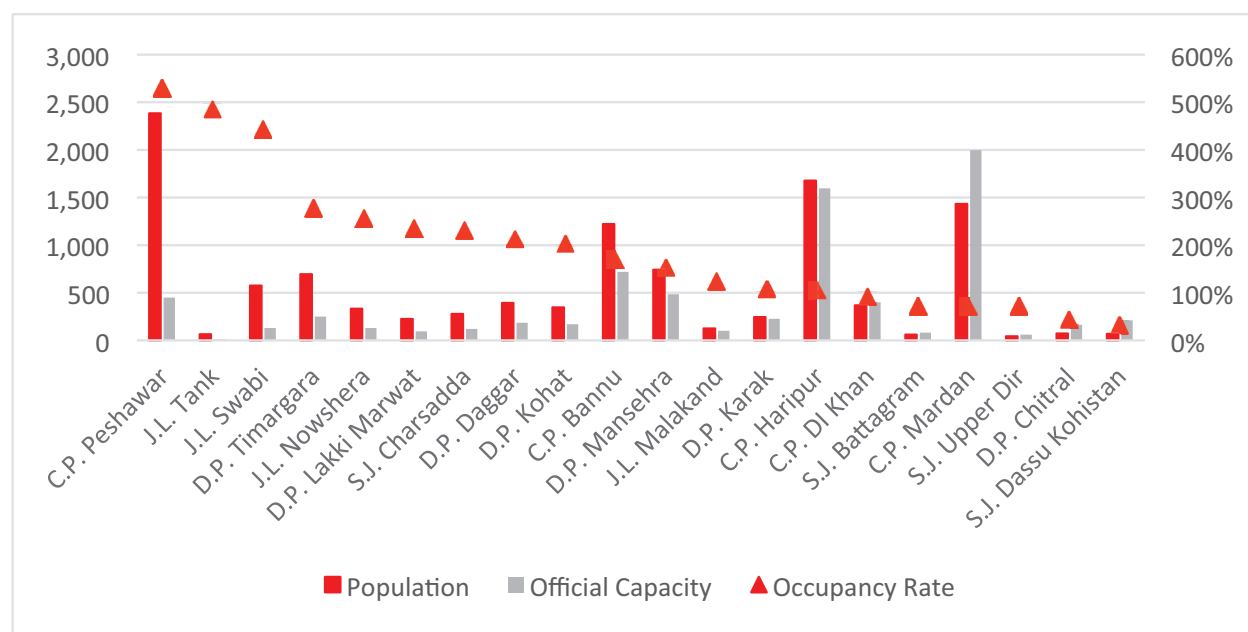
Province	KP
Department responsible	Home Department
Prison administration	Prisons Department under Home
Number of prisons/institutions	22
Prison population total	11 330
Official capacity of prison	7 587
Occupancy rate	149.3%
Incarceration rate (per 100,000 of provincial population)	37
Under trial prisoners (percentage of provincial prison population)	71.6%
Female prisoners (percentage of provincial prison population)	2.4%
Female under trial prisoners (percentage of provincial female prisoners)	84%
Juveniles (percentage of provincial prison population)	3.7%
Juvenile under trial prisoners (percentage of provincial juveniles)	88%
Foreigners (percentage of provincial prison population) ¹⁷⁵	0.02%

¹⁷⁵ Law and Justice Commission of Pakistan, available at http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf (last accessed on February 14, 2018).

Out of the 22 prisons in KP as of October 1, 2017, two (Abbottabad and Swat) were inoperative because of damages to their buildings during the earthquake and insurgencies, respectively.¹⁷⁶

While the 20 operating prisons of KP had a total occupancy rate of 149.3 percent, Figure 19 below shows that the occupancy rate of the individual prisons widely ranges from 32 to 530 percent, with 14 of them exceeding their official capacity. C.P. Peshawar was extremely overcrowded although there is reportedly an ongoing construction at the prison site that will expand its capacity from 425 to 3,000.¹⁷⁷ All four judicial lock ups were overcrowded, with very high occupancy rate for J.L. Tank (485%), J.L. Swabi (442%), and J.L. Nowshera (255%). Six of the eight district prisons had more than the authorized capacity, with D.P. Timargara, D.P. Lakki Marwat, D.P. Daggar, and D.P. Kohat at more than double the occupancy rate. The sub-jail in Kohat was also high at 231 percent.

Figure 19: Occupancy Rate of KP Prisons

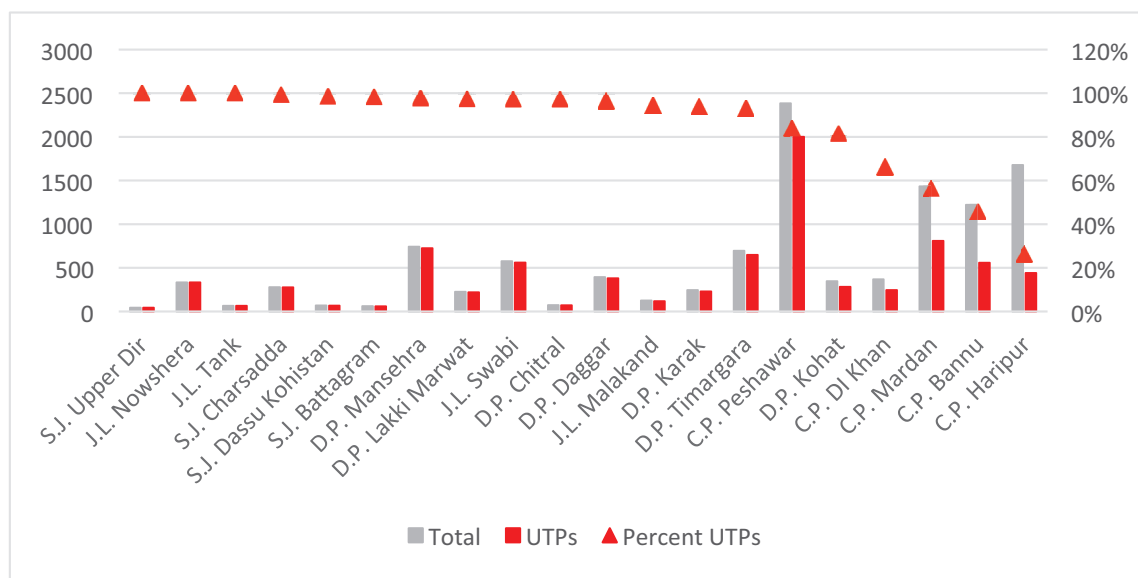


As there were 8,106 UTPs among the total population of 11,330 in the prisons of the province, the UTPs accounted for around 72 percent of the total prison population of the province. Figure 20 on the next page shows that except for C.P. Haripur, all the operating prisons in KP have UTPs higher than the world’s median average at 27 percent; and that except for four out of the five central prisons, the 16 other prisons had a UTP rate higher than the national UTP rate at 66 percent.

¹⁷⁶ District Prison Abbottabad was reopened in November 2017 after 12 years with an authorized official capacity of 808 prisoners. See <http://thefrontierpost.com/abbottabad-jail-reopened-12-years/>

¹⁷⁷ “PTI successfully tackling overcrowding in KP jails: Malik Qasim,” *Pakistan Today*, available at <https://www.pakistantoday.com.pk/2017/11/02/pti-successfully-tackling-overcrowding-in-kp-jails-malik-qasim/> (last accessed on February 19, 2018).

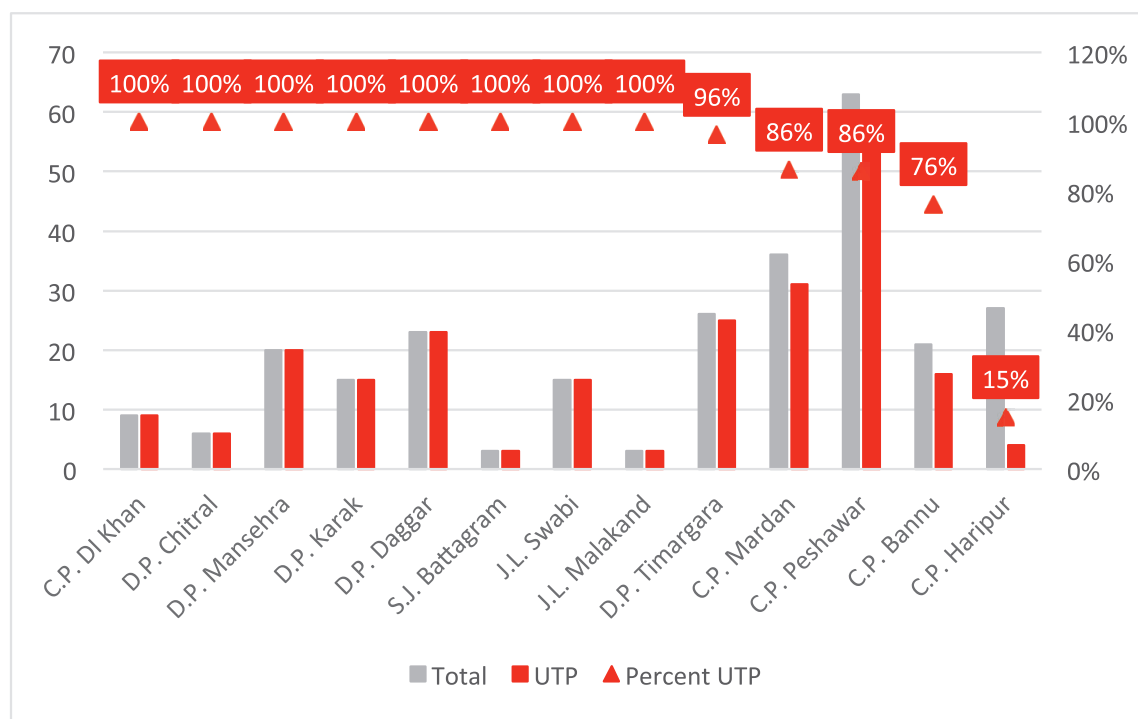
Figure 20: UTPs in KP Prisons



2.3.9.1 Female Prisoners in KP

In KP, 267 out of the total 11,330 prisoners, i.e., around 2.36 percent, were female as of October 1, 2017. Since there is no special prison for women in the whole of the KP, female prisoners were accommodated in the 13 general prisons in various parts of the province in separate quarters from the male prisoners (See Figure 21 below).

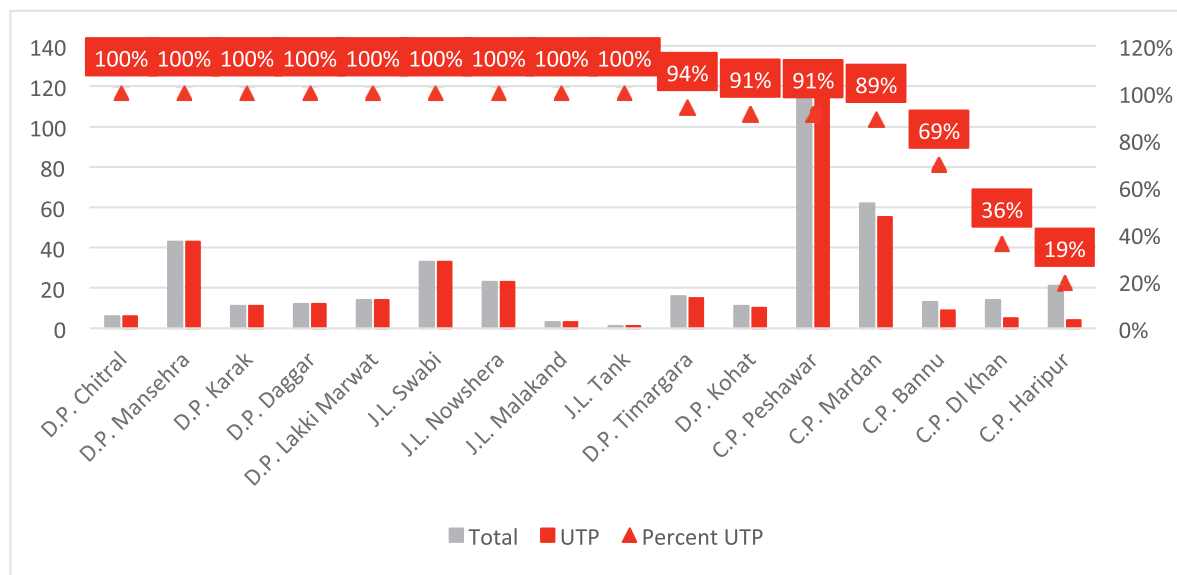
Figure 21: UTPs among Female Prisoners in KP



2.3.9.2 Juvenile Prisoners in KP

In KP, 267 out of the total 11,330 prisoners, i.e., around 2.36 percent, were juveniles as of October 1, 2017. KP also had one convicted female juvenile prisoners in Central Prison Haripur and three female juvenile UTPs in C.P. Haripur. They were all confined in the general female quarters of the respective prisons. Since there are no specialized detention facilities for juvenile prisoners in KP, 16 of the 22 operational prisons of the province as of October 1, 2017, accommodated juvenile prisoners (See Figure 22 below).

Figure 22: UTPs among Juvenile Prisoners in KP



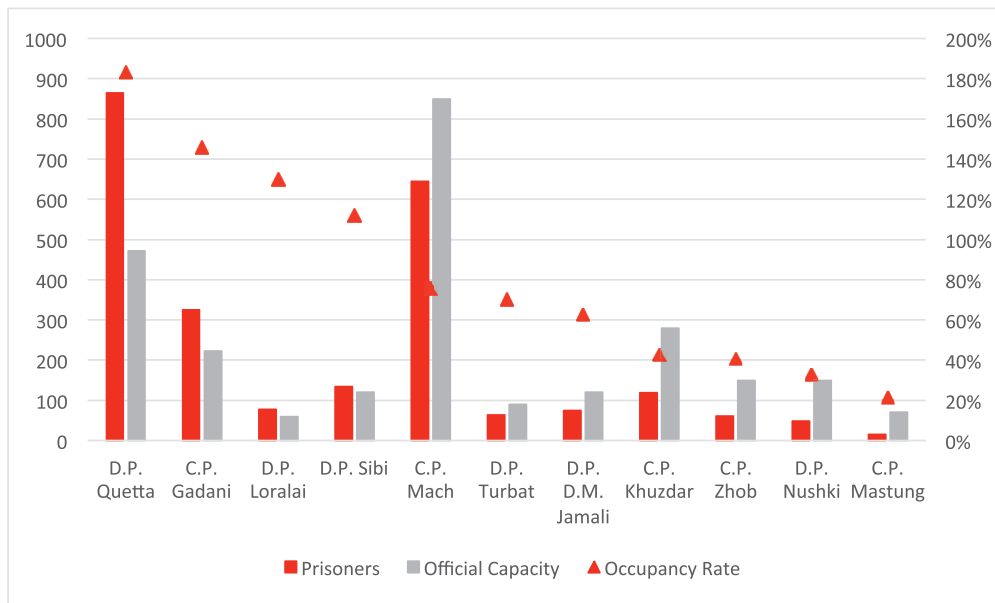
2.3.10 Prison Data of Balochistan

Province	Baluchistan
Department responsible	Home Department
Prison administration	Prisons Department under Home
Number of prisons/institutions	11
Prison population total	2 427
Official capacity of prison	2 585
Occupancy rate	93.9%
Incarceration rate (per 100,000 of provincial population)	20
Under trial prisoners (percentage of provincial prison population)	52.8%
Female prisoners (percentage of provincial prison population)	3.4%
Female under trial prisoners (percentage of provincial female prisoners)	75%
Juveniles (percentage of provincial prison population)	1.9%
Juvenile under trial prisoners (percentage of provincial juveniles)	87%
Foreigners (percentage of provincial prison population) ¹⁷⁸	2.04%

¹⁷⁸ Law and Justice Commission of Pakistan, available at http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf (last accessed on February 14, 2018).

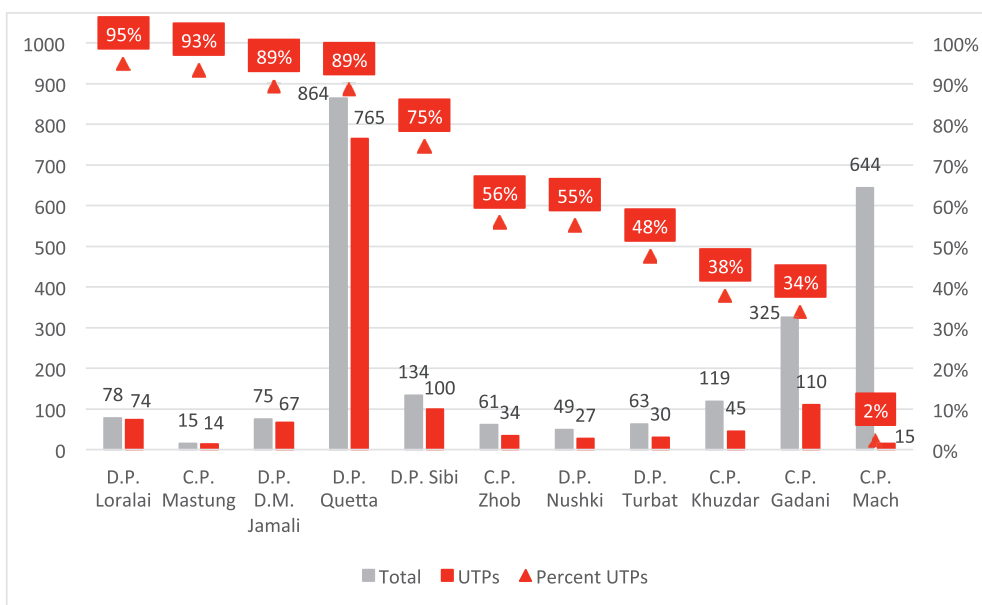
Based on official data, Balochistan's total prison population had not exceeded its total official capacity. As shown in Figure 23 below, however, some prisons in the province still accommodated more than their authorized capacity, particularly D.P. Quetta (183%), C.P. Gardani (146%), D.P. Loralai (130%), and D.P. Sibi (112%).

Figure 23: Occupancy Rate of Balochistan Prisons



According to official data, UTPs accounted for 53 percent of the total prison population of Balochistan, the lowest in all of Pakistan's provinces and administrative territories. Figure 24 below, however, shows that except for C.P. Mach, all prisons in Balochistan have a higher proportion of UTPs compared to the world's average median; while D.P. Loralai (95%), C.P. Mastung (93%), D.P. Dera Murad Jamali (89%), D.P. Quetta (89%) and D.P. Sibi (75%) were much higher than the national UTP percentage.

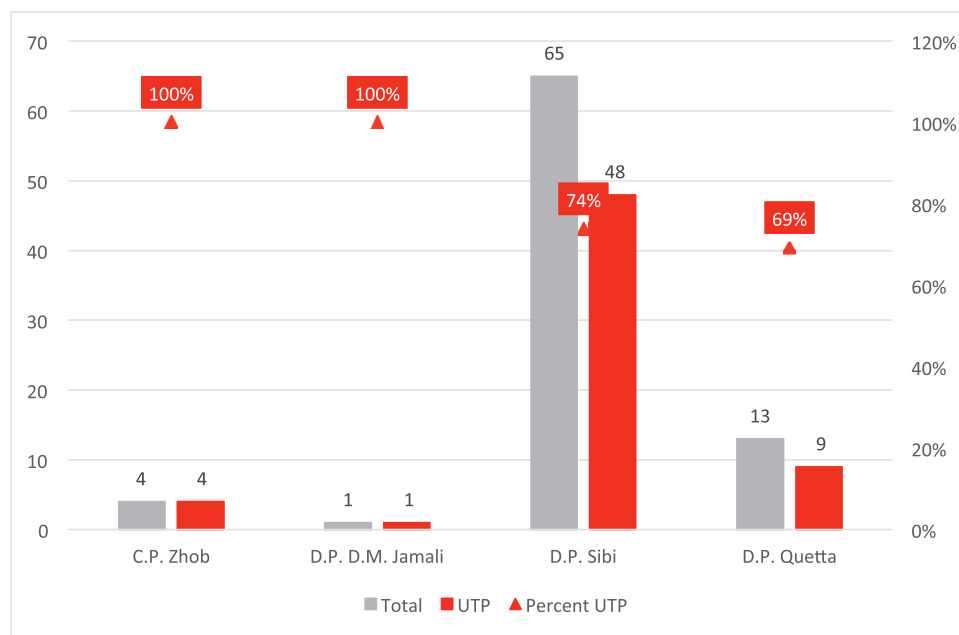
Figure 24: UTPs in Balochistan Prisons



2.3.10.1 Female Prisoners in Balochistan

In Balochistan, 83 out of the total 2,427 prisoners, i.e., around 3.42 percent, were female as of October 1, 2017. Since there is no special prison for women in the whole of Balochistan, female prisoners are accommodated in 4 of the 11 general prisons in various parts of the province in quarters separated from the male prisoners (See Figure 25 below).

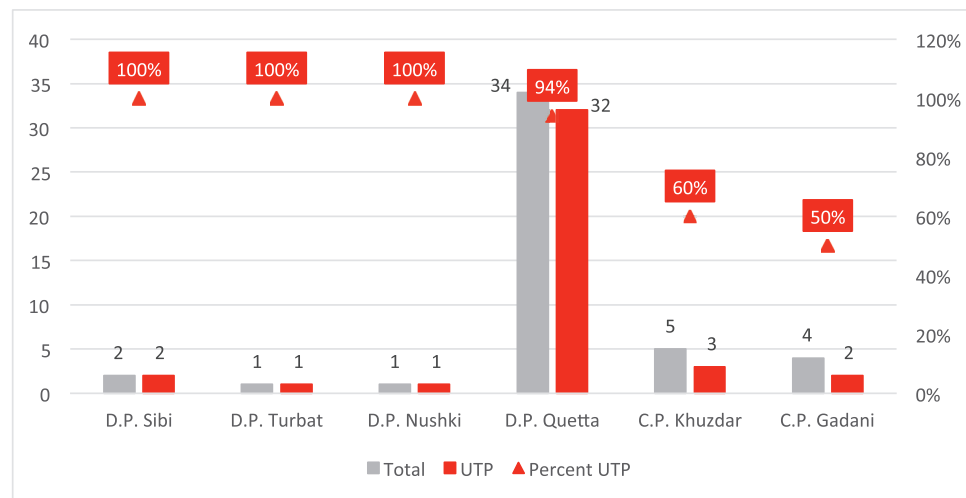
Figure 25: UTPs among Female Prisoners in Balochistan



2.3.10.2 Juvenile Prisoners in Balochistan

In Balochistan, 47 out of the total 2,427 prisoners, i.e., around 1.94 percent, were juveniles as of October 1, 2017. All the juvenile prisoners in Balochistan were male. Since there are no specialized detention facilities for juvenile prisoners in Balochistan, 6 of the 11 general prisons of the province, as of October 1, 2017, accommodated juvenile prisoners (See Figure 26 below).

Figure 26: UTPs among Juvenile Prisoners in Balochistan



2.3.11 Prison Data of AJK

Administrative Territory	AJK
Department responsible	Home Department
Prison administration	Prisons Department under Home
Number of prisons/institutions	7
Prison population total	753
Official capacity of prison	513
Occupancy rate	146.8%
Incarceration rate (per 100,000 of provincial population) ¹⁷⁹	-
Under trial prisoners (percentage of provincial prison population)	68.8%
Female prisoners (percentage of provincial prison population)	3.3%
Female under trial prisoners (percentage of provincial female prisoners)	88%
Juveniles (percentage of provincial prison population)	0
Juvenile under trial prisoners (percentage of provincial juveniles)	0

In AJK, the range of occupancy rate of its seven prisons is close to its overall occupancy rate of 146.8 percent. The prison with the highest occupancy rate was C.P. Mirpur at 189 percent, and the lowest was C.P. Muzaffarabad at 113 percent, as shown in Figure 27 below. Thus, unlike in the four provinces of Pakistan where not every prison was overcrowded, all the prisons in AJK exceeded their authorized capacity.

Figure 27: Occupancy Rate of AJK Prisons

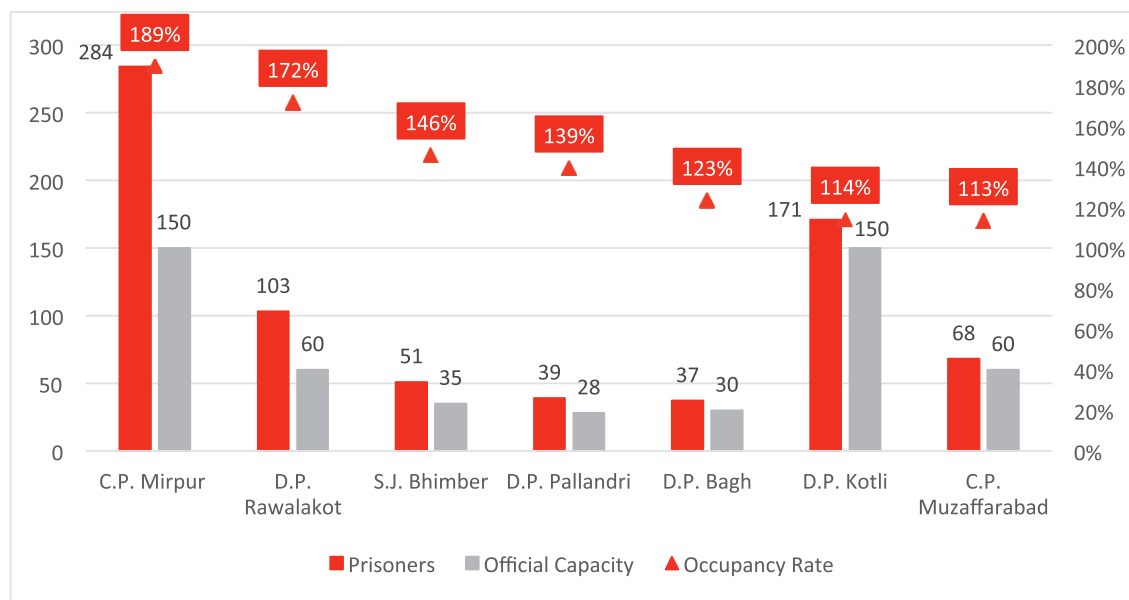
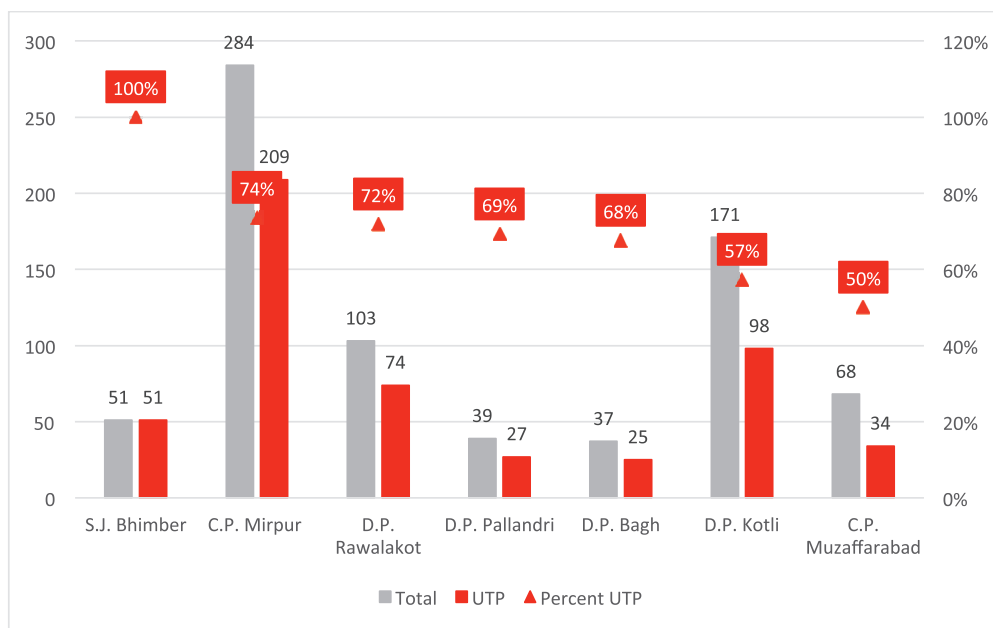


Figure 28 below shows the range of UTP rates in all of AJK prisons from 50 (C.P. Muzaffarabad) to 100 percent (S.J. Bhimber). Except for Central Prison Muzaffarabad and District Prison Kotli, the proportion of UTPs is higher than the national one.

¹⁷⁹ No incarceration rate is computed as the partial official report of the national census in 2017 did not include AJK.

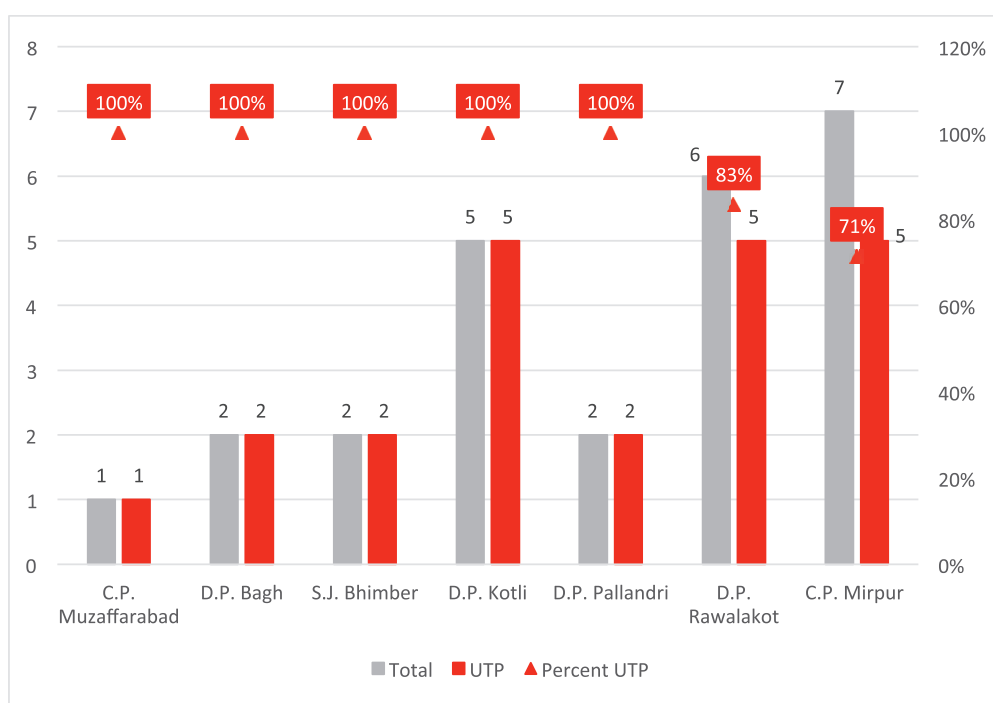
Figure 28: UTPs in AJK Prisons



2.3.11.1 Female Prisoners in the Administrative Territory of AJK

In the administrative territory of AJK, 25 out of the total 753 prisoners, i.e., around 3.32 percent, were female as of October 1, 2017. Since there is no special prison for women in the whole of AJK, female prisoners are accommodated in all the general prisons in various parts of the Administrative Territory in quarters separated from the male prisoners (see Figure 29 below).

Figure 29: UTPs among Female Prisoners in AJK



2.3.11.2 Juvenile Prisoners in the Administrative Territory of AJK
 There were no juvenile prisoners in any prison in AJK as of October 1, 2017.

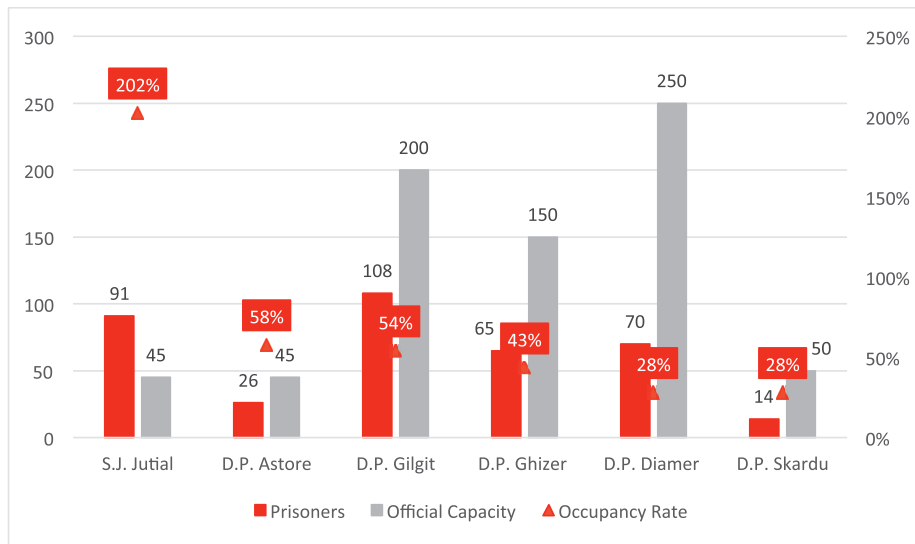
2.3.12 Prison Data of GB

Province	GB
Ministry responsible	Home Ministry
Prison administration	Prisons Department
Number of prisons/institutions	6
Prison population total	374
Official capacity of prison	740
Occupancy rate	50.5%
Incarceration rate (per 100,000 of provincial population) ¹⁸⁰	-
Under trial prisoners (percentage of provincial prison population)	69.3%
Female prisoners (percentage of provincial prison population)	2.4%
Female under trial prisoners (percentage of provincial female prisoners)	100%
Juveniles (percentage of provincial prison population)	3.2%
Juvenile under trial prisoners (percentage of provincial juveniles)	83%

Based on official data, the seven prisons in GB had 374 prisoners against the total official capacity of 740 as of October 1, 2017. This implies that the occupancy rate of the prisons of GB on the said date was 51 percent, which is the lowest among all the provinces and ATs of the country. From GB's total occupancy rate, it may seem that there is no overcrowding in the province.

As shown in Figure 30 below, however, Sub-Jail Jutial had an occupancy rate of 202 percent, although the rest kept their prison population below their authorized capacity.

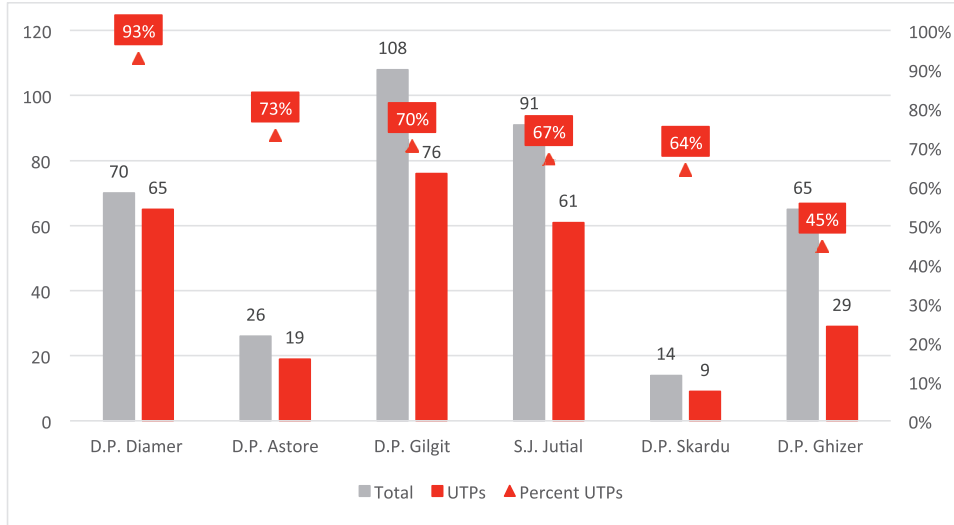
Figure 30: Occupancy Rate of GB Prisons



¹⁸⁰ No incarceration rate is computed as the partial official report of the national census in 2017 did not include GB.

According to official data, the UTPs accounted for 69.3 percent of the total prison population of the administrative territory. Figure 31 below shows the range of UTP rates in all five prisons of GB ranging from 45 percent in D.P. Ghizer to 93 percent in D.P. Diامر. While all the prisons have a UTP rate higher than the world's median average at 27 percent, 2/3 of them are higher than the national UTP rate at 66 percent.

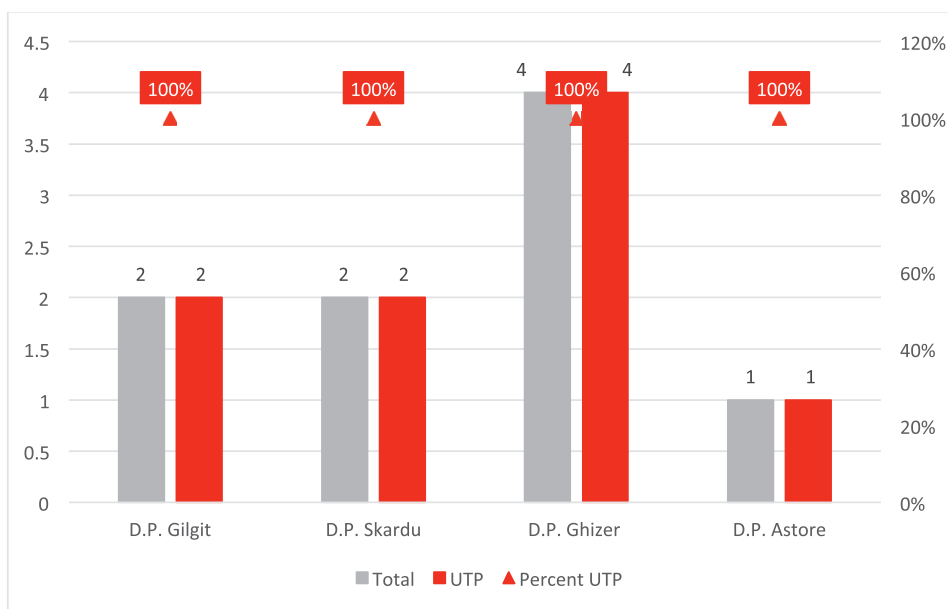
Figure 31: UTPs in GB Prisons



2.3.12.1 Female Prisoners in the Administrative Territory of GB

In the Administrative Territory of GB, nine out of the total 374 prisoners, i.e., around 2.41 percent, were female as of October 1, 2017. Since there is no special prison for women in the whole of GB, female prisoners are accommodated in four of the six general prisons in various parts of the Administrative Territory in quarters separated from the male prisoners. The proportion of UTPs among female prisoners is higher than the male prisoners, as shown in Figure 32 below.

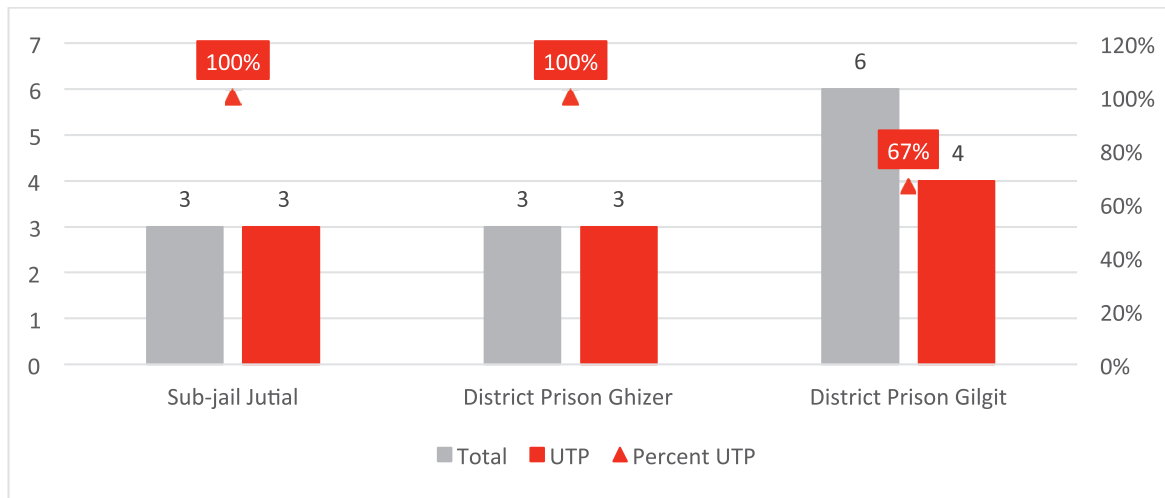
Figure 32: UTPs among Female Prisoners in AJK



2.3.12.2 Juvenile Prisoners in the Administrative Territory of GB

In the administrative territory of GB, 12 out of the total 374 prisoners, i.e., around 3.21 percent, were juveniles as of October 1, 2017. All the juvenile prisoners in GB were male. Since there are no specialized detention facilities for juvenile prisoners in GB, 3 of the 6 general prisons of the province accommodated juvenile prisoners, as of October 1, 2017 (see Figure 33 below).

Figure 33: UTPs among Juvenile Prisoners in GB



3 Consequences of Overcrowding in Prison

Overcrowding in prisons in Pakistan have consequences not just on prisoners and the prison authorities, but the entire criminal justice system, public health, poverty levels and government finance. These consequences are discussed here as they relate to conditions of imprisonment, prisoner classification, post-release of prisoners and others outside the prisons.

3.1 Poor Conditions of Detention

Overcrowding is a very serious humanitarian concern as it “automatically generates substandard and often inhumane conditions of detention.”¹⁸¹ In 2011, the Supreme Court of California declared overcrowding in Californian prisons to be “unconstitutional” and demanded that the prison population be brought to the required maximum according to the court’s orders.¹⁸² The constitutional provision invoked in the decision was the Eighth Amendment which prohibits cruel and unusual punishments.

In Pakistan, poor conditions of detention had been chronicled in publicly available reports and news articles, regarding unbalanced food, insufficient water, inadequate accommodation. Poor access to healthcare, lack of hygiene, difficulties to receive family visits, lack of staff and safety security concerns. The Supreme Court of Pakistan also addressed overcrowding as one of the issues facing the prisons of Pakistan in an order dated 28 May 2016.¹⁸³

3.1.1 Unbalanced Food

The diet specified for prisoners under the law¹⁸⁴ is sufficiently well-balanced, including, but not limited to, meat, lentils, vegetables, and wheat.¹⁸⁵ The IG Prisons is also obliged to ensure that every prisoner has enough food and drink to be in good health and vigor.¹⁸⁶

Prisoners in Pakistan, however, face chronic health problems and malnutrition, often supplementing their diets with help from family and friends.¹⁸⁷ Overcrowding leads to stress on the resources available in prisons for providing for the inmates’ food, and leads to a different diet due to making adjustments than the balanced one provided by law. According to media reports, overcrowding often results in repetition of providing lentils to the prisoners as opposed to meat and balanced vegetables.¹⁸⁸

3.1.2 Water of Insufficient Quantity or Quality

According to law, pure and wholesome water should be available freely for prison inmates at all times for drinking¹⁸⁹ and prisoners confined in cells are to have their own pitchers for storing such drinking water.¹⁹⁰ Clean water, however, is not provided at all times to prisoners as mandated by law¹⁹¹ and potable water is not always accessible.¹⁹² Furthermore, the water provided is found to be supplied to prisons on a two to

181 *Handbook on Strategies to Reduce Overcrowding In Prisons*, United Nations Office on Drugs and Crime (UNODC), 2013

182 *Brown, Governor of California, v Plata* [2011] USSC Appeal no. 09-1233 <https://www.law.cornell.edu/supct/html/09-1233.ZS.html> (last accessed on December 19, 2017).

183 Order Dated 28 May 2016 by the Supreme Court of Pakistan, in *Suo Moto* Case No. 1 of 2006.

184 Rule 260 of the Pakistan Prison Rules 1978.

185 Rule 260 of the Pakistan Prison Rules 1978.

186 Rule 503 of the Pakistan Prison Rules 1978.

187 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

188 Shazia Hasan, “Bursting at the Seams,” *Dawn*, September 7, 2014, available at <https://www.dawn.com/news/1130263> (last accessed on December 22, 2017).

189 Rule 504 (a) of the Pakistan Prison Rules 1978. The right to clean drinking water is a human right implied in Article 11 of the ICESCR, and also protected in Pakistani law by virtue of several Supreme Court judgments, e.g. in *Shahab Usto v Government of Sind through Chief Secretary, Constitutional Petition No.38 of 2016, 2017 SCMR 732*, the Supreme Court declared that the right to clean water was a fundamental right subsumed in the right to life and human dignity as ensured in the Constitution. This right is also enshrined in the *International Covenant on Economic, Social and Cultural Rights*, which Pakistan has ratified.

190 Rule 637 of the Pakistan Prison Rules 1978.

191 Federal Ombudsman’s Office, *Report of the National Committee on Prison Reforms*, op.cit..

192 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

three days' basis in a week, as opposed to daily fresh supply, particularly in prisons in Karachi.¹⁹³ It was also reported that water-borne diseases had spread rapidly due to overcrowding in Punjab prisons.¹⁹⁴

3.1.3 Inadequate Accommodation

The Prison Rules that deal with accommodation in prisons in Pakistan lay down extensive requirements for the prisons to be suitable for habitation.¹⁹⁵ Rule 257, in particular, provides for adequate sanitary and bathing arrangements. Many prisons in Pakistan, however, are not up to date with respect to facilities related to sanitation, ventilation, and lighting.¹⁹⁶ There are also many prisons that are not properly equipped with controlling indoor temperatures.¹⁹⁷ Overcrowding worsened the existing accommodation constraints. Lack of adequate accommodation also affected the productive and recreational facilities that could be made available to the prisoners. In KP, productive and recreational facilities were very limited, even non-existent.¹⁹⁸

3.1.4 Poor Access to Healthcare

Owing to the poor conditions of prisons that result from overcrowding, prisoners become subject to physical and mental illnesses. In addition, procedural hindrances also make access to healthcare difficult for prisoners. Concerns were expressed over Pakistan's prisons facing severe overcrowding and being in poor condition, that "insufficient access to medical services" is one of the challenges being faced by prisoners in the country.¹⁹⁹ Although, a whole chapter is dedicated to health of prisoners in the Pakistan Prison Rules,²⁰⁰ and a system exists for basic and emergency healthcare, the process is hindered by excessive administrative procedures.²⁰¹

Medical staff in most jails in Pakistan was inadequate, resulting in issues pertaining to health and hygiene amongst the prisoners.²⁰² This leads to chronic health problems amongst prison inmates.²⁰³ To aggravate the situation, overcrowding leads to an accelerated spread in diseases. In Punjab prisons alone, the director of the Punjab Tuberculosis Control Programme observed that the spread of tuberculosis was aggravated due to overcrowding.²⁰⁴

Women face much more difficulty as compared to men in accessing healthcare.²⁰⁵ The Supreme Court of Pakistan took a *suo moto* action with respect to the miserable condition of women in jails, and ordered that female doctors be available to female prison inmates.²⁰⁶ The Supreme Court also directed the Health Department in Punjab to facilitate treatment of women and their children on an emergency basis.²⁰⁷

3.1.5 Lack of Vocational Training

Overcrowding strains resources and focuses the attention of prison management on controlling the prison population on a day-to-day basis rather than on investing in longer-term rehabilitation programs. Lack

193 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

194 'HRCP Report: Packed Prisons, Ill Inmates' *The Express Tribune*, 28 April 2013.

195 See Rule 746 on ventilation of wards, Rule 747 on fitness for occupation, Rule 745 and 748 for capacity of wards, and Rule 751 for height of walls etc.

196 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

197 *Ibid.*

198 Comments made by a senior lawyer during consultation with the lawyers of the KP Bar Council in Mansehra on December 14, 2017.

199 Committee against Torture, *Concluding observations on the initial report of Pakistan*, May 2017.

200 Chapter VIII of the Pakistan Prison Rules 1978.

201 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

202 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

203 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

204 "HRCP Report: Packed Prisons, Ill Inmates," *The Express Tribune*, April 28, 2013.

205 UNODC, *Females behind Bars*, Country Office Pakistan, 2011, accessed at < https://www.unodc.org/documents/pakistan/female_behind_bars_complete_final.pdf>, last accessed 19 February 2018.

206 *Suo Moto* Case no. 1 of 2006, Supreme Court of Pakistan.

207 Order dated 23 January 2006 in the *Suo Moto* Case no. 1 of 2006, Supreme Court of Pakistan.

of vocational trainings leads to prisoners leaving the prison premises, unequipped with the skills to be rehabilitated. They are then often re-arrested and to end up back in prison, forcing the government to spend more money on them in the process, leading to it being a cause of overcrowding itself.²⁰⁸

The Pakistan Prison Rules²⁰⁹ provide for mandatory education for juveniles, specifically, in prisons. The ground reality, however, is contrary to these legal provisions. The Pakistan Law Commission, in 2014, noted in its report that “no proper and organized system for imparting education to [the] prisoner exists”.²¹⁰ The Human Rights Commission of Pakistan also made mention of the fact no special effort is apparent to make opportunities available to prisoners for vocational training, improving their level of educational attainment and helping them in becoming law-abiding citizens.²¹¹ The process of readjustment of released prisoners is slow as they do not possess necessary social skills to absorb in the community.²¹²

3.1.6 Lack of Hygiene

As discussed above, the Prison Rules provide for sufficient hygiene and health of prisoners, but the situation on the ground is inadequate owing to excessive administrative procedures and overcrowding. Unsanitary facilities in Pakistani prisons have been noted in several studies,²¹³ many drawing a link between poor hygiene and increase in chronic diseases in prisons.²¹⁴ Other studies also show that overcrowding directly results in poor hygiene, leading to spread in disease and poor healthcare.²¹⁵

3.1.7 Difficulties to Receive Family Visits

Being allowed to stay connected to the outside world in certain circumstances and under specific conditions is also provided by law in Pakistan,²¹⁶ however, this is not being implemented due to various factors, *inter alia*, overcrowding. Overcrowding in prisons could adversely affect the numbers of interview sheds and booths in prisons for family visits.²¹⁷ It could result in difficulties faced by relatives in meeting the inmates and might lead to the involvement of bribery in facilitating such visits.²¹⁸

3.1.8 Inadequate Human Resources

Limited and denied resources forces prisons to stretch their space, equipment and staff to accommodate everyone ultimately cultivating competition and conflict that often leads towards aggression, violence and high rate of illness.²¹⁹ Health and educational training is needed for treatment of communicable diseases for prisoners. Unreliable correctional health care delivery system and increasing cost are some of the contributing factors of health hazards that need to be examined and rectification for the protection of everyone involved. Staff should be well trained for treatment, and rehabilitation programs including, but not restricted to, substance abuse, mental health, education or vocational training, life skills, anger management, sex offender treatment, halfway house, and community service, that are ample to meet the service needs of the population of incarcerated and community supervised offenders.²²⁰ It was also noted in consultations with

208 Michael A. Ruderma, Deirdra F. Wilson, Savanna Reid, “Does Prison Crowding Predict Higher Rates of Substance Use Related Parole Violations? A Recurrent Events Multi-Level Survival Analysis”, 2015, <https://doi.org/10.1371/journal.pone.0141328>.

209 Pakistan Prison Rules, Rule 301.

210 Pakistan Law Commission, “Report on Jail Reform” p. 16, available at <http://www.ljcp.gov.pk/Menu%20Items/Publications/Reports%20of%20the%20LJCP/reports/report23.htm>.

211 Human Rights Commission of Pakistan, *Jails, prisoners and ‘disappearances’*, 2014, available at <http://hrcp-web.org/hrcpweb/data/ar14c/2-2%20jails%20and%20prisoners%20-%202014.pdf>.

212 Muhammad Siddique Akbar and Mazhar Hussain Bhutta, *Prison Reforms and Situation of Prisons in Pakistan*, available at http://sapandssrp.com/attachments/File/Prison_reforms.pdf.

213 Committee against Torture, *Concluding observations on the initial report of Pakistan*, May 2017.

214 ‘Overcrowded jails’ *Daily Times*, April 16, 2016.

215 Zahra Sabri, “Bursting at the Seams,” *Dawn*, August 21, 2017, available at <https://www.dawn.com/news/1128841> (last accessed on December 22, 2017) and Irfan Aslam, “Caged: Behind the walls of Pakistan Prisons,” *Dawn*, September 7, 2014, available at <https://www.dawn.com/news/1130263> (last accessed on December 22, 2017).

216 Rules 92, 538, 539, 544 and 545 of the Pakistan Prison Rules 1978.

217 Federal Ombudsman’s Office, Report of the National Committee on Prison Reforms, op.cit..

218 Federal Ombudsman’s Office, Report of the National Committee on Prison Reforms, op.cit..

219 Hans-Jörg Albrecht, Prison Overcrowding, Finding Effective Solutions. Strategies and Best Practices Against Overcrowding in Correctional Facilities the-Planck-Institute for Foreign and International Criminal Law, German.

220 Craig Haney, The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions, Washington University Journal of Law & Policy, Volume 22, January 2006.

prison officials that in-service trainings and pre-service trainings were needed for prison officials.²²¹ They also noted that prison security staff was understaffed and inadequately trained to deal with law and order situations, whether internal or external.²²²

The shortage of staff in prisons was due to the meagre budget allocation and shortage of administrative and training staff. Prisons in the country are inadequately equipped and understaffed, leading to frustration among the existing prison officials in Pakistan.²²³

3.1.9 Safety and Security Concerns

Overcrowding leads to greater safety and security needs of prisoners and of prisons. In Pakistan, where there is a dearth of separation of hardened criminals from the rest, overcrowding poses a serious threat of recidivism.²²⁴ The difficulties to maintain safety and security in prisons became public knowledge notably after the jail break in D.P. Mardan in KP in June 2016²²⁵ and the much highlighted escape of two members of the *Lashkar-e-Jhangvi* from C.P. Karachi on 13 June 2017. Six days later, the Rangers and Frontier Constabulary carried out a raid and seized, among other items, 102 mobile phones, 163 gas cylinders, and Rs. 3.3 million (\$30,000) in cash from the inmates.²²⁶

3.2 Difficulty in Implementing Prisoner Classification and Separation

Despite the fact that a detailed legal regime is in place for classification and separation of prisoners, the prisoners are often confined together due to overcrowding.²²⁷ Discussed hereinafter are the legal provisions that require classification of prisoners, followed by the actual conditions in prisons in the subsequent sections.

3.2.1 Legal Framework in Pakistan for Separation of Prisoners

Rule 231 of the Pakistan Prison Rules, 1978, establishes the standards for the separation of prisoners.²²⁸ It provides that women should be confined in separate prison, or separate part of the same prison to avoid seeing, conversing, or holding any communication with male prisoners. Furthermore, juveniles should also be separated from all other prisoners, and civil prisoners should not be kept with criminal prisoners. Under-trial prisoners (UTPs)²²⁹ should also be detained separate from convicted prisoners,²³⁰ and political prisoners²³¹ should be kept separate from all other prisoners.²³² In addition, condemned prisoners whose death sentence has been confirmed by the High Court,²³³ must be kept in a separate cell from all other prisoners under the supervision of a special guard.²³⁴

Moreover, under Rule 232 of the Pakistan Prison Rules, the UTPs committed to Sessions Courts are to be

221 Comments made by a senior-level prisons official of the Government of KP during consultations with prison officials on Rule 745 of the Prison Rules at NACTA on December 15, 2017.

222 *Ibid.*

223 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

224 Waseem Ahmed Shah, "The Siege Within" Dawn, September 7, 2017, available at <https://www.dawn.com/news/1130027> (last accessed on December 22, 2017).

225 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

226 Geo TV, The Reality of Prisons in Karachi, August 5, 2017, available at <https://www.geo.tv/latest/148566-uncovering-the-reality-of-karachi-prisons> (last accessed on December 22, 2017).

227 Human Rights Commission of Pakistan, *The State of Human Rights*, Report 2016.

228 Please also refer to Sections 27 to 30 of the Prison Act 1894 and Rules 224 to 249 of the Pakistan Prison Rules 1978 which clearly provide for the classification of prisoners on the basis of their involvement in civil matters or criminal offences. They further require for the segregation of female and juvenile convicts from the rest.

229 Under section 344 of the Code of Criminal Procedure 1898, the court has the power to remand an accused to custody for ensuring his presence in the court on the dates of hearing. These prisoners have not been sentenced, but are kept in prisons while their trial takes place. Prisoners, who are undergoing trial are, therefore, called remand prisoners.

230 Rule 231 (iii) of the Pakistan Prison Rules 1978.

231 Political prisoners are prisoners who commit crimes for political motives, instead of for personal gains; See: Rule 225 of the Pakistan Prison Rules 1978.

232 Rule 231 (v) of the Pakistan Prison Rules 1978.

233 Rule 330 of Pakistan Prison Rules, 1978.

234 Rule 332 of Pakistan Prison Rules, 1978.

kept separate from UTPs who have not been so committed.²³⁵ UTPs previously convicted are to be kept separate from UTPs with no previous record of conviction.²³⁶

Other categories of segregation include casual convicted prisoner from habitual convicted prisoners,²³⁷ of simple imprisonment prisoners from rigorous imprisonment prisoners,²³⁸ of convicted prisoners under 16 years of age from those above 16 years of age,²³⁹ and that of political prisoners from each other, if necessary.²⁴⁰ The law also requires that habitual criminals be kept separate in a special prison where only habitual criminals are kept, as far as is possible.²⁴¹

Classifying and separating prisoners according to their age, gender and the risk they pose to others is also one of the most basic principles on treatment of prisoners under international law. Article 10(2) of the International Covenant on Civil and Political Rights, which Pakistan ratified in 2010, states that “accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons”, and that “accused juvenile persons shall be separated from adults, and brought as speedily as possible for adjudication.” The UN Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules), which was adopted unanimously by the UN General Assembly, also provide for categorization and separation of prisoners.²⁴²

3.2.2 *Situation in Prisons of Pakistan*

While segregation of prisoners is a requisite under Pakistan’s laws, overcrowding challenges its implementation and leads to several prisoners being housed in the same barracks of buildings. Such absence of proper classification and complete separation is one of the major and more alarming consequences of overcrowding, particularly where it may lead to physical and other abuse. It may also lead to prisoners, particularly juveniles, being influenced by hardened or habitual offenders, thereby posing a greater problem in reforming offenders.

3.2.2.1 *Separation according to risk posed to others*

Security classification systems help prison personnel identify inmates who pose little or no risk, so that they can be placed in appropriate facilities and start rehabilitation, while ensuring detainees are held under the

235 Under Section 190 of the Code of Criminal Procedure 1898, the Magistrate is supposed to be take cognizance of an offence. But if the offence is such that the Court of Sessions is empowered for trial of the offence, and not the Magistrate, then the Magistrate is to send the case to court of Sessions for trial under section 190 (3) of the Code of Criminal Procedure. The accused, who are tried by the Court of Sessions, and not the magistrate, are called ‘committed to the Sessions Court’ for trial. For instances of when a person was committed to sessions, see: Abdul Majeed v State, 1980 SCMR 391 and Muhammad Fayyaz Ahmed v State, 1976 SCMR 183.

236 Rule 232 (i) of the Pakistan Prison Rules 1978.

237 Rule 232 (ii) of the Pakistan Prison Rules 1978.

238 Rule 232 (iii) of the Pakistan Prison Rules 1978.

239 Rule 232 (iv) of the Pakistan Prison Rules 1978.

240 Rule 232 (vi) of the Pakistan Prison Rules 1978.

241 Rule 232 (v) of the Pakistan Prison Rules 1978.

242 Pertinent provisions of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) are as follows:

Rule 11: The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus:

- (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate;
- (b) Untried prisoners shall be kept separate from convicted prisoners;
- (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- (d) Young prisoners shall be kept separate from adults.

Rule 93: 1. The purposes of classification shall be:

- (a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;
 - (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.
2. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

Rule 94: As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions.

Based on the principle of accommodating prisoners in the least restrictive environment, guided by their individual assessment and classification, most prisoners can be held in medium to low security levels and a significant number may be held in semi-open and open prisons. Such prisons are often under-utilized, not necessarily because of objective risk factors, and an increase in their usage should be among options considered.

A proper risk assessment of prisoners, undertaken on the basis of reliable assessment criteria and tools, can enable prison administrations to identify prisoners whose accommodation in high security facilities are truly justified. They usually make up a very small proportion of the total prison population.

The implementation of this principle will ensure that funds are saved, due to the lower costs involved in the building, maintenance and operation of low-security prisons.

appropriate degree of security. This approach helps ensure that inmates are treated humanely, and can reduce tensions in prisons.

Classification on the basis of their crime and separating hardened criminals from others could be helpful not only in reducing the influence of the hardened criminals on the other detainees but also help in making the prison atmosphere less stressful for them. The *Federal Ombudsman's Report* noted that due "to overcrowding and shortage of prison facilities, all kinds of inmates involved in cases ranging from gambling and drinking to robberies and mass murders are confined in the same jail."²⁴³ The Government of Sindh had plans for separation including based on the gravity of the offense, but were not yet in effect.²⁴⁴

While several high security prisons were under construction in different parts of the country, primarily for terrorism convicts,²⁴⁵ there was a view that in the rest of the prisons such convicts are confined in segregated quarters from the rest of the prisoners.²⁴⁶ The Legal Aid Office,²⁴⁷ however, expressed concerns that prisons were seen as "breeding grounds for violent extremism," where the recruitment of "idle and frustrated minds" easily took place.²⁴⁸ Lack of segregation between the prisoners with extremist tendencies and the other population is spreading and facilitating radicalization in prisons.²⁴⁹

3.2.2.2 Separation according to age

Juveniles are housed with adult prisoners in some jails but in separate barracks, especially in Balochistan and KP, where there are no Borstal Institutions for them.²⁵⁰ This leads to abuse of children by other prisoners and prison staff.²⁵¹ Such conditions have also resulted in sexual abuse of juveniles in prisons, which are often not even properly investigated and the perpetrators go unpunished.²⁵² Additionally, rather than the rehabilitation of juvenile prisoners in society, the time served in prisons leads to them becoming hardened criminals after having spent a long time in the company of adult prisoners.²⁵³

243 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

244 Interview with Home Secretary of the Government of Sindh Mr. Qazi Shahid Pervez in Karachi on June 6, 2017.

245 For Example Sahiwal and Peshawar; See Faisal Ali Ghumman, 'Country's First High Security Prison ready for Opening' *Dawn* January 14, 2015; Zahir Shah Sherazi, 'KP to set up Pakistan's first high security prison' *Dawn* May 8, 2014.

246 Prisons Act 1894, section 27; Comments made by Additional Secretary Home Department Balochistan Mr. Muhammad Tayyab Lehri during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

247 The Legal Aid Office Project was founded by Justice Nasir Aslam Zahid, Chairperson for the Committee for Welfare of Prisoners, set up by the Government of Sindh in 2004. The Legal Aid Office operates under the Committee for Welfare of Prisoners; See Professor Akmal Wasim and Barrister Haya Emaan Zahid, 'Sindh Prisons: A Review of the Criminal Justice System' *Annual Research Report 2015*, Legal Aid Office, Committee for Welfare of Prisoners, 2015.

248 Professor Akmal Wasim and Barrister Haya Emaan Zahid, 'Sindh Prisons: A Review of the Criminal Justice System' *Annual Research Report 2015*, Legal Aid Office, Committee for Welfare of Prisoners, 2015.

249 Professor Akmal Wasim and Barrister Haya Emaan Zahid, 'Sindh Prisons: A Review of the Criminal Justice System' *Annual Research Report 2015*, Legal Aid Office, Committee for Welfare of Prisoners, 2015.

250 As also noted by the UN Committee on the Rights of Child in their report of 2016; See UN Committee on the Rights of the Child, *Concluding Observations on the Fifth Periodic Report of Pakistan*, 11 July 2016. A similar comment was made by Representative of DIG Prisons Rawalpindi Mr. Amer Fayyaz during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017; As per Rule 4 of Juveniles Justice System Rules 2002, there should be Borstal Institutions for Juveniles in every District. See also 'No borstal institute for juvenile offenders in Balochistan' *The nation*, November 20, 2016.

251 UN Committee on the Rights of the Child, *Concluding Observations on the Fifth Periodic Report of Pakistan*, 11 July 2016.

252 UN Committee against Torture, *Concluding observations on the initial report of Pakistan*, May 2017.

253 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

In KP, there are no separate prisons for juvenile prisoners but segregated areas within some of the existing prison premises have been assigned for them.²⁵⁴ A borstal institute has been constructed at Bannu (KP) but it is still not operational due to technical reasons and the lengthy rule-making process.²⁵⁵ Specific areas are usually sealed for the security of the juveniles. In the area sectioned off for juvenile offenders, elderly staff is hired to oversee them while regular prison staff is not allowed entry there.²⁵⁶

KP had 16 general prisons accommodating juveniles as of October 1, 2017. In Balochistan, six out of its 11 general prisons were housing juveniles, while there were three out of six in GB. Although there were two specialized detention facilities for juvenile prisoners in Punjab, juveniles were also accommodated in 30 other general prisons in the province. In Sindh, juveniles were only kept in juvenile detention centers, and there were no juvenile prisoners in AJK.

In addition to keeping the juvenile detainees in a separate section of the prison in Sindh, there is also a separate entry gate so that they do not have to take even a step through the rest of the prison.²⁵⁷ Four out of the total of 25 prisons in Sindh had been assigned as juvenile detention centers under the name of Youthful Offenders Industrial Schools.²⁵⁸ According to officials, the Youthful Offenders Industrial Schools provide a dorm-like environment to ensure that juvenile offenders feel more like being in a learning facility rather than a prison. Every young detainee is provided with a bed and every barracks is equipped with a television and a ceiling fan. The juvenile detainees in those facilities also have access to cold water, medical facilities, educational courses, crafts training, as well as vocational training.²⁵⁹

3.2.2.3 Separation according to sex

Separating female prisoners from male prisoners, along with the staff that deals with them, is essential for protecting women in detention. The authorities in Pakistan, however, observed separation in some prisons instead of all prisons as it should be.²⁶⁰ The abuse against women in prisoners, as reported, includes lack of healthcare even for pregnant women,²⁶¹ sexual exploitation and prostitution within jail premises.²⁶² With slightly reduced overcrowding in jails for women, however, the sexual exploitation was also noted to have decreased.²⁶³ Hence, redressal of overcrowding is expected to result in decline, although not absolute eradication, of the contingent issues faced by female detainees in Pakistan.²⁶⁴

There is not a single prison for female in whole of Balochistan province.²⁶⁵ They are housed in separate quarters in the prisons,²⁶⁶ particularly in four out of 11 prisons in the province as of October 1, 2017. There are not too many female detainees in Balochistan province,²⁶⁷ though, because the police and the

254 'Lack of Borstals and plight of juvenile offenders' *Dawn* October 16, 2011.

255 'Juvenile Justice Centres' *The Express Tribune*, October 19, 2015.

256 Interview with Special Secretary with Additional Charge of Secretary to Government of Khyber Pakhtunkhwa (KP) Mr. Siraj Ahmad in Peshawar on May 22, 2017.

257 Interview with Home Secretary of the Government of Sindh Mr. Qazi Shahid Pervez in Karachi on June 6, 2017.

258 Interview with Inspector General (IG) Prisons of the Government of Sindh Mr. Nusrat Hussain Mangan in Karachi on June 6, 2017; 2 of these prisons are mentioned in 'Industrial schools established for young offenders', *Dawn*, March 1, 2013.

259 Interview with Inspector General (IG) Prisons of the Government of Sindh Mr. Nusrat Hussain Mangan in Karachi on June 6, 2017.

260 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

261 Abdur Razzaq, 'For female prisoners, misery and disease in KP jails' *The Express Tribune*, 23 September 2016, <https://tribune.com.pk/story/1187049/female-prisoners-misery-disease-k-p-jails/> (last visited on 3 December 2017).

262 Ahmed Yusuf, "When Jail Birds Sing" *Dawn*, September 7, 2014, available at <https://www.dawn.com/news/1130263> (last accessed on December 22, 2017).

263 Fazal Sher, 'Sexual Exploitation of Women in Jails Declined due to Reforms: Asma' *Business Recorder*, 6 August 2016.

264 Based on findings of the article: Fazal Sher, 'Sexual Exploitation of Women in Jails Declined due to Reforms: Asma' *Business Recorder*, 6 August 2016.

265 Interview with IG Prisons of the Government of Balochistan Mr. Hameed Ullah Nasar and DIG Prisons of the Government of Balochistan Mr. Zia Ullah Khan in Quetta on June 8, 2017. See also 'No women prison in Balochistan' *The Nation*, August 24, 2015.

266 Interview with Deputy Inspector General (DIG) Investigation of the Police Department of the Government of Balochistan in Quetta on June 8, 2017.

267 Jahangir Achakzai and Shakira Bukhari, 'Situation and needs assessment of women in jails; a case study of province of Balochistan' available at <http://sbbwu.edu.pk/journal/SUMMER-2012-vol-6-No-1/Paper%206.pdf> (last accessed on December 22, 2017).

judiciary is liberal in granting bail to female detainees.²⁶⁸ With the rising number of women getting involved in narcotics trafficking under compulsion from their male relatives, however, this could change in future.²⁶⁹

There are no separate prisons for female prisoners²⁷⁰ in KP either but segregated areas within some of the existing prison premises have been assigned for them. Specific areas are usually sealed for the security of the female prisoners. In the segregated areas for female prisoners, only female staff is allowed to enter with the exception of the prison superintendent and the magistrate or judge.

In KP, 13 general prisons were housing female prisoners as of October 1, 2017. In AJK, all of its seven prisons accommodated women prisoners, while four out of six in GB. In Punjab, female prisoners are accommodated in separate quarters in 28 prisons housing male prisoners, in addition to one Women Prison in Multan. In Sindh, four out of the total of 25 prisons—located in Karachi, Hyderabad, Sukkur, and Larkana—are assigned exclusively for female detainees.

3.2.2.4 Separation of under trial and convicted prisoners

The Legal Aid Office²⁷¹ observed that in seven prisons in Sindh, several remand prisoners and convicted prisoners were kept in the same barracks or had easy access to each other. In 10 prisons, “hardened/habitual remand prisoners were not separated from ‘other casual remand offenders.’” The Government of Sindh had plans to separate UTPs from convicts, but they are not yet in effect.²⁷²

3.3 Post-Release Consequences for the Inmates

Although prisons are correctional facilities, the impact of having served some time in prisons has mental and social consequences after release from prisons. If such short-term incarcerations are repeated by prisoners in prisons, they then face their long term impacts. Not only do prisons expose their inmates to violence, chronic diseases, addictions, and mental health problems, but they also result in barriers in acquiring a formal employment, social stigma, and leads to encouragement toward indulging in illegal activities and crimes. All in all, prisons create obstacles in maintaining a healthy lifestyle and healthy family relations for prisoners even after their release.²⁷³

To cater to these issues, meaningful activities such as education, work and other programs are necessary for creating a positive and learning environment in the prisons.²⁷⁴ Studies have shown that prisoners in a healthy and engaging environment are less likely to initiate disturbances out of boredom or frustration.²⁷⁵ As discussed above, overcrowding, however, becomes a hindrance to providing such reformatory activities and healthy environment to the prisoners, resulting in the adverse consequences even after their release. These consequences are discussed hereinafter.

3.3.1 Recidivism

Overcrowding, in particular, has been associated with recidivism and producing hardened criminals.²⁷⁶ Studies have shown that overcrowding in prisons has contributed to growing radicalization and recidivism,²⁷⁷

268 Interview with Deputy Inspector General (DIG) Investigation of the Police Department of the Government of Balochistan in Quetta on June 8, 2017.

269 Interview with Deputy Inspector General (DIG) Investigation of the Police Department of the Government of Balochistan in Quetta on June 8, 2017.

270 ‘Lack of Borstals and plight of juvenile offenders’ *Dawn* October 16, 2011.

271 The Legal Aid Office Project was founded by Justice Nasir Aslam Zahid, Chairperson for the Committee for Welfare of Prisoners, set up by the Government of Sindh in 2004. The Legal Aid Office operates under the Committee for Welfare of Prisoners; See Professor Akmal Wasim and Barrister Haya Emaan Zahid, ‘Sindh Prisons: A Review of the Criminal Justice System’ *Annual Research Report 2015*, Legal Aid Office, Committee for Welfare of Prisoners, 2015.

272 Interview with Home Secretary of the Government of Sindh Mr. Qazi Shahid Pervez in Karachi on June 6, 2017.

273 Nicholar Freudenberg, ‘Coming home from jail, the Social and health consequences of Community reentry for women, male adolescents, and their families and communities’ AMJPH 95 No 10 October 2005.

274 *Handbook on Strategies to Reduce Overcrowding In Prisons*, United Nations Office on Drugs and Crime (UNODC), 2013, p. 13.

275 *Handbook on Strategies to Reduce Overcrowding In Prisons*, United Nations Office on Drugs and Crime (UNODC), 2013, p. 13.

276 Diane Whitmore et.al., “Twelve Facts about Incarceration and prisoner reentry” the Hamilton Project, October 2016, available at https://www.brookings.edu/wp-content/uploads/2016/10/thp_20161020_twelve_facts_incarceration_prisoner_reentry.pdf (last accessed on December 22, 2017).

277 ‘Ill-Equipped: US Prisons and Offenders with Mental Illnesses’ Human Rights Watch, 2003, accessed at: <https://www.hrw.org/sites/default/files/reports/usa1003.pdf>.

especially if the prisoners are not segregated and UTPs are kept in the same barracks as hardened convicts.²⁷⁸ A correlation has also been drawn between many perpetrators of attacks and their history of having spent time in overcrowded prisons in Europe.²⁷⁹

Recidivism could have social drivers such as non-acceptability in the society because of the stigma associated with a prison sentence. Drug addicts are among the top recidivists in prisons, followed by thieves and gangsters, and members of families involved in long-standing violent disputes.²⁸⁰ Narcotics dealers also tend to become repeat offenders because they also find it hard to secure alternative means of livelihoods after getting released from the prisons.²⁸¹ Since drug addicts constitute a considerable proportion of recidivists, rehabilitation centers for drug addicts were established a few years ago in every prison in Punjab.²⁸² The impact of the rehabilitation centers for drug addicts seems to be limited since police and prison officials claim that drug addicts still constitute the highest numbers of recidivists in prisons.²⁸³

Some officials argue that at times even a person caught mistakenly without any crime finds it difficult to go back to normal life after release because of the stigma associated with serving a prison term.²⁸⁴ Confining prisoners for offences such as assault and intimidation in the same prison space as terrorists, assassins and dacoits contributes to radicalization and the conversion of innocent victims into gangsters.²⁸⁵ This correlation between overcrowding and recidivism was also noted in an article on overcrowding in US prisons.²⁸⁶ Citing the example from US prisons, the author further went on to draw a nexus between recidivism, overcrowding and lack of rehabilitation mechanisms. Pakistan also suffers from a lack of opportunities for reform and rehabilitation of prisoners.²⁸⁷

Despite declaration from the Federal Shariat Court, one of the superior courts in Pakistan, that the need for reform, rehabilitation, and rectification of prisoners is essential as envisioned in the Islamic and Pakistani law, jails in Pakistan still lack a proper mechanism for rehabilitation.²⁸⁸

The situation is worse for women and juveniles who are not exposed to the system of rehabilitation either. This makes reintegration back into society difficult for them following the prescribed detention period.²⁸⁹ In this regard, the *Federal Ombudsman's Report* laid special emphasis on how women, in particular, needed protection, care, and security after immediate release from jails.²⁹⁰ Similarly, the Federal Shariat Court observed that juvenile prisoners, when released in society, needed special care and attention, and someone's guidance to help them reintegrate in society.²⁹¹

3.3.2 Obstacles in Employment

Prisoners, whether convicted or acquitted, face obstacles in obtaining new, or continuing their previous, employment. This particularly impacts people living in poverty and their families, who are also subject to socio-economic exclusion and marginalization. Thus, unnecessary and excessive imprisonment directly contributes to impoverishment of the prisoner or their families, even after release. Studies show that

278 Yumna Rafi, 'Overcrowding in prisons leading to overcrowding radicalization' (*Dawn*, 10 May 2015) <https://www.dawn.com/news/1180976/overcrowding-in-prisons-leading-to-growing-radicalisation> accessed 6 July 2017.

279 Hanna Kozłowska 'The overcrowded prisons of Europe are breeding terrorists' (*Quartz*, 31 March 2017) <https://qz.com/944992/the-overcrowded-prisons-of-europe-are-breeding-terrorists/> accessed 6 July 2017.

280 Comments made by a senior-level prisons official of the Government of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

281 Comments made by a senior-level official of the Home Department of Balochistan during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

282 'Rehabilitation Centres' *Punjab Prisons Government of Punjab*; Interview with Deputy Inspector General (DIG) Prisons of Rawalpindi Region Mr. Shahid Saleem Baig in Rawalpindi on May 19, 2017.

283 Comments made by senior-level police officers and senior-level prison officials during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

284 Interview with a senior-level official of the Home Department of the Government of Punjab in Lahore on May 24, 2017.

285 Comments made by a senior lawyer during consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017.

286 Pearl Jacobs, "the Challenge of Prison Overcrowding and Recidivism," Sacred Heart University, Criminal Justice Faculty Publications, 2005.

287 *Dr. Muhammad Aslam Khakhi v The State*, PLD 2010 FSC 1.

288 *Dr. Muhammad Aslam Khakhi v The State*, PLD 2010 FSC 1.

289 Comments made by a senior lawyer during consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017.

290 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

291 *Dr. Muhammad Aslam Khakhi v The State*, PLD 2010 FSC 1.

children of parents who are imprisoned are more likely to become criminals, and are further criminalized if once incarcerated even for a short while. Therefore, the impact of imprisonment travels, not only through the lifetime of the prisoner, but even through generations.²⁹² In the past, the cotton factory in Central Prison Machh, Balochistan, was a good example of imparting employable skills to the inmates for their reintegration into the society upon their release, but the factory has been closed for the past few years.²⁹³

3.3.3 *Difficulty in Reintegration in Society*

As has been mentioned previously, the absence of a proper rehabilitation and reformatory program for prisoners often leads to recidivism.²⁹⁴ In Pakistan, there is lack of an effective rehabilitation policy that ensures reintegration of prisoners in society,²⁹⁵ including women²⁹⁶ and juveniles.²⁹⁷ Therefore, to decrease recidivism and help prisoners avoid becoming hardened criminals, the only solution is to reintegrate them into the society.²⁹⁸ The difficulty in implementation of rehabilitation programs is that reintegration, although beneficial for prisoners, is not easy.²⁹⁹

With imprisonment also comes the stigma of having served time in jails, which makes reintegration into society even more difficult.³⁰⁰ Not only does the person incarcerated face social stigmatization, but his chances of earning a livelihood are also effected to a great extent.³⁰¹ The term “stigma of conviction” has also been used by the courts in several cases.³⁰² The courts have even declared it the right of citizens to have their names cleared of conviction, even if, for example, they had been pardoned³⁰³ or finished serving their sentence.³⁰⁴ It is this stigma that makes un-assisted rehabilitation and reintegration into society difficult, and it is this very notion that needs to be overcome to ensure an effective reformatory regime for prisoners.³⁰⁵

3.4 **Consequences of Overcrowding Outside the Prisons**

3.4.1 *Increased Costs for the Government*

Imprisonment creates a further burden on state budgets, especially in developing countries like Pakistan where availability of funds is already strained in other important areas like health, social services, and education.³⁰⁶ With reference to Pakistan in particular, the budget allocated to prison administration and operation by the federal government for the year 2017-2018 is 43 million Rupees, an increase from 39 million the previous year and 38 million the year before that.³⁰⁷ The same federal budget allocated 5.174 billion Rupees to the law courts, and 101.174 billion Rupees to the police.

The provinces also allocated separate budget for their own prison administration and operation. In Punjab, for example, 1,632.56 million Rupees were allocated for the year 2017-2018 for provision of adequate prison

292 *Handbook on Strategies to Reduce Overcrowding In Prisons*, United Nations Office on Drugs and Crime (UNODC), 2013, p. 15.

293 Comments made by a senior lawyer during consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017.

294 Pearl Jacobs, “the Challenge of Prison Overcrowding and Recidivism,” Sacred Heart University, Criminal Justice Faculty Publications, 2005.

295 Federal Shariat Court, *Dr. Muhammad Aslam Khakhi v The State*, PLD 2010 FSC 1.

296 Federal Ombudsman’s Office, Report of the National Committee on Prison Reforms, op.cit..

297 Federal Shariat Court, *Dr. Muhammad Aslam Khakhi v The State*, PLD 2010 FSC 1.

298 Maria Borzycki and Eileen Baldry, “Trends and Issues in Crime and Criminal Justice: Report No. 22. Promoting Integration: The Provision of Prisoner Post-release Services,” Australian Institute of Criminology, 2003.

299 Maria Borzycki and Eileen Baldry, ‘Trends and Issues in Crime and Criminal Justice: Report No. 22. Promoting Integration: The Provision of Prisoner Post-release Services’, Australian Institute of Criminology 2003.

300 Sindh High Court, *Zulfiqar Abbas v The State*, 2007 PCrLJ 306.

301 Sindh High Court, *Zulfiqar Abbas v The State*, 2007 PCrLJ 306.

302 GB Chief Court, *Nizam Ali v The State*, 2016 PCrLJ 1613. Supreme Court of Pakistan, *Mian Muhammad Nawaz Sharif v State*, 2009 PLD Supreme Court, 814. Supreme Court of Pakistan, *Ramzan Ali v The State*, PLD 1967 SC 545.

303 Supreme Court of Pakistan, *Mian Muhammad Nawaz Sharif v State*, 2009 PLD Supreme Court.

304 Supreme Court of Pakistan, *Ramzan Ali v The State*, PLD 1967 SC 545.

305 Based on the Federal Shariat Court ruling that rehabilitation and reformation could not be complete unless the person could live his life free from stigmatization. See: Federal Shariat Court, *Dr. Muhammad Aslam Khakhi v The State*, PLD 2010 FSC 1.

306 Maria Borzycki and Eileen Baldry, ‘Trends and Issues in Crime and Criminal Justice: Report No. 22. Promoting Integration: The Provision of Prisoner Post-release Services’, Australian Institute of Criminology 2003.

307 Finance Division, Government of Pakistan, Budget in Brief, Federal Budget 2017-18 <http://www.finance.gov.pk/budget/Budget%20in%20Brief%202017-18.pdf>, last accessed 22 January 2018.

infrastructure, setting up of family accommodation in existing jails for prison employees and completion of district and security jails in the province, while 100 million Rupees were earmarked for the second phase of prison records digitalization.³⁰⁸

Despite these amounts, prisons already face acute shortage of staff and meagre budget allocation,³⁰⁹ which contribute to widespread corruption and inefficiency in the prison systems, with Pakistan's prison systems being affected by both.³¹⁰

The meagre allotment of budget to prisons in Pakistan is also a serious concern as opposed to growing overcrowding.³¹¹ For C.P. Haripur, the budget was "too meager and insufficient to ensure even petty maintenance works" noted the *Federal Ombudsman's Report*. The said report made recommendations for improving the budget for prisons.³¹² This shows that the Government of Pakistan, in particular, is also affected by the maintenance of increased costs for prisons, and still needs to provide for funds, as the currently allocated funds are not sufficient.

3.4.2 Consequences for the Families of Inmates

Although prison sentences aim at punishing the offender, studies have found that their family members also became victims of the situation. Referred to as the hidden or invisible victims of punishment of crimes, their hardships are not as noticeable or obvious. There are practical, financial, social, and emotional impacts that spiral outside the prison walls on these families as a result of overcrowded prisons. This may vary from the poor standards of medical hygiene in congested prisons that are often detrimental to visiting family members who are at risk of contracting diseases from such environments to the financial challenges faced by family members in covering lawyer fees and paying for the living subsistence of an incarcerated family member. The latter is an especially troublesome issue in overcrowded prisons where the available facilities are limited and become a trading tool in a system of corruption and power. Visiting rights are also violated in such circumstances where the lack of adequate space results in less contact between families and their loved ones, further adding to the overall psychological strain of having an incarcerated family member.³¹³

The impact of incarceration on partners and children is even more profound than on other family members.³¹⁴ For children, the effect is especially pronounced as the lack of access to an incarcerated parent, which is commonly the case in overcrowded prisons, can lead to stunted development in terms of emotional and even academic growth.³¹⁵ Some studies have even associated risk of mental health problem in children due to incarceration of parents. For partners, social isolation, deterioration in relationships, and extra burdens, especially if there is a child involved, are common. Some marriages even end in divorce due to the strain imprisonment puts on families of prisoners.³¹⁶

3.4.3 Consequences for Public Health

Studies have shown that prisoners are at a higher risk of hosting chronic and infectious diseases than the general public, as well as a higher risk of developing mental health and substance abuse problems.³¹⁷ Communicable diseases such as tuberculosis, HIV, malaria, dengue, diarrhea, and hepatitis, as well as non-

308 Planning and Development Department, Government of the Punjab, Budget 2017-18, Annual Development Program, <https://pnd.punjab.gov.pk/system/files/ADP18-17VOL2.pdf>, last accessed 27 February 2018.

309 Crisis Group Asia Report No.212 (2011) Reforming Pakistan's Prison System.

310 Muhammad Siddique Akhtar and Mazhar Hussain Bhutta, 'Prison Reforms and Situation of Prisons in Pakistan' available at http://sapandssrp.com/attachments/File/Prison_reforms.pdf (last accessed on December 22, 2017); See also Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

311 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

312 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

313 "Impact of Punishment: Families of People in Prison," The Scottish Centre for Crime and Research, University of Glasgow, available at <http://www.sccjr.ac.uk/wp-content/uploads/2015/10/SCCJR-Impact-of-crime-prisoners-families.pdf> (last accessed on December 22, 2017).

314 Joseph Murray, "The effects of imprisonment on Families of Prisoners" available at https://www.academia.edu/653783/The_effects_of_imprisonment_on_families_and_children_of_prisoners?auto=download (last accessed on December 22, 2017).

315 Kolina J. Delgado, "The Impact of Incarceration on Families: A Summary of the Literature" available at https://corescholar.libraries.wright.edu/cgi/viewcontent.cgi?referer=https://www.google.com.pk/&httpsredir=1&article=1004&context=psych_student (last accessed on February 14, 2018)

316 Joseph Murray, "The effects of imprisonment on Families of Prisoners" available at https://www.academia.edu/653783/The_effects_of_imprisonment_on_families_and_children_of_prisoners?auto=download (last accessed on December 22, 2017).

317 Selina A Smith and others, "Introduction to Public Health and Incarceration: Social Justice Matters," JHCPU, vol. 27 (2A), 1-4, 2016, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4861999/> (last accessed on December 22, 2017).

communicable diseases such as hypertension, diabetes, obesity, cancer, mental disorders, and substance abuse are prevalent in Pakistan.³¹⁸

Due to intensive interaction between prisons and society, prisons health is recognized as part of public health.³¹⁹ The Declaration on Prison Health as Part of Public Health, 2003, (also known as Moscow Declaration) acknowledges this nexus, as well as the higher rates of infection with tuberculosis, HIV, and hepatitis in prisons as compared to the general population.³²⁰ The Moscow Declaration lays down the basic recommendations for member states to ensure medical aid to prisoners and to prevent the spread of diseases within and outside the prisons. In 2013, a policy brief published by the World Health Organization (WHO) and UNODC noted that prisons, being at a high risk of disease, and due to continuous exchange between the outside communities and prisons, the task for ensuring public health involves addressing communicable diseases inside the prisons such as tuberculosis and HIV/AIDS.³²¹

Because overcrowding encourages spread of diseases in prisons, and public health and prisons health is closely related, the necessity to ensure physical and mental health of prisoners, by including other measures reducing overcrowding, becomes imminent.

3.4.4 Consequences for the Criminal Justice System

Overcrowding in prisons calls for reforms, not only in prisons, rather throughout the criminal justice system.³²² It results in violation of various human rights³²³ as well as is opposed to principles incorporated in international instruments acceded to by Pakistan.³²⁴ For example, miserable condition of women in jails led to the Supreme Court of Pakistan taking an initiative via the *Suo Moto* Case No. 1 of 2006, and passed a direction to the Federal Ombudsman office to address the issue, including overcrowding.³²⁵ As a result, not only prisons, but reforms in the whole criminal justice system are being considered to address the problem in Pakistan.³²⁶ Overcrowding, therefore, challenges the efficiency of the overall criminal justice system, from prisons to police, prosecution, the legal profession and the judiciary.³²⁷

Furthermore, the system faces a strain on its limited resources. The number of cases to be heard by the judiciary rise exponentially; police is burdened to transfer prisoners from jails to courts repeatedly; and on prosecution and defense lawyers, where the latter seldom receive sufficient monetary remuneration.³²⁸ As a result of this strain, alternate coping mechanisms are often adopted by the criminal justice system authorities, such as bribery and corruption etc., leading to increased mistrust of the general public in the criminal justice sector.³²⁹ In addition, criminal justice reforms was also viewed to have a tendency to benefit only criminal justice institutions, rather than the intended beneficiaries, especially where independent oversight is lacking.³³⁰

318 Dr. Huma Qureshi, "Review of Health System in Prisons of Punjab, Pakistan," Pakistan Medical Research Council, 2012, available at <http://phrc.org.pk/Downloads/Review%20Health%20system%20Prisons%20of%20Punjab.pdf> (last accessed on December 22, 2017).

319 Brenda J Van Bergh and others, 'Imprisonment and Women's Health: Concerns about gender sensitivity, human rights and public health' World Health Organization Bulletin, 2011, available at <http://www.who.int/bulletin/volumes/89/9/10-082842/en/> (last accessed on December 22, 2017).

320 Declaration on Prison Health as Part of Public Health 2003.

321 In addition, it also recognized the states' responsibility to provide healthcare to prisoners and other citizens alike, as well as bringing prison health services at part with public health services. . See: Copenhagen, Good governance for prison health in the 21st century. A policy brief on the organization of prison health. WHO Regional Office for Europe, 2013, available at http://www.euro.who.int/_data/assets/pdf_file/0017/231506/Good-governance-for-prison-health-in-the-21st-century.pdf?ua=1 (last accessed on December 22, 2017).

322 Human Rights Council: Criminal Justice System Reforms, available at http://www.semmuna.org/uploads/2/4/2/3/24230689/committee_31_-_hrc_-_criminal_justice_system_reform.pdf (last accessed on December 22, 2017).

323 Such as right to adequate accommodation, healthcare, dignity of man etc. See: International Covenant on Civil and Political Rights 1976.

324 Such as United Nations Standard Minimum Rules for the Treatment of Prisoners, or the Mandela Rules 2015. See also: Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

325 Order Dated 28 May 2016 by the Supreme Court of Pakistan, in *Suo Moto* Case No. 1 of 2006.

326 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

327 Based on the recommendation of the Federal Ombudsman report to address certain elements in all these institutions for improving conditions in jails. See: Federal Ombudsman's Office, *Report of the National Committee on Prison Reforms*, 17 May 2016.

328 Human Rights Council: Criminal Justice System Reforms, available at http://www.semmuna.org/uploads/2/4/2/3/24230689/committee_31_-_hrc_-_criminal_justice_system_reform.pdf (last accessed on December 22, 2017).

329 *Handbook on Strategies to Reduce Overcrowding In Prisons*, op.cit., 2013.

330 Interview with National Coordinator of NACTA Mr. Ihsan Ghani Khan in Islamabad on May 29, 2017.

4 Causes of High Pre-Conviction Detention Leading to Prison Overcrowding

The *Federal Ombudsman's Report* identifies the existence of more than 80 percent UTPs as the main reason for overcrowding in prisons.³³¹ On the other hand, the conviction rate in Pakistan was "at the best at 10%" in 2011, according to the International Crisis Group³³² and Foundation of Open Society Institute (FOSI).³³³ The reality of high prevalence of pre-conviction detention has been considered as a direct violation of human rights and below the standard of a just criminal justice system.³³⁴ The comparison of the figures of the high under-trial prisoners rate and the low conviction rate indicates weaknesses in the criminal justice system.

The *Federal Ombudsman's Report* listed overcrowding, shortage of manpower, non-production of UTPs in courts for their hearings, non-implementation of Pakistan Prison Rules of 1978, lack of external oversight mechanisms, poor health and sanitary conditions, unsatisfactory service structure of prison officers and staff, lack of computerized data, lack of educational and medical facilities, miserable conditions of women and children, lack of categorization and segregation of prisoners based on crime, and undue shifting of prisoners to death cells and high risk barracks as some of the serious problems with respect to the conditions in prisons in the country.³³⁵ The report observed that "at least 20 percent of UTPs fail to reach their respective trial courts because of shortage of court police staff or vehicles."³³⁶ It further states:

There are numerous cases of protracted detention without free trial/fair trial. Even those who succeed reaching the Court Lockup, usually complain that they are not produced in their Trial Courts and returned without proper hearing (reasons being failure of the lawyers or witnesses turning up on the specified dates). Because of this, the disposal of cases gets affected, resultantly the population of the prisons keeps increasing.³³⁷

The report further observes that because of overcrowding in prisons, owing to a very high percentage of UTPs, the living, food, and sanitary conditions have been adversely affected.³³⁸ It states:

The state bears huge cost due to delays in adjudication of criminal cases in courts. The delay in court processes results in un-necessary incarceration of some of the accused who are ultimately acquitted.³³⁹

Before delving into the discussion about the causes of high pre-conviction detention, it is important to get an understanding of the socio-economic conditions and prevalence of crime as drivers of high rate of under-trial prisoners in Pakistan.

331 Federal Ombudsman's Office, *Report of the National Committee on Prison Reforms*, op.cit., p. 14.

332 International Crisis Group, *Reforming Pakistan's Prison System*, *Crisis Group Asia Report N°212*, 12 October 2011, p. 11.

333 Vrinda Bhandhari, 'Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bagladesh', Open Society Justice Initiative 2014, p. 10.

334 It was held in *Shah Hussain v State* (Jail Petition no. 56 of 2005) PLD SC 2009 (incomplete citation) that the right of speedy trial is a fundamental right as under right to life and liberty (Art 9 of Constitution); See also AIR 1979 SC 1360; Human Rights Watch, *Excessive Pre-Trial Detention*.

335 Federal Ombudsman's Office, *Report of the National Committee on Prison Reforms*, op.cit., p.6.

336 Federal Ombudsman's Office, *Report of the National Committee on Prison Reforms*, op.cit., p.7

337 Federal Ombudsman's Office, *Report of the National Committee on Prison Reforms*, op.cit., p.44

338 Federal Ombudsman's Office, *Report of the National Committee on Prison Reforms*, op.cit., p.25.

339 Federal Ombudsman's Office, *Report of the National Committee on Prison Reforms*, op.cit., p.25

4.1 Socio-Economic Causes

4.1.1 Poverty

In June 2016, Pakistan's first official report on multidimensional poverty³⁴⁰ was launched by the Ministry of Planning, Development and Reform. The report details Pakistan's official Multidimensional Poverty Index (MPI) which was earlier published in the Economic Survey of Pakistan 2015–2016.³⁴¹

According to the report, nearly 39 percent of Pakistanis live in multidimensional poverty, with the highest rates of poverty in FATA and Balochistan. Pakistan's MPI showed a strong decline, with national poverty rates falling from 55 percent to 39 percent from 2004 to 2015. That said, progress across different regions of Pakistan is uneven. Poverty in urban areas is 9.3 percent as compared to 54.6 percent in rural areas. Disparities also exist across provinces.³⁴²

The report found that over two-thirds of people in FATA (73 percent) and Balochistan (71 percent) live in multidimensional poverty. Poverty in KP stands at 49 percent, GB and Sindh at 43 percent, Punjab at 31 percent and AJK at 25 percent.³⁴³ There are severe differences between districts: Islamabad, Lahore and Karachi have less than 10 percent multidimensional poverty, while Qila Abdullah, Harnai and Barkhan (all in Balochistan) have more than 90 percent poverty.

Majority of prison population across the world comes from economically and socially underprivileged backgrounds.³⁴⁴ Most people who live in poverty are either illiterate or poorly educated, and face socio-economic challenges, leading to marginalization.³⁴⁵ Sufficient research exists to substantiate the premise that poverty is directly associated with criminal activity.³⁴⁶ Although, research from across the world shows that poverty and crime are intrinsically linked, the level of connection is inconsistent across various countries.³⁴⁷

The UN Special Rapporteur on Extreme Poverty and Human Rights reported that “disproportionately high numbers of the poorest and most excluded are arrested, detained and imprisoned.”³⁴⁸ This was also confirmed by the Open Society Justice Initiative that “most pre-trial detainees are poor, and economically and politically marginalized.”³⁴⁹ Poverty and marginalization have been also associated with female offenders and prisoners, representing discrimination in education, opportunities and due to being burdened with taking care of their households with little or no support.³⁵⁰ Violence against women, inside and outside the prison premises, is also responsible for mental illnesses and criminal behavior.³⁵¹

340 As opposed to looking at poverty from one-dimensional measures, such as income, multidimensional poverty looks as several factors, such as poor health, lack of education, inadequate living standards, lack of income, disempowerment, poor quality of work and threat from violence etc. See Policy-A Multidimensional Approach, Oxford Poverty and Human Development Initiative (OPHI), accessed at: [HYPERLINK “http://ophi.org.uk/policy/multidimensional-poverty-index/”](http://ophi.org.uk/policy/multidimensional-poverty-index/) <http://ophi.org.uk/policy/multidimensional-poverty-index/>, last accessed 13 February 2018.

341 “The Multidimensional Poverty Index (MPI), developed by OPHI [Oxford Policy and Human Development Initiative] and UNDP’s Human Development Report Office is a new measure to compute acute poverty. The MPI complements consumption based poverty measures by reflecting deprivations that individuals face in other dimensions such as education, health and standard of living.” For details, see Brief on Multidimensional Poverty in Pakistan available at <http://www.pk.undp.org/content/dam/pakistan/docs/MPI/Multidimensional%20Poverty%20in%20Pakistan.pdf?download> (last accessed on December 19, 2017).

342 See Brief on Multidimensional Poverty in Pakistan available at <http://www.pk.undp.org/content/dam/pakistan/docs/MPI/Multidimensional%20Poverty%20in%20Pakistan.pdf?download> (last accessed on December 19, 2017).

343 Brief on Multidimensional Poverty in Pakistan available at http://www.pk.undp.org/content/pakistan/en/home/library/hiv_aids/Multidimensional-Poverty-in-Pakistan.html (last accessed on December 19, 2017).

344 *Handbook on Strategies to Reduce Overcrowding In Prisons*, United Nations Office on Drugs and Crime (UNODC), 2013, p. 20.

345 *Ibid.*

346 Patrick Sharkey, Max Besbris, and Micheal Friedson, ‘The Oxford Handbook of the Social Science of Poverty’, Oxford, May 2016.

347 Patrick Sharkey, Max Besbris, and Micheal Friedson, ‘The Oxford Handbook of the Social Science of Poverty’, Oxford, May 2016.

348 UN General Assembly, 66th Session, Extreme poverty and human right: Report of the Secretary-General, 4 August 2011, A/66/265.

349 Open Society Justice Initiative, *The Presumption of Guilt: The Global Overuse of Pretrial Detention*, Open Society Foundations, September 2014, p.1 .

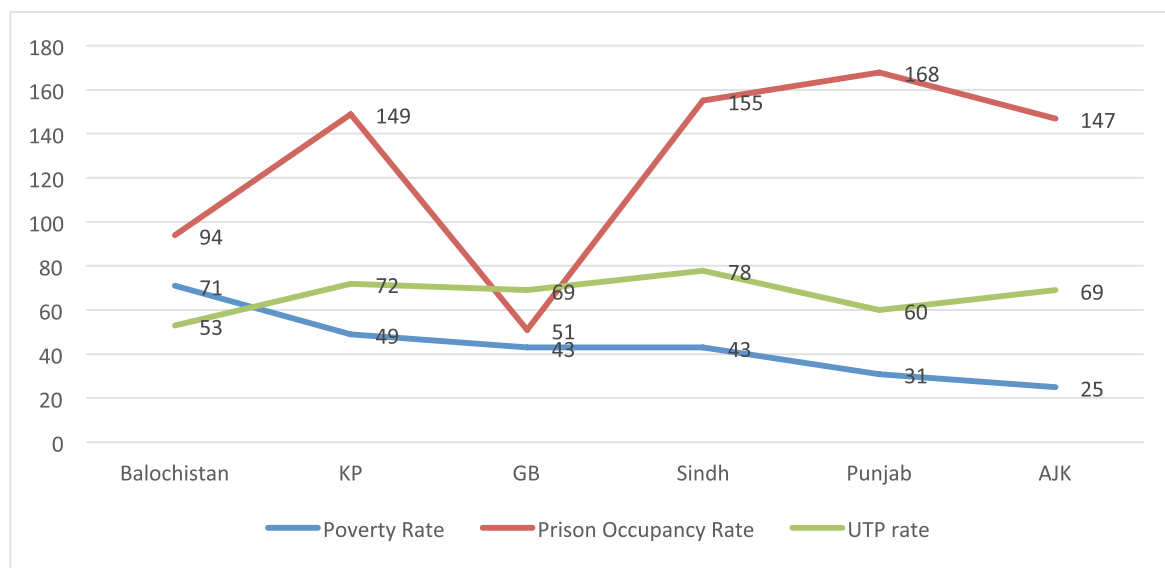
350 Penal Reform International, ‘Global Prison Trends 2015’, PRI 2015.

351 Penal Reform International, ‘Global Prison Trends 2015’, PRI 2015.

In the case of Pakistan, a comprehensive study found that unemployment, poverty, and lack of price stability (inflation) in Pakistan are some of the major factors that can be correlated with increasing crime rates in Pakistan.³⁵² Another study showed that poverty, revenge, lack of empowerment and suppressed anger in women could directly be associated with increased criminal activities amongst women.³⁵³

As shown in Figure 34 below, although the incidence and intensity of poverty is very high in Balochistan, prison occupancy rate and UTP rate are among the lowest. On the other hand, areas with lowest poverty rates, such as AJK, Sindh, and Punjab exhibited high prison occupancy rates.

Figure 34: Comparison of Poverty with Overcrowding in Various Provinces/ATs



Therefore, poverty incidence in the province/administrative territory has neither relation to overcrowding nor to UTP rates. Poverty alone cannot predict overcrowding or UTP rates; they can only be ascertained by taking into consideration relative factors such as unemployment, drug abuse, the kind of household one is raised in (single parent households or large families) etc.³⁵⁴ Another important factor in this regard is that ethnic minorities and marginalized groups are often targeted for drug enforcement methods and find themselves as drug abusers and offenders.³⁵⁵ Countries of the Organization for Economic Co-operation and Development (OECD), however, have shown declining imprisonment rates with increased investment in social welfare.³⁵⁶

4.1.2 Lack of Awareness about the Law

As discussed, the law in itself provides adequate protections to prisoners by ensuring that they should be provided with all the necessities of life, be provided adequate space and be granted their rights under the Prison Rules.³⁵⁷ However, lack of awareness about these laws creates several problems in terms of implementation. For example, when asked about the prison space authorized for prisoners, the prison officials mentioned that they did not even know about Rule 745 of Prison Rules.³⁵⁸

352 Syed Yasir Mahmood Gillani, Hafeez ur Rehman, and Abid Rasheed Gill, "Unemployment, Poverty, Inflation and Crime Nexus: Cointegration and Causality Analysis of Pakistan," PESR 47 No. 1, 2009, pp. 93-94.

353 Adeela Khalid and Nashi Khan, 'Pathways of Women Prisoners to Jail in Pakistan', HPP 2013 3(1), pp. 31-35.

354 Patrick Sharkey, Max Besbris, and Micheal Friedson, "The Oxford Handbook of the Social Science of Poverty," Oxford, May 2016.

355 Penal Reform International, "Global Prison Trends 2015," PRI 2015.

356 *Handbook on Strategies to Reduce Overcrowding In Prisons*, United Nations Office on Drugs and Crime (UNODC), 2013, p. 21.

357 See Pakistan Prison Rules 1978.

358 Comments made by senior-level police officers and senior-level prison officials during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

In addition to laws about prisons, there is legal awareness wanting on other laws as well, for example, the District Legal Empowerment Committees (DLECs), and other legal aid committees.³⁵⁹ These also result in lack of timely discharge of bail of prisoners who cannot afford legal counsel and end up being imprisoned for extended periods.

4.1.3 Corruption

Corruption can have a significant impact on the number of people who are arrested, detained and imprisoned and the time spent in the processing of prisoners' cases. There is particular risk of bribes being required during the initial period of arrest when decisions are being taken to detain, caution or divert by law enforcement officials.³⁶⁰

According to Transparency International, corruption is a serious problem facing the country. Pakistan ranks 116th out of 178 countries in the Corruption Perceptions Index of Transparency International—the Global Anti-Corruption Coalition.³⁶¹ The first country in the rank being Denmark and the last one Somalia.³⁶²

Pakistan's National Accountability Bureau (NAB),³⁶³ in the National Anti-Corruption Strategy 2002 (NACS), noted that "corruption has become a disease infecting every aspect of political, social and economic activity" in the country.³⁶⁴ The NACS further went on to state that "grand or mega corruption" was prevalent in the political arena, and its value could not be accurately determined.

According to the NACS, petty or middling corruption, which was found to be prevalent in most government institutions, was the most alarming for stakeholders. Police was amongst the three worst ranking departments in terms of petty corruption, the other two being taxation and power.³⁶⁵ Corruption in the law enforcement agencies, such as police and the judiciary, directly impacts the general public and raises the most serious of concerns.³⁶⁶

4.1.3.1 Police

In 2013, Transparency.org published its Global Corruption Barometer, where 82% of the respondents in Pakistan felt that the police were corrupt/extremely corrupt.³⁶⁷ According to Justice Project Pakistan, a 2012 report by the Asia Society's Independent Commission on Pakistan Police Reform notes that Pakistan's police are handicapped by "[a] lack of resources, poor training facilities, [and] insufficient and outmoded equipment," with some officers earning as little as \$100 per month. The Independent Commission concluded that "the system simply is not structured to reward good behavior, as merit-based opportunities for professional advancement are scarce, low pay is the norm, and a lack of support and resources compels even many well-intentioned officers to misuse their authority in order to survive."³⁶⁸

Human Rights Watch reported that corruption by the police staff was unavoidable because of the lack of financial resources to run the police station:

359 Vrinda Bhandari for Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014.

360 *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., p. 74.

361 See Corruption Perceptions Index 2016, Transparency International, accessed at: < https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table > (last accessed on December 22, 2017).

362 See <https://www.transparency.org/> (last accessed on December 22, 2017)

363 Created via the National Accountability Ordinance 1999 to combat corruption in Pakistan, the National Accountability Bureau is an Anti-Corruption Agency reporting directly to Pakistan and enjoying wide range of autonomy in carrying out its functions, leading to effective performance from NAB. See: National Anti-Corruption Strategy, 2002, National Accountability Bureau, Government of Pakistan, available at <http://www.nab.gov.pk/downloads/doc/nacs.pdf> (last accessed on December 22, 2017).

364 National Anti-Corruption Strategy, 2002, National Accountability Bureau, Government of Pakistan, available at <http://www.nab.gov.pk/downloads/doc/nacs.pdf> (last accessed on December 22, 2017).

365 National Anti-Corruption Strategy, 2002, National Accountability Bureau, Government of Pakistan, available at <http://www.nab.gov.pk/downloads/doc/nacs.pdf> (last accessed on December 22, 2017).

366 National Anti-Corruption Strategy, 2002, National Accountability Bureau, Government of Pakistan, available at <http://www.nab.gov.pk/downloads/doc/nacs.pdf> (last accessed on December 22, 2017).

367 <https://www.transparency.org/gcb2013/country/?country=pakistan> (last accessed on December 22, 2017).

368 Justice Project Pakistan, *A "Most Serious Crime" - Pakistan's Unlawful Use of the Death Penalty*, 2016.

From the police's point of view, a certain level of corruption is unavoidable as the state does not provide the necessary resources and instead expects the police to raise a lot of their funds themselves. Many basic police station necessities such as stationery and transportation are often provided by complainants or funds generated through complaints. However, the issue of corruption is more complex. In many instances, the established trend seems to be that SHOs are appointed to police stations because they are able to generate the funds required not only for running and maintaining the thana, but also for greasing the system all the way to the top.³⁶⁹

4.1.3.2 Prison

The International Crisis Group commented in 2011 that corruption “is also responsible for such delays, with prison staff (...) seeking bribes from prisoners to ensure access to a judge, adding to already prohibitive costs of litigation, while those without means are often denied their day in court. A senior prisons official in Quetta shared that with salaries being low, discipline often lax and training inadequate, it is hardly surprising that staff are susceptible to bribery and other corrupt practices.”³⁷⁰

In December 2015, the Inspectorate General of Prisons in KP province published a report according to which 672 prison staff had been punished, in order “to reduce corruption and to expedite the efficiency of the Prisons Department.”³⁷¹

4.1.3.3 Judiciary

The *National Judicial Policy* extensively addresses eradication of corruption among the judiciary. The recommendations include the establishment of a “Cell for Eradication of Corruption of Judiciary” (§2), the requirement of Judges and judicial officers to declare their assets (§ 3 (i-c)), and the carrying out of surprise inspections by the Chief Justices/judges of the High Courts (§5).

Open Society Justice Initiative noted that although corruption remains a problem amongst the subordinate judiciary, it is not as pervasive as in the police for three reasons:

- The *National Judicial Policy's* provisions on eradication of corruption in the lower courts have been partially implemented;
- Judges' promotions are monitored and they are under a probationary period before their confirmation; and
- The basic salaries of subordinate judges increased rapidly, for example, session judges saw their salary increased from Rs. 28,000 to 120,000 per month³⁷² in 2014 (it is approximately from 280 USD to 1,200 USD with the exchange rate then).

4.1.3.4 Eliminating corruption

The nexus between corruption and high pre-conviction detention has been drawn by some officials as abuse of certain legal instruments that leads to over-arresting by the police, such as the Maintenance of Public Order Ordinance.³⁷³ Although policies exist for governing the criminal justice system, there are challenges with respect to their implementation.³⁷⁴ In other words, prison overcrowding is not always a reflection of bad laws, but a demonstration of inefficiency or corruption at the implementation level.³⁷⁵

369 Human Rights Watch, This crooked system: Police abuse and reform in Pakistan, September 26, 2016, available at <https://www.hrw.org/report/2016/09/26/crooked-system/police-abuse-and-reform-pakistan> (last accessed on December 22, 2017).

370 International Crisis Group, *Reforming Pakistan's Prison System*, *Crisis Group Asia Report N°212*, 12 October 2011, p. 11.

371 Inspectorate General of Prisons, *Khyber Pakhtunkhwa, Public Good Information*, December 2015.

372 Vrinda Bhandari for Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014.

373 Comments made by a senior-level official of the Federal Judicial Academy during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

374 Interview with a senior-level police officer in Islamabad on May 18, 2017. See also: Report of the Committee and Recommendations in pursuance of the directive of the Supreme Court in *Suo moto* Case No. 1/ 2006.

375 One of the recommendations of the Federal Ombudsman Report to improve situation in prisons was implementation of existing laws on prisons. See Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit..

There are a variety of measures that can be taken to reduce and eliminate corruption in the criminal justice system, including the following:

1. Recruitment of criminal justice officials should be based on personal qualifications and merit; persons selected should be individuals of integrity; and the recruitment procedures should be transparent, objective and non-discriminatory.
2. Training of criminal justice officials should be based on the fundamental values of the rule of law and the protection of human rights, and includes training on compliance with ethical standards and the prohibition of all forms of corruption.
3. Adequate remuneration should be provided to all criminal justice officials.
4. Mechanisms for the strict supervision, including a clear chain of command, of all law enforcement officials responsible for arrest and detention must be put in place.
5. Internal prison inspections must be used an opportunity to assess levels of overcrowding in the prison system and individual prisons, as well as the possible causes of such overcrowding, and take appropriate measures to resolve the problem faced.
6. A system of monitoring by visiting judges should be established to monitor and undertake regular reviews of the legal status of prisoners.
7. Cooperation with bodies responsible for monitoring prisons should be strengthened.

4.2 Overuse of Imprisonment in Criminal Justice Policies

As noted in the UNODC's *Handbook on Overcrowding*, when "poverty and lack of social support to the disadvantaged are combined with a "tough on crime" rhetoric and policies which call for stricter law enforcement (...), the result is invariably a significant increase in the prison population. Sometimes described as warehousing, the increased population typically comprises an overrepresentation of the poor and marginalized, charged with petty and nonviolent offences."³⁷⁶

4.2.1 Criminalization of socially undesirable behavior and petty offences

According to Penal Reform International, there "are wide variations between countries in the extent and nature of behavior which is subject to the criminal law. In many low income countries, criminal law provisions date back to the colonial era and include offences such as being a "rogue and vagabond," or "idle and disorderly," which have little justification in the 21st century."³⁷⁷

While Pakistan's criminal justice system cannot be labeled as extremely punitive, there are clauses in Pakistan's criminal laws that can be used for creating a situation in which a person could be put behind bars for minor offenses. Under Section 55 of the CrPC, "any officer in charge of a police station may arrest vagabonds and habitual robbers." People could be arrested for "loitering,"³⁷⁸ "disturbing public peace,"³⁷⁹ etc. In addition to these punitive legal instruments for petty offenses, the laws and practice related to detention of illegal migrants, and defaulters of fines also lead to high under-trial detention rates. In Sindh, for example, out of the 40,286 prisoners it reportedly processed, 5,055 or 12.5 percent were for a petty offence.³⁸⁰

4.2.2 Detention for Illegal Migration and Detention After Service of Sentence for Deportation

Under Section 14(2) of the Foreigners Act (1946), where "any person knowingly enters into Pakistan illegally, he shall be guilty of an offense under this Act and shall be punished with imprisonment for a term which may extend to ten years and fine which may extend to ten thousand rupees." A foreigner accused of illegal entry under the Foreigners Act cannot be released on bail pending trial.³⁸¹

³⁷⁶ *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., p. 25.

³⁷⁷ Penal Reform International, *Reducing pre-trial detention: 10 points plan*, 2016.

³⁷⁸ Section 236, Cantonment Act 1924.

³⁷⁹ Section 151, 159, and 504 of Pakistan Penal Code 1860.

³⁸⁰ See Sindh Prisons Department, *Statistics of Prisoners*, p. 7, available on http://sindh.gov.pk/dpt/sindh_prisons/All%20PDF/Statistics%20of%20Prisoners.pdf, last accessed on 27 February 2018.

³⁸¹ Section 14A, Foreigners Act (1946).

Pakistan is host to an estimated 1.4 million refugees, most of them of Afghan origin.³⁸² The prisons, especially in Balochistan and KP provinces, which have large Afghan refugee concentrations, are also accommodating Afghan detainees. According to members of the Balochistan Bar Council, the police, levies and coast guards make arrests in bulk of said refugees and since the government has no proper mechanism for the deportation of these refugees it leads to these detainees becoming an unnecessary burden to prisons and national tax-payers.³⁸³

In the year 2017, 3,345 Afghan refugees were arrested, as opposed to 5,895 arrests in 2016.³⁸⁴ Balochistan and KP have most of these arrests and detentions, with Balochistan arresting and detaining 1,187, and KP at 957.³⁸⁵ UNHCR and its partner organizations provided legal aid to detained refugees. In October 2017 alone, 3,723 arrested persons of concern were provided legal aid to by UNHCR.³⁸⁶

In June 2016, the Police on the direction of the KP government started a crackdown on the Afghan nationals who ‘illegally entered’ Pakistan. The Chairman of the NGO Voice of Prisoners commented that C.P. Peshawar had the capacity to accommodate 350 detainees (N.B.: 450 detainees according to official figures) but held around 5,000 detainees as of August 2016. He asserted that the prison population had increased because of the large scale arrest and detention of Afghan nationals; as a result, several detainees had to spend the nights in the toilets of the prison.³⁸⁷

For many years, the Afghan civilians and even members of armed opposition groups always went back and forth between Afghanistan and Pakistan, notably for medical treatment in Peshawar or Quetta. In 2016, the KP government changed its policy with regard to the influx of Afghan nationals. According to the U.S. Department of State:

There were firsthand accounts of members of the intelligence services harassing refugees. Refugees faced discrimination from local communities. Provincial officials in KP and nationwide cited the presence of Afghan “refugees”—without differentiating between proof of registration (PoR) cardholders, migrants, and temporary visitors—as the cause for deteriorating law and order in major cities. In June the government released press statements that labeled refugee camps safe havens for terrorists and urged the early return of Afghan refugees to their homeland.³⁸⁸

In Balochistan, the arrests and detention of Afghan nationals spiked in August 2016, largely due to security operations and by the FC apprehending them at various checkpoints.³⁸⁹ According to LJCP, 634 out of 3,145 detainees (i.e., 20 percent of the total number of detainees) in Balochistan were foreigners as of February 2017,³⁹⁰ but their nationality was unknown.

Hosting such a huge number of Afghan refugees, the Pakistani government provided them temporary legal status by formal registration and issuing a Proof of Registration (PoR) card.³⁹¹

382 UNHCR in Pakistan: An Enduring Partnership, UNHCR, available at <http://unhcrpk.org/> (last accessed on December 22, 2017).

383 Comments made by a senior lawyer during consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017.

384 UNHCR, ‘Summary of Legal Assistance and Aid Program January - October 2017, accessed at: <http://unhcrpk.org/wp-content/uploads/2013/12/Arrest-and-detention-summary-October-2017.pdf> (last accessed on December 22, 2017).

385 UNHCR, ‘Summary of Legal Assistance and Aid Program January - October 2017, accessed at: <http://unhcrpk.org/wp-content/uploads/2013/12/Arrest-and-detention-summary-October-2017.pdf> (last accessed on December 22, 2017).

386 UNHCR, ‘Summary of Legal Assistance and Aid Program January - October 2017, accessed at: <http://unhcrpk.org/wp-content/uploads/2013/12/Arrest-and-detention-summary-October-2017.pdf>.

387 Akhtar Amin, “KP prisons facing overcrowding after crackdown on illegal Afghans,” *The News*, August 20, 2016.

388 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

389 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

390 Law and Justice Commission Pakistan, Province wise consolidated list showing the number of prisoners confined in the prisons for the month of February 2017, available at http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf (last accessed on December 22, 2017).

391 PoR cards are key identity documents that provide temporary legal stay and freedom of movement in Pakistan to Afghan refugees. The PoR Cards operate as their proof of having been registered as refugees in Pakistan, and they have been extended

In a meeting of the Federal Cabinet on February 7, 2017, the Government of Pakistan pledged to continue to support Afghan refugees and extended the stay of registered Afghan refugees holding PoR cards as well as the validity of the Tripartite Agreement on voluntary repatriation until December 31, 2017. The cabinet also agreed on the implementation of a flexible visa regime for different categories of Afghan refugees such as students, businessmen, skilled/unskilled labor, and Afghans traveling to Pakistan because of inter-marriages with Pakistanis or for healthcare. Legislation of a comprehensive national refugee law and documentation of the unregistered Afghans as well as improved border management were some other points agreed during the cabinet meeting on February 7, 2017.³⁹²

In August 2017, the government of Pakistan launched a six-month program to register undocumented Afghans and regularize their stay. Afghan nationals registered under this new scheme will receive the Afghan Citizen card, providing them legal protection from arrest and detention under the Foreigners Act. Pakistan's National Database Registration Authority (NADRA), the Ministry of States and Frontier Regions, the Afghan Ministry of Refugees and Repatriation will oversee this project with the support of IOM and UNHCR.³⁹³

Under the Foreigners Act (1946) and Foreigners Order (1951), a foreigner having no permission to stay in Pakistan, whether convicted, acquitted or imprisoned shall not be released on the expiry of the sentence and shall remain in custody for a period not exceeding three months to enable the deportation arrangements. Detention cannot be extended beyond the three-month period without the review of a board. In its country report on Pakistan, the U.S. Department of State commented that 'foreign prisoners often remained in prison long after completion of their sentences because they were unable to pay for deportation to their home countries.'³⁹⁴ As an example, in January 2014, a Review Board of the Supreme Court directed the Ministry of Interior (MoI) to release six foreigners (from India, Bangladesh, and South Africa) who had mistakenly crossed the border and had served their sentences.³⁹⁵

In Sindh, many Indians were arrested and detained owing to its proximity to India. The Pakistan Maritime Security Agency regularly arrested Indian fishermen for illegally fishing in Pakistani waters. On 10 July 2017, the Pakistani Rangers handed over 78 Indian detainees, mostly fishermen, to the Indian Border Security Force in Wagah Border. However, according to media reports, several Indian detainees who had served their sentences remained in prisons in Sindh Province because of bureaucratic hurdles.³⁹⁶

4.2.3 Automatic Imprisonment of Fine Defaulters

The courts in Pakistan are empowered to imprison a person in default of payment of fine.³⁹⁷ The imprisonment in default of payment of fine, however, is not mandatory,³⁹⁸ and is at the discretion of the court.³⁹⁹ Moreover, such imprisonment may not exceed one-fourth of the total imprisonment for the offence for which the

to be valid until 31 December 2017. In addition to the PoR cards, the Pakistani government decided to issue Afghan Citizen Cards to Afghan refugees. To register and maintain a database of all Afghan citizens in Pakistan, the Afghan National Registration Project was launched by the Government of Pakistan, National Database and Registration Authority (NADRA). As a result, identity cards in the form of Afghan Citizen cards were issued to Afghan nationals for affirming their registration, and hence, legal status as a registered refugee in Pakistan. See: Afghan National Registration, NADRA, available at <https://www.nadra.gov.pk/local-projects/national-solutions/afghan-national-registration/> (last accessed on December 22, 2017). See also: Pakistan: PoR Card Registration Update – 2017, available at <http://unhcrpk.org/wp-content/uploads/2013/12/PoR-Registration-Summary-2017.pdf> (last accessed on December 28 2017).

392 *Report of the National Consultations on Afghan Refugees in Pakistan*, CODE PAKISTAN (2017) p.49.

393 As of now, 2.8 million Afghans are registered with NADRA and have obtained their Afghan Citizen Cards. See: Afghan National Registration, NADRA, available at <https://www.nadra.gov.pk/local-projects/national-solutions/afghan-national-registration/> (last accessed on December 22, 2017).

394 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

395 "Sentences completed: SC orders release of foreign prisoners," *The Express Tribune*, January 26, 2014, available at <https://tribune.com.pk/story/663408/sentences-completed-sc-orders-release-of-foreign-prisoners/?amp=1> (last accessed on December 22, 2017).

396 NDTV, "Pakistan Hands Over 78 Prisoners, Mostly Fishermen, To India," July 10, 2017, available at <https://www.ndtv.com/india-news/pakistan-hands-over-78-prisoners-mostly-fishermen-to-india-1723044?site=full> (last accessed on December 22, 2017).

397 Section 64 of Pakistan Penal Code 1860.

398 Lahore High Court, *Ashfaq Ahmad v the State*, PLD 1968 Lahore 1124; *Crown v Beni Prasad* (1878) PR 73.

399 Section 64 of Pakistan Penal Code 1860.

person is liable.⁴⁰⁰ Thus, in Pakistan, the imprisonment in default of payment of fine is not automatic, rather it is subject to the order of the court. The imprisonment terminates automatically upon payment of fine.⁴⁰¹

It is within the power of the court, which passed the sentence of imprisonment in default of payment of fine, to allow for the fine to be paid in installments,⁴⁰² or to suspend the execution of sentence and release the offender on bond, with or without sureties.⁴⁰³ If the offender does not respect the conditions of the court on which he is released, he may be sentenced to imprisonment again.⁴⁰⁴ This confinement due to nonpayment of fine has been identified as one of the reasons of overcrowding in Pakistan's prisons.⁴⁰⁵ *Diyat, arsh*, and *daman* cases⁴⁰⁶ add to these statistics as well when detention is imposed until offenders recompense their victims, or their heirs, in accordance with the court stipulations.⁴⁰⁷ The reason being the prisoners' inability to pay such fines.

It has been noted in the UNODC's *Handbook on Overcrowding* that fine defaulters should not be imprisoned as routine. Rather, other non-custodial options should be used to deal with them, such as to provide them remunerated work by the state, whereby the proceeds automatically go to the payment of their fines.⁴⁰⁸ The Report of National Committee on Prisons to the Federal Ombudsman submitted in pursuance of the directions of the Supreme Court *Suo Moto* Case No. 1 of 2006 also recommended that a Prison Endowment Fund be set up for creating resources for payment of fines on behalf of persons imprisoned in default of payment of fine.⁴⁰⁹ The National Committee on Prison Reforms further noted that, "prisoners, especially the women and juvenile prisoners, confined due to nonpayment of petty fines should be provided immediate financial assistance for their release from jails."⁴¹⁰ This recommendation was taken up by the Federal Ombudsman when they decided to make payments on behalf of imprisoned persons in default of payment of fines.⁴¹¹

On 12 July 2017, the Federal Ombudsman organized an event to present its report on Prison Reforms. Mamnoon Hussain, President of Pakistan, was particularly sensitized to the issue of detainees who had served their sentences but were still in prison for inability to pay fines. He said that Zakat⁴¹² could be used for this purpose.⁴¹³

4.3 Preventing Unnecessary Arrests

4.3.1 Unnecessary Arrests

Despite legal instruments against arbitrary detention, the police generally has a tendency of over-arresting, i.e. taking into custody multiple people for individual offenses.⁴¹⁴ For instance, numerous people might be arrested in a case where only two of those people are directly responsible. The others may simply be

400 Section 65 of the Pakistan Penal Code 1860.

401 Section 68 of the Pakistan Penal code 1860.

402 Section 388 (1) (a) of the Code of Criminal Procedure 1898.

403 Section 388 (1) (b) of the Code of Criminal Procedure 1898.

404 Section 388 (2) of the Code of Criminal Procedure 1898.

405 Comments made by two senior lawyers during consultations with lawyers of the Islamabad Bar Council in Islamabad on October 23, 2017 and consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017.

406 Where the victim or their heirs are compensated by payment of blood money or compensation for injury to the body; See section 53, Chapter III of Pakistan Penal Code 1860.

407 Comments made by a senior lawyer during consultations with the lawyers of the Sindh Bar Council in Karachi on November 22, 2017.

408 *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., p. 46.

409 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit., p. 27.

410 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit.

411 "Those who are in jail for unpaid fines," *Business Recorder*, June 10, 2016.

412 The amount of money that every adult, mentally stable, free, and financially able Muslim, male and female, has to pay to support specific categories people under the Qur'an

413 "President suggests the use of Zakat to release inmates with unpaid fines," *Daily Times*, July 12, 2017.

414 Such instances have also been discussed in "This Crooked System: Police abuse and Reform in Pakistan" *Human Rights Watch* available at <https://www.hrw.org/report/2016/09/26/crooked-system/police-abuse-and-reform-pakistan> (last accessed on December 22, 2017); For police abuse of powers of arrest and detention, see Zeeshan Manzoor, "Need to Check Indiscriminate and Liberal Arrests by Police" *Pakistan Law Journal* <http://www.pljlawsite.com/2016art9.htm> (last accessed on December 22, 2017); see also Interview with Additional Inspector General (AIG) of Police Investigation Branch Punjab Mr. Azhar Hameed Khokhar in Lahore on May 25, 2017

bystanders or acquaintances of the actual accused who happened to be at the scene of occurrence.⁴¹⁵ According to International Crisis Group, 'people often tried to implicate not only the main accused but also other members of the family, frequently on baseless grounds, and the police, either because they are corrupt or simply because they have neither the time nor the resources to conduct a thorough investigation, put them all behind bars.'⁴¹⁶

Similarly, the police resorts to over-arresting during operations against encroachments on public properties by private individuals, such as street vendors selling goods on mobile trolleys.⁴¹⁷ The Police also excessively uses its powers under section 54 of CrPC to arrest persons in petty cases, such as for maintaining public order.⁴¹⁸ Many a time, people get arrested simply because of mere lack of awareness of the law, such as disturbing public peace, loitering, or traveling without an identity document, etc.⁴¹⁹

The overuse of arrest by the police was also explained by the pressure to perform and to improve their performance statistically. A former district judge noted that the police did not have quotas for arrest but that their performance was based on the number of arrests. The relevant police stations were afraid that the decrease in the number of arrests would lead to a budget decrease for the police. Sections 54 to 59 of the CrPC list the situations in which the police can make arrests without authorization from a magistrate. Several other such offenses, called cognizable offenses,⁴²⁰ are listed in the Second Schedule of the CrPC.⁴²¹ This list ranges from murder and attempt to murder to obstruction of a police officer during the performance of his duty.⁴²²

In Pakistan Police, the annual Performance Evaluation Report (PER) of police officers includes performance evaluation on the basis of knowledge of laws, leadership, initiative, etc., including arrests and detentions during the officers' posting.⁴²³ The Performance Management System of the police (which includes the annual PER), however, does not take into account the actual efficiency of the police officer. There is no way to ensure whether the act of arresting persons was for prevention of crime or for improving the statistical representation of an officer in a report.⁴²⁴ This leads to a focus on the 'output' rather than the 'outcome', leading to unnecessary arrests, adversely affecting the overall peace and security of the society.⁴²⁵

Moreover, in cases of crime against person, people generally tend to implicate more individuals than just the person responsible, which leads to high under-trial detention rate.⁴²⁶ Therefore, some officials argue that nomination of someone in the allegations submitted in FIR should not be sufficient to put someone in prison without the support of relevant evidence.⁴²⁷ The police officials in Balochistan claim that they do not follow the practice of arresting everyone nominated in the FIR without proper investigation, which has kept overcrowding and under-trial detention lower than the other provinces.⁴²⁸

415 Interview with a senior-level official of the Home Department of Government of Punjab in Lahore on May 24, 2017. Interview with a senior-level prisons official of the Government of Sindh in Karachi on June 6, 2017.

416 International Crisis Group, *Reforming Pakistan's Prison System*, *Crisis Group Asia Report N°212*, 12 October 2011.

417 Interview with a senior-level prosecutor of KP on May 22, 2017.

418 For example: Peshawar High Court, *Syed Salim Shah v. Government of Khyber Pakhtunkhwa*, 2016 PCrLJ 1194. In this case, the detainee was arrested under the KP Maintenance of Public Order Ordinance 1960 despite his showing an order of pre arrest bail to the police officer.

419 Interview with a senior police officer in Islamabad on May 18, 2017.

420 Section 4 (f) Code of Criminal Procedure 1898.

421 Section 4 (n) Code of Criminal Procedure 1898.

422 Schedule II Code of Criminal Procedure 1898.

423 Kader Qamar, 'Performance Management System in Police Organization of Pakistan' *Performance Management Report*, p.2, available at <https://www.scribd.com/document/33310940/how-perfromance-management-System-is-Affecting-Police-Performance-in-Pakistan>, (last accessed on December 22, 2017).

424 Kader Qamar, 'Performance Management System in Police Organization of Pakistan' *Performance Management Report*, p.3, available at <https://www.scribd.com/document/33310940/how-perfromance-management-System-is-Affecting-Police-Performance-in-Pakistan>, (last accessed on December 22, 2017).

425 Kader Qamar, 'Performance Management System in Police Organization of Pakistan' *Performance Management Report*, p.4, available at <https://www.scribd.com/document/33310940/how-perfromance-management-System-is-Affecting-Police-Performance-in-Pakistan>, (last accessed on December 22, 2017).

426 Interview with a senior-level police officer in Lahore on May 25, 2017; Interview with a senior-level prisons official of the Government of Sindh in Karachi on June 6, 2017.

427 Interview with a senior-level police officer in Lahore on May 25, 2017; Interview with a senior-level prisons official of the Government of Sindh in Karachi on June 6, 2017.

428 Interview with a senior-level police officer of Balochistan in Quetta on June 8, 2017.

As a check to the arrest powers of the police and to avoid unnecessary detention, the law requires them to produce the accused before a magistrate in no more than 24 hours after the arrest.⁴²⁹ This legal protection, however, may be rendered ineffective in the face of false and frivolous cases against the accused.

4.3.2 Arrests based on Frivolous and False Charges

Under the Pakistan Penal Code, ‘false information with intent to cause public servant to use his lawful power to the injury of another person’⁴³⁰ and ‘false charge of offence made with intent to injure’⁴³¹ are punishable offences. The former is punishable with imprisonment of up to 6 months or fine of up to Rs. 3000, or both,⁴³² and the latter is punishable with imprisonment of up to 7 years and fine.⁴³³ Some members of the judiciary believe that strict application of the penal provision against false information may discourage public servants and private citizens from bringing false cases to the courts.⁴³⁴

The law also provides that in case of false, frivolous or vexatious accusations, the accused shall be acquitted, and paid compensation. If the magistrate, upon acquitting an accused, forms the opinion that the accusation against the accused was false, frivolous or vexatious, then he has the power to cause the person who made the accusation to explain why he should not be made to pay compensation to the accused.⁴³⁵ If the magistrate still finds the case to be frivolous, he may order for compensation to be made of up to Rs. 25,000.⁴³⁶ The acquitted accused falsely implicated also has the civil remedy of seeking damages for malicious prosecution.⁴³⁷ Penal consequences for false evidence or false case also exist in the Pakistan Penal Code (PPC).⁴³⁸

Despite existence of these laws, according to the International Crisis Group, the police, particularly in rural areas, are often willing to register false cases for money or on the insistence of a local influential person who wants to victimize his opponents. As a result, people are thrown into prison for crimes that never occurred.⁴³⁹

Arrests based on false charges were imputed to the legal framework: ‘Anyone, including a police officer, who knows about the commission of a “cognizable offense”, can make an oral or written complaint at a police station. Because anyone with “knowledge” can make the complaint, this has led to an epidemic of false oaths to carry out personal vendettas and family feuds, which has contributed to clogging the court system’.⁴⁴⁰

It is difficult to estimate the number of arrests based on false charges. According to Asian Development Bank, in the late 1990s, various assessments recorded frivolous litigation accounted for between 25 percent and 50 percent of all cases.⁴⁴¹ Furthermore, in 2014, the number of cases disposed of in Punjab was 247,827, out of which 30,642 cases (i.e. 12.3 percent, and almost one out of eight cases) were disposed of after the witness resiled, which led the magistrate to acquit the accused under Article 249A of the CrPC. It is unclear whether the witness resiled because of making false charges or out of fear for their own or their

429 See Section 61 Code of Criminal Procedure 1898; See also Article 10 of Constitution of Islamic Republic of Pakistan 1973.

430 Section 182 of Pakistan Penal Code 1860.

431 Section 211 of Pakistan Penal Code 1860.

432 Section 182, Pakistan Penal Code 1860 states: “Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant :-

- (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with
which may extend to 64 [three thousand rupees] 64, or with both.”

433 Section 211 of Pakistan Penal Code 1860.

434 Comments made by a senior-level judge of the Punjab Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017.

435 Section 250 (1) of Code of Criminal Procedure 1898.

436 Section 250 (2) of Code of Criminal Procedure 1898.

437 Section 35A of Civil Procedure Code, 1908; *Muhammad Akram v Mussamat Farman Bibi*, PLD 1990 SC 28.

438 See sections 181 – 182, 191 -211 of Pakistan Penal Code 1860.

439 International Crisis Group, *Reforming Pakistan’s Prison System*, Asia Report No. 212, 12 October 2011.

440 Peter G. Strasser, *The Evolving Pakistan Criminal Justice System: A Study of the Raymond Davis Matter*, 2014.

441 Asian Development Bank, *Pakistan: Access to Justice Program, Completion Report*, December 2009.

family's safety, but the percentage of 12.3 is quite significant.⁴⁴² A loophole in section 169 of the CrPC was identified: the statements of witnesses examined and recorded by the police do not have to be signed by the said witnesses; therefore it is often the case that witnesses renege from their statements once the trial commences.⁴⁴³

According to a former judge of KP, in many cases, courts do not declare a case to be false or frivolous but acquittal of the accused persons is mainly based on the benefit of doubt. In case of doubt, the court would obviously refrain from ordering compensation to the accused party.⁴⁴⁴ He also believed that the courts avoided prosecution of complainants in failed cases because it would multiply the number of cases when the courts are already over-burdened and the acquittal rate is as high as 77 percent.⁴⁴⁵ Thus, the existing punishment for bringing a frivolous case to the court is not considered a good deterrent against bringing such cases to courts and making the accused suffer in a fake case.⁴⁴⁶

According to a police official in Punjab, the culprits of frivolous litigation need to be punished more severely to deter people from continuing to go to court to make legal cases based on frivolous allegations that waste court's time and put a strain on its already limited resources. He further asserted that the courts are so overburdened dealing with frivolous litigation that they are unable to give sufficient time to actual cases.⁴⁴⁷

To cater to this issue of false and frivolous litigation, the *National Judicial Policy* 2009, as amended in 2012, provided that courts "should take penal action against the party by imposing fines" under the existing law in Pakistan Penal Code (PPC) and CrPC.⁴⁴⁸ However, as discussed above, sections 182 and 211 of PPC need to be proved by following a complete criminal trial process before imposition of fines,⁴⁴⁹ and under section 250 of CrPC, compensation is made but fines not levied against the person engaging in false and frivolous litigation.⁴⁵⁰

In addition, the practices of registering such cases still continued, according to a Human Rights Watch report dated 2016: 'Pakistani police use their extensive powers of registration of cases, arrest, and detention at the behest of powerful societal elites (the wealthy, politicians, landowners, and civil and military bureaucracy) to bring false charges against perceived opponents as a form of intimidation or punishment.'⁴⁵¹

In 2017, the Costs of Litigation Act was passed to deter false and frivolous litigation, mandating payment of costs of litigation to the decree-holder or the acquitted.⁴⁵² Being a recent law, however, its effectiveness remains to be established.

4.3.3 *Detainees not Released by the Police when the Evidence is Deficient*

According to Section 169 of the CrPC, if there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate, the Officer in charge of the police station called the Station House Officer (SHO) is empowered to release the accused with or without sureties. In such a case, however, the police are still required to complete the investigation and submit the challan/police report to the magistrate who has the power to decide to pursue the case or not.⁴⁵³

442 The Pakistan Institute of Legal Development and Transparency noted that the witnesses often renege from their statements once the trial commences because section 169 of Code of Criminal Procedure does not demand that statements given to police officers be signed. This leads to witnesses giving statements initially, but renege from them at the stage of trial; See PILDAT, *Prosecution Services in Punjab and Sindh*, October 2015.

443 PILDAT, *Prosecution Services in Punjab and Sindh*, October 2015.

444 Comments made by a former judge of KP Judiciary during consultations with the judiciary organized by NACTA on December 19, 2017.

445 Comments made by a former judge of KP Judiciary during consultations with the judiciary organized by NACTA on December 19, 2017.

446 Comments made by a senior lawyer of the Islamabad Bar Council during consultations with lawyers of the Islamabad Bar Council in Islamabad on October 23, 2017.

447 Interview with a senior-level police officer of Punjab in Lahore on May 25, 2017.

448 National Judicial (Policy Making) Committee, *National Judicial Policy*, Revised edition, 2012, Section D, Paragraph 14.

449 In the case of section 182 of Court of Criminal Procedure 1898, special procedure under Section 195 (a) needs to be followed where complaint is filed by the public officer himself; See Section 195 of Code of Criminal Procedure 1898.

450 Section 250 of the Code of Criminal Procedure 1898.

451 Human Rights Watch, *'This crooked system: Police abuse and reform in Pakistan'*, 26 September 2016.

452 Costs of Litigation Act 2017.

453 See Section 169 of Code of Criminal Procedure 1898 .

Although persons released pursuant to this provision rarely abscond, police exercise this power reluctantly for fear of strict oversight.⁴⁵⁴ Another reason for the reluctance of the SHOs in granting such release within their powers is that they could be posted to some other assignment after the release, but they might still have to appear in court for the exercise of that power if any questions arise.⁴⁵⁵

4.4 Resource Constraints and Investigative Shortcomings of the Police

4.4.1 Resource Constraints with Respect to Production of UTPs in Courts

The *Federal Ombudsman's Report* noted that up to 70 percent of UTPs are able to reach their respective courts for hearings because of shortage of Court Police Staff or vehicles.⁴⁵⁶

In Sindh, when Legal Aid Office asked the UTPs if they were produced before the court in all their proceedings, 39 percent of the UTPs replied in the negative. For the same question, 32 percent of the judges stated that UTPs were not produced before the court in all their proceedings.⁴⁵⁷ According to Legal Aid Office, judges often proceed in the absence of UTPs.⁴⁵⁸

Transportation of the detainees from prisons to courts for their hearings is the responsibility of the police.⁴⁵⁹ The police, however, is resource constrained most of the time to effectively do their job.⁴⁶⁰ As a senior police officer explained the situation in these words:

Due to the scarcity of vehicles, detainees required for production at different courts are transported in the same vehicle resulting in many of those detainees arriving at the court late and missing their trial hearings.⁴⁶¹

Every police station has limited fuel allowance of 150 liters per vehicle and a limited budget for maintenance costs of vehicles. Therefore, when a police station of a concerned prison has to move prisoners between cities for their court hearing, it becomes difficult for the police to manage its costs.⁴⁶² Since safety and security of the detainees during transportation is also the duty of police, it further stretches their limited resources.⁴⁶³ Citing an example of how the resource constraints of the police with regard to the running and upkeep of its vehicles affect overcrowding in prisons, a senior-level police officer shared that once 500 Afghan refugees, who were supposed to be deported to Afghanistan, ended up in the Quetta prison because the police did not have the fuel for transporting them to the border.⁴⁶⁴ Ahmed Chinoy, the Chief of citizens-police liaison committee (CPLC) claims that after catering to dignitaries/VIPs and other burdens on police are considered, only 10 percent of force remains available for regular policing duties.⁴⁶⁵

454 Interview with a former Law Secretary of KP in Islamabad on June 16, 2017; Comments made by a senior-level police officer of KP and a senior-level prisons official of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

455 Comments made by a senior-level police officer during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

456 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit., p. 38.

457 Professor Akmal Wasim and Barrister Haya Emaan Zahid, 'Sindh Prisons: A Review of the Criminal Justice System' *Annual Research Report 2015*, Legal Aid Office, Committee for Welfare of Prisons, 2015.

458 Professor Akmal Wasim and Barrister Haya Emaan Zahid, 'Sindh Prisons: A Review of the Criminal Justice System' *Annual Research Report 2015*, Legal Aid Office, Committee for Welfare of Prisons, 2015.

459 See Police Rules 1934, Rule 2.2. (c) lists 'escorts' as a duty of police.

460 For example, Sindh and Punjab; Muhammad Hussain Khan, 'Sindh Police Facing constraints of resources: Report' *Dawn*, December 3, 2011; Annual Policing Plan 2014-2015 Punjab (District Kasur) p.23, available at <https://www.punjabpolice.gov.pk/system/files/KSR-APP.pdf> Kader Qamar, 'Performance Management System in Police Organization of Pakistan' *Performance Management Report*, p.2, available at <https://www.scribd.com/document/33310940/how-performance-management-System-is-Affecting-Police-Performance-in-Pakistan>, (last accessed on December 22, 2017).

461 Interview with a senior-level police officer in Islamabad on May 18, 2017; See also Point 13 and 19 of *Report on Jail Reform (Report No. 23)* Pakistan Law Commission, 1997; Point 21 of *Report on Expediting Trial Proceedings (Report No. 60)* Pakistan Law Commission.

462 See also 'This Crooked System' *Human Rights Watch* <https://www.hrw.org/report/2016/09/26/crooked-system/police-abuse-and-reform-pakistan> Kader Qamar, 'Performance Management System in Police Organization of Pakistan' *Performance Management Report*, p.2, available at <https://www.scribd.com/document/33310940/how-performance-management-System-is-Affecting-Police-Performance-in-Pakistan> (last accessed on December 22, 2017).

463 Comments made by a senior-level police officer serving in Balochistan during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

464 Comments made by a senior-level police officer during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

465 "Rs 117 million spent by police every month on VIP Security," *Dawn*, April 16, 2010.

Even when the transport of the detainees is within the city limits of the concerned prison, it is not at times easy for the police to manage the operation. The police has to transport three different categories of detainees for their hearings in courts, i.e., UTPs, convicted prisoners, and the ones sent directly from the police stations for their appearances in courts, which means a great amount of workload. The situation becomes especially tough for the police when there are road blocks in the city owing to violent incidents, protests, or even VIP movement.⁴⁶⁶

The *National Judicial Policy* (drafted in 2009, revised in 2012) noted:

Production before court for remand/trial is a statutory right of every prisoner; therefore, the District and Sessions Judges should ask the jail authorities to ensure that the prisoners must be produced before the court.

Frequent non-production of under trial prisoners (...) is also a major cause of delay in disposal of criminal cases. Each high court should install video conferencing facility at least in one district through its own resources for recording their statements.

There was indeed a project to create video conferencing facilities both at the Islamabad High Court and C.P. Rawalpindi in 2012,⁴⁶⁷ but the outcome of the project remains unknown for the moment.

4.4.2 Over-reliance on Witness Testimonies

The police in Pakistan relies heavily on witness testimonies instead of material evidence during investigations,⁴⁶⁸ which leads to unnecessary delays in adjudication of cases owing to a number of factors, the most common among them being the failure of witnesses to appear in courts during the trial hearings.⁴⁶⁹ The reasons for the failure of witness to appear for trial hearings include fear of reprisals from the accused, moving to another part of the country and being unable to travel for court hearings, death of witnesses, etc. Even the police witnesses are not always able to appear before the court because of postings to other cities, etc. At times, the ostensible eye-witnesses of crimes fabricate statements based on personal grudges or prejudices, which may lead to wrongful acquittals or convictions as well.⁴⁷⁰ There are delays at the time of investigation by the police as well.⁴⁷¹ This, sometimes, is due to the fact that to make statements recorded admissible in evidence, they have to be recorded before a magistrate.⁴⁷² Statements recorded by police⁴⁷³ are not admissible in evidence,⁴⁷⁴ but may be used for corroboration with other evidence.⁴⁷⁵ Hence, although it is a necessary safeguard against police abuse, the time taken to bring witnesses to magistrate and get the statement recorded in presence of the accused,⁴⁷⁶ causes delays in investigation even before a police-report (*challan*) is submitted in court by the police.⁴⁷⁷ The Government of Punjab has recently started an initiative of e-magistrates wherein parties can access a magistrate's office online,⁴⁷⁸ but the process and its efficacy are yet to be ascertained.

466 Comments made by a senior-level police officer during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017; Interview with a senior-level prisons official of Punjab in Rawalpindi on May 19, 2017; and comments made by a senior lawyer during consultation with the lawyers of the KP Bar Council in Mansehra on December 14, 2017.

467 Malik Asan, "Lower judiciary to have video conferencing facility," *Dawn*, June 7, 2012.

468 Syed Manzar Abbas Zaidi, "Terrorism Prosecution in Pakistan" *USIP Peaceworks (Report no. 113)* April 2016, p. 10.

469 *Report on Expediting Trial Proceedings (Report No. 60)* Pakistan Law Commission; *Report on Criminal Justice System (Report No. 22)* Pakistan Law Commission, p. 19; This was pointed out as a serious flaw leading to high under-trial detention by several officials during the interviews conducted by CODE PAKISTAN with high-level criminal justice officials in Islamabad as well as all four provincial capitals.

470 Interview with a senior-level prisons official of Punjab in Rawalpindi on May 19, 2017; See also *Criminal Justice System in Pakistan*, available at <https://pakistanilaws.wordpress.com/tag/criminal-justice-system-in-pakistan/> (last accessed on December 22, 2017).

471 Lahore High Court, *Dost Muhammad v the State*, 1987 PCrLJ 2490. The court noted the delay often caused by police when conducting investigations.

472 Section 164, Code of Criminal Procedure 1898.

473 Section 161, Code of Criminal Procedure 1898.

474 Peshawar High Court, *Sayyar v State*, PLD 2015 Pesh. 157.

475 Lahore High Court, *Shahid Javid v State*, 2001 YLR 2803.

476 As required under Section 164, Code of Criminal Procedure 1898.

477 Samra Fayyazuddin and others, *The State of Pakistan's Children*, APH Publishing 1998, p. 149.

478 Information about the Model Courts of Punjab shared by a senior-level judge of the Punjab Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017.

Moreover, the police also lacks a digital database of records for efficient follow-up of its court cases and efficient management of its day-to-day activities.⁴⁷⁹ While some regions are trying to digitalize their systems,⁴⁸⁰ several factors have not been taken into account for putting the system into effect. For instance, since FIRs are registered in the local language in Sindh, the data entry into computers would require it to be in English, which would create problems in the accuracy of the entered data, especially when knowledge of the English language is limited.⁴⁸¹

While the need for more modern forensics-based investigative methods is obvious from the problems with respect to witness-based investigation, it comes with its own problems in Pakistan. There are very few forensic laboratories in the country and only one in Lahore that can conduct DNA tests. Therefore, it takes a long time in obtaining the results of its tests.⁴⁸² In addition, at times the Lahore-based Punjab Forensics Laboratory asks for advance payments for its tests from the police, which becomes tricky for the concerned Investigation Officer (IO) because officially he cannot make advance payments and may thus have to make payments from his own pocket and wait until the results of the tests arrive and he may claim the bill from the government exchequer.⁴⁸³ The absence of a forensics laboratory in other areas also hampers timely and proper collection of evidence, thereby creating room for evidence contamination, which ultimately leads to improper investigations.

The law enforcement agencies could also make use of modern information and communication technologies (ICTs) for surveillance and interception,⁴⁸⁴ but such use of ICTs is only admissible in courts after getting necessary permissions under the Investigation for Fair Trial Act, 2013 in cases pertaining to terrorism and national security.⁴⁸⁵ Without acquiring warrants under the Investigation for Fair Trial Act, 2013, the only thing the police could do was to rely on the confession of suspects to the crimes committed.⁴⁸⁶ For the purpose of collecting evidence for offences other than those covered under the Schedule I of Investigation for Fair Trial Act, the Qanun-e-Shahadat Order, Article 164 is applicable.⁴⁸⁷ Although, Article 164 allows for admissibility of evidence obtained through modern technologies in court, the same does not provide a mechanism for procuring sensitive information such as SMS records, cell-detail records, data of phone based communications and CCTV footages etc. It is for the parties or the prosecutor to use his resources and obtain the same, within the confines of law. It must also be noted that any surveillance or interception related to terrorism or national security offences as defined in Investigation for Fair Trial Act may not be carried out except in accordance with the Act itself.⁴⁸⁸

479 Hassan Abbas, 'Stabilizing Pakistan Through Police Reform' *Asia Society Report by Independent Commission on Pakistan Police Reform*, July 2012, p. 84; Interview with a senior-level police officer in Islamabad on May 18, 2017.

480 For example, Punjab and Sindh; See 'Punjab Police go Digital' *Dawn*, October 23, 2015; Benazir Shah, 'Punjab Police 2.0', *Newsweek* April 11, 2016; 'Police to start keeping digital records of criminal from June' *The News* May 28, 2015.

481 Interview with a senior-level police officer in Islamabad on May 18, 2017.

482 Interview with a senior-level police officer in Islamabad on May 18, 2017; Interview with a senior-level prisons official of Punjab in Lahore on May 24, 2017.

483 Comments made by a senior-level police officer during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

484 Surveillance and Interception is defined in Section 2 (g) of Investigation for Fair Trial Act as follows: 'Intercepted material' means evidence collected under Section 17 and will refer,---

(i) for the purposes of 'Surveillance' to include,---

(a) data, information or material in any documented form, whether written, through audio visual device, CCTV, still photography, observation or any other mode of modern devices or techniques obtained under this Act; and

(b) documents, papers, pamphlets, booklets; and

(ii) for the purposes of 'Interception' to, include-mails, SMS, IPDR (internet protocol detail record) or CDR (cell detail record) and any form of computer based or cell phone based communication and voice analysis. It also includes any means of communication using wired or wireless or IP (internet protocol) based media or gadgetry; Comments made by a senior-level official of NACTA during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

485 Comments made by a senior-level police officer during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017; See also Sections 4-8, 15 and 23 of Investigation for Fair Trial Act 2013, and section 10 read with Schedule I of the same.. See also Section 15 of Investigation for Fair Trial Act 2013, under which Judges can refuse warrant and may even recommend departmental action against the concerned officer (this is a major deterrent for obtaining warrant in the first place).

486 Comments made by a senior-level police officer during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

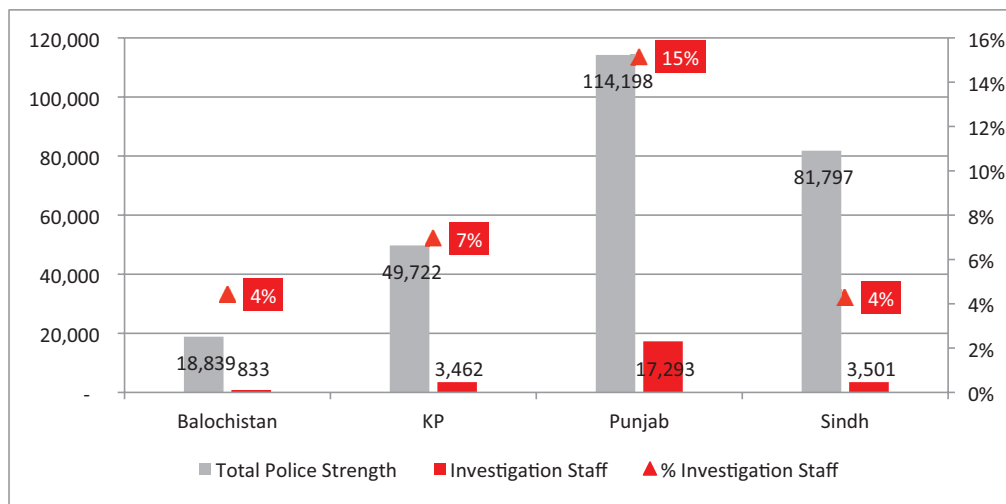
487 *In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.*

488 Section 35. *Any person who carries out any surveillance or interception except in accordance with the provision of this Act shall*

Applying modern investigative techniques is a complicated process requiring special skills and expertise in evidence collection that would subsequently be admissible in courts. The existing human resource in the police departments, however, lacks training in this respect.⁴⁸⁹ Most of the police officers conducting investigations are usually social science graduates who later acquire security and investigative training at the police academies.⁴⁹⁰ Therefore, when an under-trained and ill-equipped investigation officer (IO) is asked to produce *challans* based on forensic evidence collection within 14 days regardless of the level of complication in any given case,⁴⁹¹ he is unable to conduct a sound investigation.⁴⁹² Moreover, since investigation is a laborious process and does not come with the powers associated with being in operations—like putting in place informers or conducting raids, etc.—most police officers are not inclined to take the positions of IOs.⁴⁹³

Based on official data shared by provincial police authorities, as of October 1, 2017, a considerably small proportion of police officers were dedicated to performing the responsibilities of IOs. As shown in in Figure 35 below, Balochistan and Sindh police have only dedicated around 4 percent of their personnel to investigation. The proportion of investigative staff in KP is slightly better at 7 percent and Punjab is the best among the four provinces at a still marginal 15 percent.

Figure 35: Percentage of Investigative Staff in Total Strength of Police in the Four Provinces



4.4.3 Resource Constraints leading to Delays in Investigation

Under Section 154 of the CrPC, as soon as a crime has been committed, a FIR has to be lodged, an investigation then commences and the accused, once arrested, must be presented to the Magistrate within 24 hours of such arrest. Then, according to Section 173 of the CrPC, every investigation should be completed without unnecessary delay, and the police-report (*challan*) should be submitted to the magistrate instantaneously after completion of investigation. The *challan* includes both the investigation report comprising of columns that identify the parties and the witnesses, the nature of the offences, and information relating to the accused.⁴⁹⁴

in addition to any other punishment to which he may be liable under any other law for the time being in force be punished with imprisonment for upto three years and shall also be liable to fine.

489 "Police Education and Training in Pakistan" *Pakistan Journal of Criminology*, p.2.

490 Comments made by a senior-level police officer serving in Balochistan during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

491 Although, the IO can seek an extension in the 14 days for investigation by applying to a court for the same, completing the process in 14 days is the normal limit set by the law; See Section 173 of Code of Criminal Procedure 1898.

492 Comments made by a senior-level police officer serving in Balochistan during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

493 Comments made by a senior-level police officer during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

494 Section 173 of the Code of Criminal Procedure Code 1898; see also Peter G. Strasser, *The Evolving Pakistan Criminal Justice System: A Study of the Raymond Davis Matter*, 2014.

If the investigation is not completed within 14 days, the Officer in charge should forward to the Magistrate an interim report within three days after the expiry of the 14 days and the court shall commence the trial on the basis of the interim report, unless the court decides otherwise.⁴⁹⁵

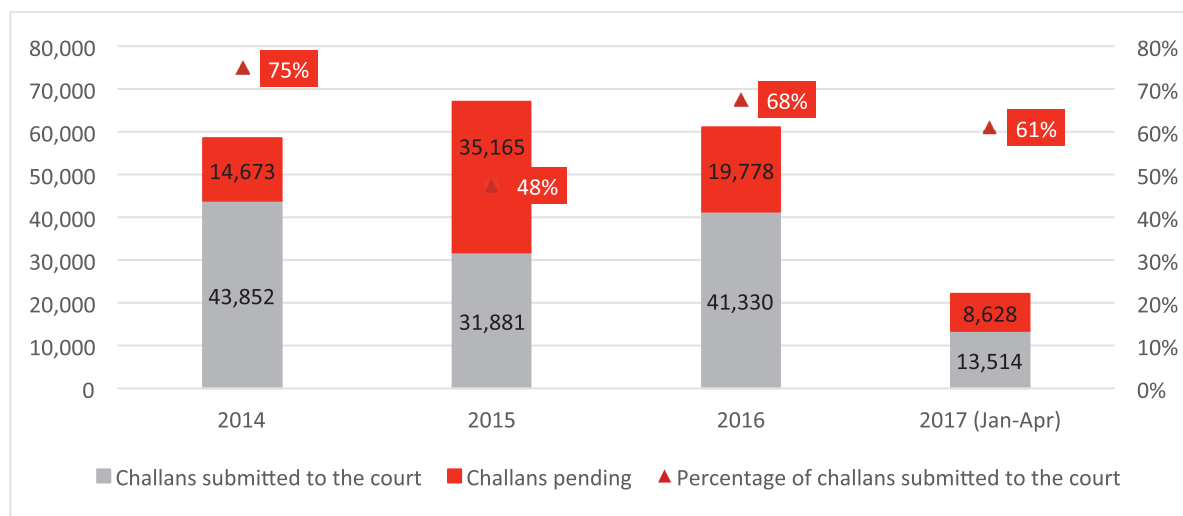
Significant delays in the submission of the *challan* remains a recurrent issue and a primary cause in the delay of disposal of cases.⁴⁹⁶ In 2011, the International Crisis Group further mentioned, police negligence and incompetence can even result in *challans* not being issued at all.

Interestingly, Sindh Police made a report on the evaluation of the performance of the police in June 2017. An excerpt published in an English daily, highlighted that the percentage of *challans* submitted to the court was between 48 percent and 75 percent, depending on the year.⁴⁹⁷ Figure 36, below, represents the compilation of data in this regard.

One key issue concerning the delays in investigation and non-submission of *challan* is a shortage of personnel to carry out investigations. The Human Rights Commission of Pakistan noted in 2012 that an “unjustifiably large number” of officers are consigned to security duties, reducing the man hours available for investigation.⁴⁹⁸

In addition, Open Society Justice Initiative pointed out the limited investigative capacities of the Police particularly inadequate training for collection of evidence. If the FIR and subsequent *challan* are frequently inaccurate, this may generate problems to obtain evidence, leading to further delays in disposal of cases. The police officers receive periodical trainings at the National Police Academy in Islamabad,⁴⁹⁹ but the quality of the training on investigations was unclear.

Figure 36: Number and Percentage of *Challans* Submitted to the Court in Sindh



The data above does not show whether the persons who are accused of offense without a *challan* submitted to the court remain in prison or are released on bail.

The *National Judicial Policy* reiterated the legal obligation to submit the *challan* within 14 days and set penalties for those police officers who did not comply with the same:

495 Section 173 of the Code of Criminal Procedure Code 1898.

496 International Crisis Group, *Reforming Pakistan’s Prison System*, *Crisis Group Asia Report N°212*, 12 October 2011.

497 Imtiaz Ali, “Sindh police recommend steps to improve criminal justice system,” *Dawn*, June 19, 2017.

498 Vrinda Bhandari for Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014. This was also mentioned by a senior-level judge of the Sindh Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017.

499 These trainings may be in the form of courses offered by the National Police Academy for certain police cadres, such as the 18 months Initial Command Course for ASPs who have just joined the Police Service of Pakistan, and may even be in the form of seminars or workshops designed for shorter time periods. See: *Trainings*, National Police Academy Islamabad, available at <http://www.npa.gov.pk/na/brief-icc/#> (last accessed on December 22, 2017).

Non-completion of investigation and non-submission of *challans* in statutory period is a major cause of delays in disposal of cases. Since, police plays crucial role in administration of justice, therefore, the District Police Officers (DPOs) may be asked to ensure that the police should conclude investigation and submit *Challans* within the prescribed period of 14 days. They may be asked that the Station House Officers who fail to comply with the statutory provision should be treated as [an] inefficient officer under the Police Order and the court may also lodge complaint under section 166 of the Pakistan Penal Code against him. The DPOs should also submit list of cases in which *Challans* are still pending for want of investigation for inspection and passing appropriate orders by the District and Sessions Judges.⁵⁰⁰

The *National Judicial Policy* also recommended to increase the number of investigation officers, and noted that, “training of prosecutors, investigators, and law enforcers should be carried out on systematic basis to apprise them about modern forensic auditing and investigating techniques.” However, “the guidelines given in the *National Judicial Policy* have also not been followed by the law enforcing and investigation agencies,” according to the Executive Committee Member of the Supreme Court Bar Association and Chairman of Voice of Prisoners, Mr. Noor Alam Khan.⁵⁰¹

The international community is providing support by funding projects aimed to enhance police performance. For instance, through a DFID and the Swiss Agency for Development and Cooperation project, partly funded by UNDP, initiative titled Strengthening Rule of Law in Khyber Pakhtunkhwa Province (2011 – 2018),⁵⁰² a total of 2,581 police officers were trained notably on crime scene investigation, and a total of 41 ‘model police stations’ were established with 12 more in process. The UNDP also helped to establish a Regional Forensic Science Laboratory in Swat, which was inaugurated on November 26, 2015.⁵⁰³

In 2016, the UNODC was involved in capacity-building and data digitization of the police. In pilot areas such as Gujarat (Punjab), the organization is involved in the development of crime scene units. It also provides equipment and infrastructure in Punjab, Balochistan, KP and Sindh.

4.5 Issues Pertaining to the Prosecution

Alongside the police, the prosecution department, which is an attached department of the Home Department in every province, plays an important role in presenting a case before the court for speedy adjudication.⁵⁰⁴ The prosecution department is headed by a Director General (DG) in every province,⁵⁰⁵ assisted by Additional Secretaries and Deputy Secretaries in the provincial headquarters and District Public Prosecutor, Deputy Public Prosecutor, and Assistant Public Prosecutor at the district level.

4.5.1 Coordination Lapses between the Police and Prosecution

The investigation officers are required to submit the *challans* in courts with the help of the prosecutors within 14 days of the lodging of the FIR.⁵⁰⁶ If the *challans* are not submitted in the court in time, it leads to delays in the processing of a prisoner’s case. If there is no effective coordination between the police and the prosecution for the submission of *challans*, it results in back-and-forth delays between the two institutions.⁵⁰⁷ At times, the police submits the *challan* to the prosecution for onward submission in courts

500 National Judicial (Policy Making) Committee, *National Judicial Policy*, Revised edition, 2012.

501 Vrinda Bhandari for Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014.

502 UNODC, Strengthening Rule of Law in Khyber Pakhtunkhwa Province’ (2011 – 2018), available at http://www.pk.undp.org/content/pakistan/en/home/operations/projects/democratic_governance/strengthening-rule-of-law-in-Khyber-Pakhtunkhwa-Province.html (last accessed on December 22, 2017).

503 UNODC, *Strengthening Rule of Law in Khyber Pakhtunkhwa Province’ (2011 – 2018)*, available at http://www.pk.undp.org/content/pakistan/en/home/operations/projects/democratic_governance/strengthening-rule-of-law-in-Khyber-Pakhtunkhwa-Province.html (last accessed on December 22, 2017).

504 Public Prosecution Department ‘Overview’ *Government of the Punjab*.

505 In Punjab, the head of the Prosecution Department is called Prosecutor General.

506 Section 173 Code of Criminal Procedure 1898.

507 Interview with a senior-level police officer in Islamabad on May 18, 2017; Interview with a senior-level official of the Home Department of KP on May 22, 2017; See Syed Manzar Abbas Zaidi, ‘Terrorism Prosecution in Pakistan’ *USIP Peaceworks (Report no. 113)* April 2016, p. 14; ‘Defective justice system’ *Dawn*, December 28, 2015; ‘Justice: police-prosecution cooperation crucial for convictions’ *the Express Tribune*, March 3, 2014.

at the very end of the 14-day period and if the prosecution finds the *challan* deficient and sends it back to the police for making corrections, that adds to the unnecessary time the pre-trial detainee spends in prison. In some cases, the prosecutors complain of being treated as mere post offices rather than having any meaningful role in the proper filing of cases.⁵⁰⁸ As the law provides for submission of interim investigation report by the police 'through the public prosecutor' to the magistrate,⁵⁰⁹ the prosecutors have been unhappy with the added responsibility of scrutinizing and submitting an interim investigation report.⁵¹⁰

As seen above, despite the requirement to submit *challans* in the courts in 14 days, it often gets delayed.⁵¹¹ From Sep 1, 2016, to Jul 31, 2017, only for 34,000 of the 223,000 FIRs filed in Punjab could the *challans* be submitted within the 14 days period. The performance of Sindh police was better with submission of 25,000 *challans* for the total of 38,000 FIRs submitted in time.⁵¹² Currently, KP is the only province in the country where the prosecution department gets involved with the police from the very start in drafting the *challan* and, therefore, reduced the delays in the submission because of the coordination between the two institutions.⁵¹³ The police and the prosecution, on the other hand, claim that even when they prepare the *challans* within the stipulated timeframe, the *moharrars*⁵¹⁴ of the court do not put them in the registers of the judges as it increases their backlog.⁵¹⁵

Some lawyers maintain that even though the CrPC mandates for a *challan* to be submitted within 14 days,⁵¹⁶ the police keeps applying for extensions from the court and the court keeps granting remand, initially under section 167 of CrPC and later under section 344,⁵¹⁷ without any inquiry as to why the accused is being kept behind bars for so long and the submission of complete *challan* being delayed.⁵¹⁸ Although, there is case law directing the judges to grant remand beyond the initial 15 days in exceptional circumstances only,⁵¹⁹ there are also ample cases on these guidelines and the provisions of law being violated by trial courts in granting excessive adjournments and keeping accused behind bars indefinitely.⁵²⁰

Punjab has formally institutionalized police-prosecutor cooperation into a written policy.⁵²¹ In 2006, the Punjab Criminal Prosecution Service (Constitution, Function and Powers) Act established an independent service for the prosecution of criminal cases but is silent on various aspects regarding the working procedures between the police and the prosecution. In 2011, the Government of Punjab published its standard operating procedures (SOPs) on Effective Police-Prosecutor co-operation in the province,⁵²² which prescribe cooperation between the police and the prosecution from the very beginning by stating

508 Interview with two senior-level prosecutors of Balochistan in Quetta on June 9, 2017.

509 Section 173, Code of Criminal Procedure 1898.

510 Interview with two senior-level prosecutors of Balochistan in Quetta on June 9, 2017.

511 Interview with a senior-level official of the Home Department of KP on May 22, 2017.

512 Data shared by a senior-level official of the LJCP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

513 Comments made by a senior-level prosecutor of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

514 *Moharrar* means the record keeper of the court here. The term is also used for some other offices such as the police stations, where it would mean the record keeper of the police station.

515 Comments made by a senior-level prosecutor of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

516 Please see Section 173 of Code of Criminal Procedure 1898.

517 The powers of magistrate to grant physical or judicial remand are laid down in Lahore High Court, 1995 MLD 771, Mohsin Ali Shah v SHO Police Station Garh Maharaja. See also PLD 2016 Kar. 238, Narullah v SHO, Police Station, Jacobabad.

518 Comments made by a senior lawyer during consultations with lawyers of the Punjab Bar Council in Lahore on October 26, 2017. In the case of Muhammad Shahbaz v State, the accused was behind the bars for 13 months before being granted bail due to delay in submission of challan. See: Lahore High Court, *Muhammad Azeem v The State*, Supreme Court, *Rehan v State* 2009 SCMR 181; 1992 PCrLJ 357 Peshawar High Court, Ayub v State.

519 See 2009 SCMR 181, Rehan v State; 2017 PCrLJ 1654, Quetta High Court, Dost Muhammad v Additional Session Judge Barkhan at Rakhni; 2016 YLR 2212 Peshawar High Court, Adeel v State; 2015 YLR 1197 Quetta High Court, State through Public Prosecutor ATA Quett v Abdul Hameed; 1990 PCrLJ 555 Lahore High Court, Mukhtar Ali v State.

520 See 2017 PCrLJ 1654, Quetta High Court, Dost Muhammad v Additional Session Judge Barkhan at Rakhni; 2015 PCrLJ 535, Karachi High Court, M. Iqbal v State; PLD 2014 Pesh. 49, Muhammad Amin v Momin Khan; 2014 YLR 2638 Peshawar High Court, Saadullah Khan v State; 1989 PCrLJ 1993 Lahore High Court, Akhtar Hussain v District Magistrate; 2003 MLD 948, Peshawar High Courtm Abdur Razzaq v State.

521 Peter G. Strasser, *The Evolving Pakistan Criminal Justice System: A Study of the Raymond Davis Matter*, 2014.

522 Punjab Government, Standard Operating Procedures: Effective Police-Prosecutor co-operation in the province of Punjab, December 2011, available at <http://prosecution.punjab.gov.pk/system/files/Police%2520Prosecution%2520Cooperation.pdf> (last accessed on December 22, 2017).

that “the police shall bring into notice of prosecution, incidence of a crime, immediately by providing a copy of the FIR to the district public prosecutor (DPP) office or informing through mutually shared IT networking system or by any available telecommunication facility, whatever is first available.”⁵²³ The Police-Prosecution cooperation would be in consonance with the existing legal framework, and would extend to all administrative and judicial criminal processes, including pre-trial stage and trial stage of a criminal case, till the final decision of the criminal case.⁵²⁴

The scope of cooperation, though not limited, is specially focused upon offences of homicide, abduction, rape, robbery, narcotics, blasphemy, offences against state, offences under the Anti-Terrorism Act 1997, cybercrimes and offences under environmental laws. For said cooperation, three tiers have been identified by the SOPs:

1. At the primary level that covers investigation officers (IOs) and district public prosecutors (DPPs) while other Joint Investigation teams in terrorism cases;
2. At the mid-level, covering regional/district police officers and DPPs, streamlining the cooperation mechanism by monitoring the process; and
3. At the high-level, covering the headquarters and performing functions of approval and reporting, etc.⁵²⁵

Although, these SOPs were signed in 2011, Pakistan Institute for Legislative Development and Transparency in 2016 stated that the SOPs still needed to be vigorously implemented to ensure that the investigation takes place in a meaningful way and the trial is conducted efficiently.⁵²⁶

In KP, a similar mechanism exists under the KP Prosecution Service (Constitution, Functions and Powers) Act 2005. Unlike Punjab, the KP Act does not establish a liaison, as in the SOPs abovementioned. It provides for cooperation between prosecution and police by empowering prosecution to issue guidelines to police officers regarding investigation,⁵²⁷ and authorizing DG Prosecution or DPP to take disciplinary action against an IO.⁵²⁸ As this Act places police in a role which is ‘guided’ and ‘disciplined’ by the prosecution,⁵²⁹ often the police is found reluctant to cooperate under this Act.⁵³⁰

In the November 2017 statistics published by the LJCP on its website, however, KP and Punjab both have hundreds of cases of UTPs waiting for trial due to non-submission of challan despite having police-prosecution cooperation mechanisms, as shown in Table 8 below.

Table 8: UTPs Waiting for Trial due to Non-submission of Challan

Province	No. of UTPs Waiting for Trial Due to Non-Submission of Challan, Nov 2017				
	Male Adult	Female Adult	Male Juvenile	Female Juvenile	Total
Punjab	298	13	1	0	312
Sindh	2	0	0	0	2
KP	341	10	24	0	375
Baluchistan	0	0	0	0	0
Total	641	23	25	0	689

523 Punjab Government, *Standard Operating Procedures: Effective Police-Prosecutor co-operation in the province of Punjab*, December 2011.

524 Standard Operating Procedure for Police Prosecution Cooperation in the Province of Punjab, 2011, available at <http://prosecution.punjab.gov.pk/system/files/Police%2520Prosecution%2520Cooperation.pdf> (last accessed on December 22, 2017).

525 Standard Operating Procedure for Police Prosecution Cooperation in the Province of Punjab, 2011, available at <http://prosecution.punjab.gov.pk/system/files/Police%2520Prosecution%2520Cooperation.pdf> (last accessed on December 22, 2017).

526 ‘Reforms in Prosecution Services of Pakistan’ Policy Brief, PILDAT 2016, p 13.

527 Section 5 (d) of the KP Prosecution Service (Constitution, Functions and Powers) Act 2005.

528 Section 5 (f) of the KP Prosecution Service (Constitution, Functions and Powers) Act 2005.

529 Section 5 of the KP Prosecution Service (Constitution, Functions and Powers) Act 2005.

530 Comments made by a former judge of KP during an interview in October 2017.

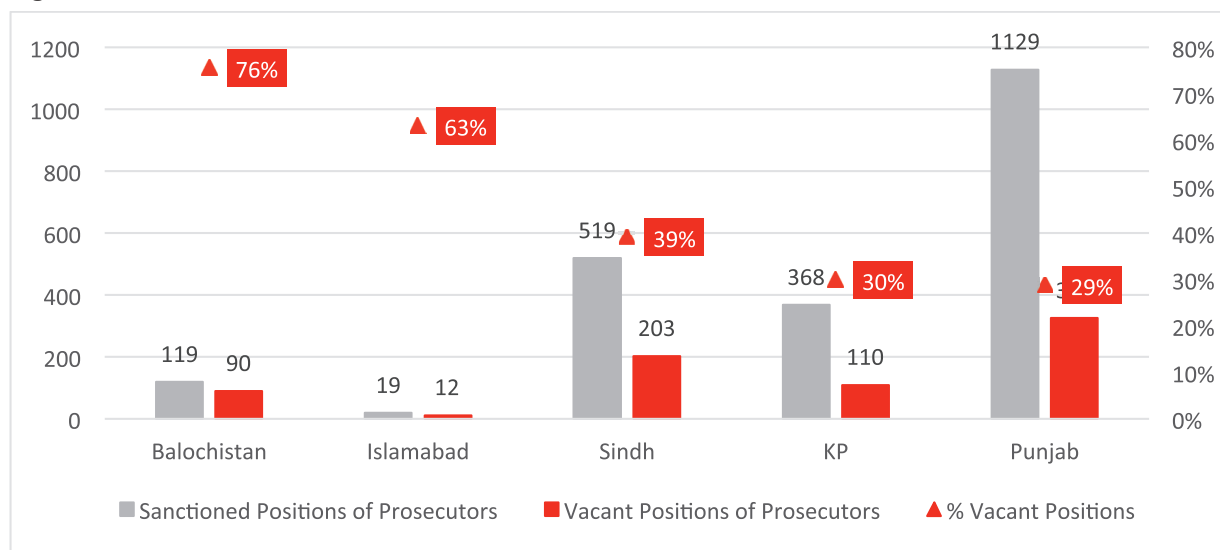
4.5.2 Resource Constraints of the Prosecution

Lack of cooperation between the police and the prosecution has been attributed to the weaknesses of the prosecution. The Open Justice Society Initiative highlighted the shortcomings of the prosecution in terms of human resources and training:

Prosecutors are underpaid and overwhelmed, and thus, often corrupt. Till 2003, there were no independent prosecution departments in Pakistan; the police under the aegis of the Home Department conducted all prosecutions at the trial level. Between 2003 and 2009, the provinces (Sindh, Punjab, Balochistan, NWFP – N.B.: now KP) enacted laws to set up separate prosecution services (...). The Public Prosecution Department suffers additionally from inadequate human resources (although exact numbers are hard to find), capacity, physical infrastructure, training and training facilities. Its “widely undefined role”, vis-à-vis the Judiciary and the Police, leaves it open to “considerable external pressure”. These shortcomings impede the functioning of the Prosecution Departments, which often results in delayed investigation/trial, increasing the time spent in pretrial detention.⁵³¹

As of 2017, 740 vacant positions of prosecutors existed throughout Islamabad and the four provinces of Pakistan against the total 2,254 sanctioned positions, or a vacancy rate of 34 percent. Figure 37 below shows the number of district-level vacant positions of public prosecutors by province/territory. In Balochistan, 76 percent of the positions of public prosecutors at the district-level are vacant, followed by 63 percent in Islamabad Capital Territory (ICT), 39 percent in Sindh, 30 percent in KP, and 29 percent in Punjab

Figure 37: Number of District-level Vacant Positions of Prosecutors as of 2017⁵³²



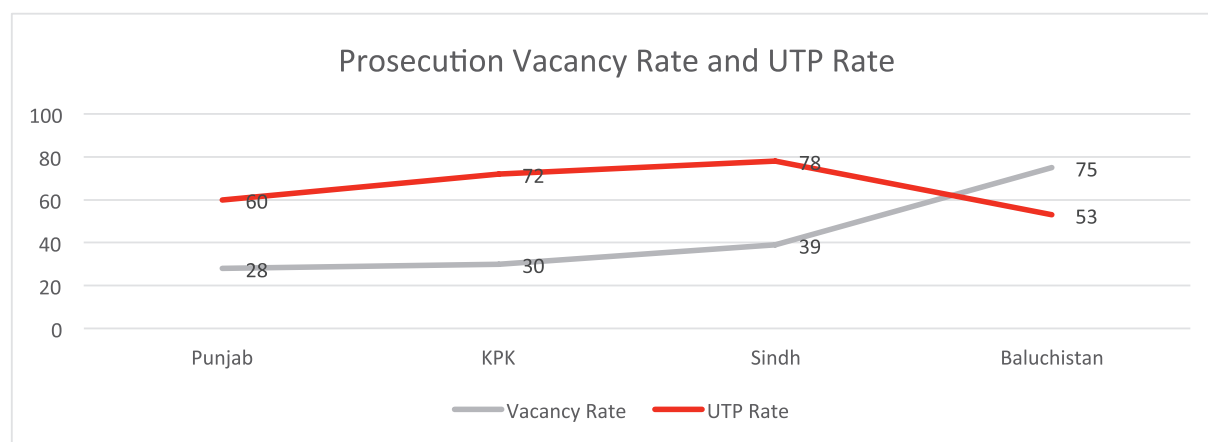
These figures represent numerous vacancies that significantly impact the caseload upon the prosecution and the prosecutors that are available in each province. Considering the percentage of prosecutors' vacant positions on an already stressed prosecution department, the quality of performance is expected to ultimately decrease and cases expected to go in pendency *ipso facto*.

In Figure 38 on the next page, the vacancy rates of the four provinces were charted with that of their UTP rates. This reveals that except in Balochistan where lawyers have security concerns, the vacancy rate for all other provinces has a direct relation with its UTP rate.

531 Vrinda Bhandari for Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014.

532 Based on official data obtained from the provincial Home Departments through NACTA.

Figure 38: Comparison of prosecution vacancy rate with UTP rate



Not only is the prosecution department understaffed at the district level, it is also underpaid. The Pakistan Institute of Legislative Development and Transparency (PILDAT) collected data on the working conditions of the Prosecutors in Punjab. An Assistant Public Prosecutor (APP) in Punjab earned Rs. 516, 252 (approx. \$4,700) net per annum as of 2014. The average number of cases dealt by the APPs was said to be 668; this amounted to Rs.772 per case (approx. \$7). PILDAT commented that the high number of cases results in a situation where prosecutors are unable to prepare extensively for each case; and that the best candidates would not be attracted to the prosecution services without better terms and conditions. PILDAT also criticized the absence of adequate training, stating that there is no induction course nor mandatory training to prepare the prosecutors for their role.⁵³³

UNODC is building the capacity of prosecutors and prosecution services, in collaboration with the Government of the Netherlands. As part of its support, UNODC is providing assistance to the Balochistan Prosecution Service in enhancing the training structure, and building the capacity of the prosecutors of Balochistan. This effort is complemented by the development of guidelines for prosecutors by UNODC, in close coordination and consultation with Balochistan’s Prosecution Service. These guidelines will be included in the post-induction training for prosecutors.⁵³⁴

German Cooperation Agency (GIZ) had a program named ‘Support for criminal investigation services in Pakistan’ in 2015-2016. The project provided technical support to the institutions that train police and prosecutors in Punjab and Sindh, developing courses and materials in areas such as investigative methods, evidence collection and forensics. GIZ placed particular emphasis on training held for police and prosecutors collectively.⁵³⁵

4.5.3 Non-dismissal of Cases Lacking Evidence by the Prosecution

Section 494 of the CrPC provides that “any Public Prosecutor may, with the consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person (...) and upon such withdrawal: (a) if it is made before a charge has been framed, the accused shall be discharged (...); (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.”

This authority of the Public Prosecutor has now been mentioned in the prosecution services acts of the provinces. The Criminal Prosecution Services Act 2006 is applicable in Punjab whereas in Sindh the 2005 Prosecution Services Act is relevant by virtue of which, subject to a procedure, the prosecution can withdraw cases.⁵³⁶ Despite having this authority, the prosecutor rarely exercises it. One report commented that --

⁵³³ PILDAT, *Prosecution services in Punjab and Sindh*, October 2015.

⁵³⁴ UNODC Pakistan, *Development of Prosecutor’s Handbook*, available at <https://www.unodc.org/pakistan/en/launch-of-prosecutors-handbook.html> (last accessed on August 26, 2017).

⁵³⁵ GIZ, *Support for criminal investigation services in Pakistan*, available at <https://www.giz.de/en/worldwide/35472.html> (last accessed on December 22, 2017).

⁵³⁶ See Punjab: Criminal Prosecution Services Act 2006, Sindh Criminal Prosecution Services Act 2005, KP Criminal Prosecution Services Act 2005, Baluchistan Criminal Prosecution Services Act 2003.

“The prosecutor’s office works like a post office,” which meant that prosecutors simply delivered *challans* to court without ever having reviewed the attached investigative reports.⁵³⁷

The same report also mentions a ‘revolutionary case’ in which the High Court and the Supreme Court supported a district prosecutor’s refusal to proceed to trial with a flawed case:

In Karachi, upon a district prosecutor’s refusal to proceed to trial with a flawed case, the police filed a writ of mandamus to force the Sindh Prosecutor General to prosecute the case. But the High Court of Sindh ruled against the police, holding that CrPC sections 173 and 494 gave the prosecutor the discretion to scrutinize case files and reject flawed cases. To no avail, the police appealed to the Supreme Court; it affirmed the high court [decision].⁵³⁸

Although under the CrPC and pursuant to the Apex Court’s ruling on the matter, cited above, prosecutors may withdraw from a flawed case with the Court’s consent, the KP prosecution service has much wider powers. Under the KP Prosecution Services Act, 2005,⁵³⁹ prosecution may dismiss a case without sending it to court for lack of evidence, but it is not available in Punjab’s Act of 2006.⁵⁴⁰ Criminal justice officials of Punjab are of the view that the prosecution department in Punjab should be given such discretionary powers so as to cancel the defective cases at first instance and thereby reduce burden from the courts.⁵⁴¹

4.6 Detainees’ Lack of Access to Legal Counsel

People who cannot afford legal counsel are also behind bars, sometimes for no substantial allegation against them.⁵⁴² The Constitution of Pakistan states, “no person (...) shall be denied the right to consult and be defended by a legal practitioner of his choice.”⁵⁴³ Section 340 of CrPC further provides for the rights to counsel of the accused, but in absence of such availability of legal counsel, the state is responsible for providing such counsel.⁵⁴⁴

In July 2011, the LJCP, by statutory notification S.R.O 684 (I)/2011 by Ordinance (XIV of 1979), established the DLECs. These Committees were constituted to administer and manage funds for the purpose of provision of legal aid to the deserving litigants. The members of DLECs include the following:

- a. Deputy Commissioner/District Coordination Officer;
- b. District Jail Superintendent;
- c. President of the District Bar Association;
- d. A civil society representative; and
- e. District and Sessions Judge (who also chairs the Committee).

The DLEC is mandated to take up applications from deserving litigants to provide free legal assistance. Deserving litigants have been defined as those who are otherwise unable to obtain legal aid or assistance for protecting their genuine legal rights or interests on account of their limited financial resources.⁵⁴⁵

537 Peter G. Strasser, *The Evolving Pakistan Criminal Justice System: A Study of the Raymond Davis Matter*, 2014.

538 Province of Sindh through Secretary of Sindh v. Prosecutor General of Sindh, 2012 SCMR 45 / PLD 2012 SC 307; See also Peter G. Strasser, *The Evolving Pakistan Criminal Justice System: A Study of the Raymond Davis Matter*, 2014.

539 Section 4(1)(c)(ii) of KP Prosecution Services Act 2005 talks about discharge of case by applying to the court.

540 In the Punjab Criminal Prosecution Service (Constitution, Functions And Powers) Act 2006, discharge of accused is provided for but Prosecutor does that on receiving request for discharge from Police (section 13 (9) r/w section 9), not on his own initiative as is the case in KP. After commencement of trial, prosecutor can apply for discharge of case to the trial court under section 10(3) (f) of Punjab Criminal Prosecution Service (Constitution, Functions And Powers) Act 2006.

541 Interview with a senior-level official of the Home Department of Government of Punjab in Lahore on May 24, 2017.

542 Comments made by a senior lawyer during consultations with lawyers of the Punjab Bar Council in Lahore on October 26, 2017.

543 Constitution of Pakistan, Article 10.

544 High Court Rules and Orders Volume III, Chapter 24C. See also: Federal Shariat Court, *Muhammad Waqar v the State*, 1991 PCrLJ 197.

545 In July 2011, the Law and Justice Commission of Pakistan (LJCP) by statutory notification S.R.O 684 (I)/2011 by Ordinance (XIV of 1979) has established the District Legal Empowerment Committees (DLECs). These Committees were constituted to administer and manage funds for the purpose of provision of legal aid to the deserving litigants.

Deserving litigants may apply directly to the District and Sessions Judge (Chairperson of the DLEC Committee) on a plain paper along with a copy of the Computerized National Identity Card (CNIC) or any other document of identity. One of the DLEC members may be assigned to act as a Secretary to the Committee. The Superintendent District Jail may also forward applications of the UTPs or convicted prisoners, or any person confined in jail in relation to civil proceedings after necessary verification that the applicant is a deserving litigant. The Committee may also consider cases referred by any Court for provision of legal aid to the person whose case is pending before such Court.⁵⁴⁶

The *Federal Ombudsman's Report* noted that 'Most of the accused, being poor cannot afford quality legal assistance'. In addition, according to a UNDP (Voices of the Unheard, 2012), the level of awareness about the right to a lawyer and the legal procedures was low amongst the poorer sections of the society; the organizations providing free legal aid were at times under pressure by the lawyers who charged their services, as they saw their market decline.⁵⁴⁷

Anwar Zaheer Jamali, former Chief Justice of Pakistan and Chairman of LJCP, noted in October 2017 that although the DLECs have been operational for over four years, very few people are aware of the support available. During consultations held with provincial bar councils, some lawyers were of the opinion that committees promising free legal aid such as the DLEC only exist on paper, and are not as effective.⁵⁴⁸ The Sindh Bar Council has the legal aid committee working under the supervision of Bar Council and is providing free legal aid to prisoners but the extent of their assistance is limited by insufficiency of budget for this task.⁵⁴⁹

Table 9 below, however, shows that the funds allocated for the DLECs in each Province are underutilized.

Table 9: District Legal Empowerment Committees (DLEC) Summary from 2012 to June 30, 2016⁵⁵⁰

Province	Total Legal Aid Provided (no. of cases)	Average Cost Per Case (Rupees)	Total Funds Allocated (Rupees)	Total Funds Utilized	Percentage of Total Funds Utilized
Punjab	365	Rs.8,112	Rs.7,200,000	Rs.2,960,900	41%
KP	166	Rs.8,934	Rs.4,800,000	Rs.1,483,000	31%
Sindh	33	Rs.15,303	Rs.5,400,000	Rs.505,000	9%
Balochistan	27	Rs.7,093	Rs.3,800,000	Rs.191,500	5%
Total (or average)	591	Rs.8,698	Rs.21,200,000	Rs.5,140,400	24%

The poor quality of legal aid services provided by lawyers was pointed out by the Punjab Bar Council that while there is enough number of lawyers to provide legal service for the province, the quality remains to be improved.⁵⁵¹

In January 2017, the then-Minister for Law and Justice stated that the LJCP has constituted DLECs in districts across the country to provide free legal aid. He further said that a budget of Rs. 21.2 million with Rs. 200, 000 for each committee was released by the LJCP Secretariat, and that the LJCP is keen to provide free legal aid to all the poor litigants including female detainees who cannot afford to hire lawyers.⁵⁵²

546 Legal Rights Forum Pakistan, District Legal Empowerment Committee Fact Sheet 2012-2016, available at <http://lrfpk.org/files/research-reports/District-Legal-Empowerment-Committees-Fact-Sheet-2012-16.docx> (last accessed on December 22, 2017).

547 Vrinda Bhandari for Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014.

548 This opinion was conveyed by during consultations with lawyers of the Punjab Bar Council in Lahore on October 26, 2017, consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017, and consultations with lawyers of the Sindh Bar Council in Karachi on November 22, 2017.

549 Comments made by a senior lawyer during consultations with lawyers of the Sindh Bar Council in Karachi on November 22, 2017.

550 Law and Justice Commission Pakistan, *District Legal Empowerment Committees – Supporting Legal Aid*, August 2016.

551 Comments made by various lawyers during consultations with lawyers of the Punjab Bar Council in Lahore on October 26, 2017.

552 Dispatch News Desk, District Legal Empowerment Committees formed to provide free legal aid: Minister, January 10, 2017, available at <https://dnd.com.pk/district-legal-empowerment-committees-formed-to-provide-free-legal-aid-minister/122186> (last accessed on December 22, 2017).

At the provincial level, an elaborate scheme exists for taking disciplinary action against lawyers under the auspices of the relevant Bar Councils. The Legal Practitioners and Bar Councils Act 1973 provides for electing a Disciplinary Committee from amongst the Bar Council's members for the Pakistan Bar Council and respective provincial Bar Councils.⁵⁵³ The Disciplinary Committee has the power to proceed against an advocate, be it on its own motion or otherwise.⁵⁵⁴ If an advocate is found guilty of misconduct by the Committee, then the punishment may be in the form of being reprimanded, suspension of license, removal from practice or be made to pay compensation or fine.⁵⁵⁵ Appeals against the Disciplinary Committees' decisions may be made to tribunals set up by the Pakistan Bar Council and respective provincial Bar Councils.⁵⁵⁶ The Pakistan Legal Practitioners and Bar Councils Rules 1976 further lay down the procedure for disciplinary proceedings⁵⁵⁷ and the etiquettes to be followed by lawyers in Pakistan.⁵⁵⁸

However, despite the existence of an elaborate legal scheme for disciplinary actions against lawyers in Pakistan by Bar Councils and courts alike,⁵⁵⁹ the Disciplinary Committees are unsuccessful in achieving the required outcome.⁵⁶⁰ Though lawyers are subjected to the decisions of the Disciplinary Committees,⁵⁶¹ at times this is an exception to the many cases of violating legal canons.⁵⁶²

On 26 August 2017, the DLEC, Lahore and the European Union's (EU) Punjab Access to Justice Project launched the Lahore DLEC Pilot Project. Through this project, the EU is assisting in the support of existing and new legal aid agencies in Punjab. John Lipton, Team Leader of the EU Project, specified that the Project aims to train lawyers in providing legal aid through DLECs as well as developing a monitoring framework for DLECs.⁵⁶³

4.7 Inadequate Use of Alternatives to Pre-trial Detention

According to Penal Reform International, alternatives to imprisonment in Pakistan have their legal basis at the pre-trial stage in the form of bail, at the sentencing stage with fines and probation, and at the post-sentencing stage with parole.⁵⁶⁴ The alternative dispute resolution (ADR) mechanisms could be termed as the fourth category in this connection.

4.7.1 Denial of Bail

In Pakistan, the offences are classified as bailable or non-bailable. The CrPC's Schedule 2 Column 5 lists whether an offence is bailable or not. As an example, 'claiming property without right' under Section 207 of the PPC is bailable, whereas "robbery" under Section 392 of the PPC is non-bailable.

Bailable offences, under Section 496 of the CrPC, are those where the judge or officer in charge of a police station must grant bail.⁵⁶⁵ Here, the accused is released on the provision of money bail; or at the court/officer's discretion, at the execution of a bond for personal appearance without sureties.⁵⁶⁶

553 Section 10 and 15 of Legal Practitioners and Bar Councils Act 1973.

554 Section 39B of Legal Practitioners and Bar Councils Act 1973.

555 Section 41 of Legal Practitioners and Bar Councils Act 1973.

556 Section 41 and 42 of Legal Practitioners and Bar Councils Act 1973.

557 Chapter X of Pakistan Legal Practitioners and Bar Councils Rules 1976.

558 Chapter XII of Pakistan Legal Practitioners and Bar Councils Rules 1976.

559 Section 54 of Legal Practitioners and Bar Councils Act 1973.

560 Criminal Miscellaneous Application No. 86 of 2014 and Criminal Petition No. 240 of 2012 (Slamat Ali Chmma v State), < http://ljcp.gov.pk/court_cases/bar.pdf> last accessed 23 January 2017.

561 See PLJ 2006 TrC (SBC) 269, 2000 CLC 1999, 2016 SCMR 141 and 2002 MLD 1375.

562 See Criminal Miscellaneous Application No. 86 of 2014 and Criminal Petition No. 240 of 2012 (Slamat Ali Chmma v State), < http://ljcp.gov.pk/court_cases/bar.pdf> last accessed 23 January 2017.

563 Punjab Access to Justice Project, District Legal Empowerment Committee Pilot Lahore Launch Event, August 26, 2016, available at <http://eu-a2j.com/news-and-events/2017/08/26/district-legal-empowerment-committee-pilot-lahore-launch-event> (last accessed on December 22, 2017).

564 Penal Reform International, The probation and parole system in Pakistan, 2011.

565 Supreme Court of Pakistan, *Tariq Bashir v the State*, PLD 1995 SC 34. The police's power to grant bail under section 497 can be inferred from the case of Madar Ali alias Muhammad Ali Khan v State 1991 MLD 2564.

566 Vrinda Bhandari for Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014.

Under Section 497 of the CrPC, those accused of non-bailable offences may be released on bail⁵⁶⁷ unless there appears to be reasonable grounds for believing that they were guilty of an offence punishable with death, life imprisonment, or with ten years imprisonment. This is commonly understood as the prohibitory clause for granting bail under the said provision.⁵⁶⁸ Moreover, the court may order release on bail for any person under the age of 16 years old, women, or any sick or infirm person accused of a non-bailable offence.⁵⁶⁹

In a 2015 report, the Legal Aid Office, operating under the Committee for Welfare of Prisons in Sindh,⁵⁷⁰ commented that, firstly, it is commonly found in the trial court that bail is frequently denied to individuals who are accused of bailable offences; and, secondly, it is also a common practice in the trial courts to deny bail in offences which fall outside the prohibitory clause. Regarding the latter, the Supreme Court of Pakistan has repeatedly held that in offences which fall outside the prohibitory clause, grant of bail has to be considered favorably as a rule, and could only be declined in exceptional cases.⁵⁷¹ However, according to Legal Aid Office, in practice, bail is withheld as a means of punishment to the accused.⁵⁷² Senior members of the judiciary maintain that bail is denied primarily because of fear of repetition of offence and the chance of the accused absconding.⁵⁷³ A senior lawyer of the Islamabad Bar Council pointed out the need to create a mechanism within the existing legal system whereby some plausible sureties could be created for the production of the accused in courts as denial of bail is the common mechanism for ensuring their appearance in court. “We think that the only way to present an accused in the court is to have him/her arrested,” he said.⁵⁷⁴ For several offences this is a harsh measure as compared to the nature of the offence, resulting in longstanding detention.⁵⁷⁵

It was the opinion of a senior level lawyers during the Islamabad Bar Council consultations that overcrowding can be reduced by doing two things; firstly, by converting several non-bailable offences into bailable ones, and secondly, by reducing the list of cognizable offences, and turning offences of petty nature into non-cognizable offences. Explaining the first recommendation, he noted that certain crimes of comparatively less grave nature, that had been declared non-bailable by the law, increased pressure on the prisons in terms of UTPs. It would be better to have the list of non-bailable offences as short as it can be, and to not extend it unnecessarily as that increased the burden on prisons.

Explaining his second recommendation, he gave the example of section 107 CrPC, which deals with apprehending persons who are a threat to peace. He said that apprehending persons under section 107 and in cognizable cases also leads to increased UTPs, hence most offences which are cognizable in nature but of petty nature should be converted into non-cognizable offences so police cannot apprehend prisoners on minor charges.

Lastly, he made the observation that even after arrest, bail remains the right of the accused in most cases and the same should be implemented.⁵⁷⁶ Reinstating his first point, he said that the list of bailable offences still needs to be increased to ensure this right is granted wherever necessary.

567 Supreme Court of Pakistan, *Tariq Bashir v the State*, PLD 1995 SC 34.

568 Supreme Court of Pakistan, *Sohaila v the State*, 2017 SCMR 325. Supreme Court of Pakistan, *Abdul Hameed v the State*, 2016 SCMR 748.

569 Supreme Court of Pakistan, *Shoukat Ilahi v Javed Iqbal*, 2010 SCMR 966.

570 This committee was established by the Government of Sindh; See Professor Akmal Wasim and Barrister Haya Emaan Zahid, ‘Sindh Prisons: A Review of the Criminal Justice System’ *Annual Research Report 2015*, Legal Aid Office, Committee for Welfare of Prisons, 2015.

571 See: Supreme Court of Pakistan, *Tariq Bashir v the State*, PLD 1995 SC 34; Muhammad Tanveer v State PLD 2017 SC 733; Nooruddin v State 2011 SCMR 1319; Zafar Iqbal v Muhammad Anwar 2009 SCMR 1488; and Haji Muhammad Nazir v State 2008 SCMR 807

572 Legal Aid Office, *Sindh Prisons: A review of the criminal justice system*, 2015. Similar views were expressed by a senior lawyer Mr. Ishtiaq Khan during consultation with the lawyers of the KP Bar Council in Mansehra on December 14, 2017.

573 Comments made by a senior-level judge serving at the KP Judicial Academy (KPJA) during CODE PAKISTAN’s consultations with the judges at KPJA on October 20, 2017.

574 Comments made by a senior lawyer during consultations with lawyers of the Islamabad Bar Council in Islamabad on October 23, 2017.

575 Such as section 498-F of Pakistan Penal Code 1980 (bouncing of cheque); Barrister Shoaib Razaa, Islamabad Bar Council Consultations.

576 Comments made by a senior lawyer during consultations with lawyers of the Islamabad Bar Council in Islamabad on October 23, 2017.

In some cases, several persons are granted bail and can still not leave the prison due to non-payment of bail money.⁵⁷⁷ A lawyer pointed out in consultations with the Punjab Bar Council that judges often asked for surety in the form of property within their jurisdiction (e.g. in Lahore). People who come to courts from far-flung areas, or are only residing in a place for the time being due to their livelihood, do not have permanent properties in the cities and live on rent. Therefore, they cannot provide the surety, and hence avail bail, as required by the courts.⁵⁷⁸

The *National Judicial Policy*, drafted in 2009 and revised in 2012, reminded that in bailable cases, grant of bail is a statutory right. As for bailable offences, the policy states that, “to overcome the problem of congestion in jails, the court should exercise powers under Section 497 of the CrPC keeping in view the principles of grant of bail including the principle that if the offence does not fall under the purview of the prohibitory clause, grant of bail is a rule and refusal is an exception.”⁵⁷⁹ Some senior members of the judiciary are of the opinion that there should be no non-bailable offenses and that denial of bail should be an exception rather than a rule.⁵⁸⁰ They maintain that absconding of the accused could be avoided by improvement in community policing and investment in avenues that allow for monitoring and if necessary tracking of individuals let out on bail.⁵⁸¹

While some officials and, as discussed above, lawyers claim that courts are not very liberal in granting bails to UTPs because of the prevalence of absconding,⁵⁸² most of the senior-level criminal justice officials are of the opinion that the judiciary in Pakistan is liberal in the granting of bail to UTPs in bailable offenses.⁵⁸³ While the point about the courts being liberal in granting bail is contested by some lawyers,⁵⁸⁴ there are also procedural delays and resource constraints of the detainees that come in the way of benefitting from the grant of bail by the court. Even when the court orders the grant of bail to UTPs, several of them are unable to come up with monetary or other forms of sureties that are required to get out of the prison on bail.⁵⁸⁵ Sometimes the police would not produce the record for the grant of bail if they are not interested in the grant of bail to a particular detainee. Similarly, the litigants would try hard against the grant of bail to their adversary defendants. This becomes a problem particularly when the litigant is influential enough to exert his influence in the non-grant of the bail.⁵⁸⁶

According to *National Judicial Policy*, the Sessions Judges are required to visit prisons on monthly basis⁵⁸⁷ while the magistrates should visit more frequently⁵⁸⁸ where they can grant bail for relevant cases of petty nature on the spot. Although the process of prison visit is time consuming with the magistrate or the judge going from one barracks to another to listen to the cases of prisoners,⁵⁸⁹ some officials claim that with

577 Comments made by a senior lawyer during consultations with lawyers of the Islamabad Bar Council in Islamabad on October 23, 2017 and by a senior lawyer during consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017.

578 Comments made by a senior lawyer during consultations with lawyers of the Punjab Bar Council in Lahore on October 26, 2017.

579 National Judicial (Policy Making) Committee, *National Judicial Policy*, Revised edition, 2012, Section D, Paragraph 4 (ii).

580 Comments made by a senior-level judge serving at the KP Judicial Academy (KPJA) during CODE PAKISTAN's consultations with the judges at KPJA on October 20, 2017.

581 Comments made by a senior-level judge serving at KP Judicial Academy (KPJA) during CODE PAKISTAN's consultations with the judges at KPJA on October 20, 2017.

582 Interview with senior-level police officer in Lahore on May 25, 2017; Interview with a senior-level official of the Prisons Department of the Government of Sindh in Karachi on June 6, 2017.

583 It should be noted that bail under s. 496 is mandatorily granted by courts (as per law). It is the 497 bail which is at the discretion of the court, and that too, in specific and more serious offences. This is supported by case law from the superior judiciary in Pakistan; See PLD 1998 SC 1 (granting of bail is the rule in a civilized society); 2002 SCMR 442 (granting of bail is the rule and its refusal is an exception) 1990 PCrLJ 323 (the object of bail in s. 497 Code of Criminal Procedure 1898 is to protect innocent persons from being unnecessarily harassed by being arrested in cases initiated in malafide); 2008 SCMR 173, 2008 SCMR 1316, 2007 SCMR 843, *Himesh Khan v NAB* (PLD 2015 SC); Comments made by various senior-level criminal justice officials during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

584 Comments made by lawyers during consultations with the lawyers of the Islamabad Bar Council in Islamabad on October 23, 2017.

585 Comments made by a senior-level official of the Federal Judicial Academy during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

586 Comments made by a senior-level prosecutor of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

587 Judicial Policy 2009, Section D, Provision 8.

588 Time is not specified for magistrates; See Judicial policy Section D, Provision 8A.

589 Interview with the a senior-level official of the Home Department of Punjab in Lahore on May 24, 2017.

regular prison visits of the magistrates and judges alone, from 900 to 1,000 UTPs could easily be released as the offenses behind their detention are, in many cases, minor enough to allow them freedom from being locked up.⁵⁹⁰ Some officials claim that it is the duty of the judges to ensure the well-being of the prisoners. A former Law Secretary of KP said, “detainees kept in prisons should be seen as being in judicial custody and judges should take this responsibility seriously by making regular prison visits and making certain that prison authorities are fair in the treatment of their inmates.”⁵⁹¹

4.7.2 Excessive Bail Amounts

As noted by Penal Reform International, “many of those remanded in custody cannot afford the amounts of bail which have been determined by the courts. This leads to injustice and unnecessary punishment of poor people.”⁵⁹²

Section 498 of the CrPC states that the amount of bail bond will be fixed with “due regard to the circumstances of the case” and shall “not be excessive.”⁵⁹³ In a 2015 report, Legal Aid Office, operating under the Committee for the Welfare for Prisoners in Sindh,⁵⁹⁴ commented, “surety amounts are set at a level which makes them unaffordable for the common man.” Legal Aid Office had interviewed 1,348 persons who had been granted bail in Sindh. Out of them, 649 persons (48% of the persons who had been granted bail) did not submit the bail amount and were sent to prisons. For 344 out of these 649 persons (53%), the bail bond had been fixed at Rs.40,000 (\$364) or above, whereas the official minimal wage was Rs.12,000 (\$109) at the time of the study. 316 out of these 649 persons (49%) said they had a salary between Rs. 1,000 and Rs. 10,000 (between \$9 and \$91).⁵⁹⁵ The Society for the Protection of the Rights of the Child (SPARC) also commented that juveniles spent long period behind bars because they could not afford bail.⁵⁹⁶

Another factor which deters people from executing bail bonds is that although the surety (the person ensuring presence of accused in court) does not have to pay money upfront in most cases, and is only required to execute a bond to ensure that he is bound by the bond, in case the accused absconds then the surety has to pay the money specified in the bail bond. Furthermore, this money is recoverable through attachment of property by the courts. In case of non-payment, it is also possible for the surety to be put behind bars under Section 514 of CrPC. This deters people from executing bonds in favor of the accused even when payment of bonds is not mandatory on the spot. Furthermore, the accused are often not in a financially strong position to pay the surety the bond money.

4.7.3 Disposal of Cases Through Diversion for Juveniles

Based on official data as of October 1, 2017, an alarming 90 percent of juveniles in Pakistan’s prisons were UTPs. This figure indicated that despite the provisions of the Juvenile Justice System Ordinance 2 providing for establishment of juvenile courts for speedy adjudication of cases,⁵⁹⁷ the same was not implemented as it was not a mandatory requirement and was for the provincial governments to apply. Alternatively, the powers of the juvenile courts may be devolved upon the regular courts by the High Courts of each province,⁵⁹⁸ and it was also a requirement for the juvenile courts to decide cases within 4 months.⁵⁹⁹ This requirement, however, was overlooked where there were delays caused due to sufficient reasons.⁶⁰⁰

590 Interview with a senior-level prosecutor of KP in Peshawar on May 22, 2017.

591 Interview with a former Law Secretary KP in Islamabad on June 16, 2017.

592 Penal Reform International, *Reducing pre-trial detention: 10 points plan*, 2016.

593 Vrinda Bhandari for Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014.

594 This committee was established by the Government of Sindh; See Professor Akmal Wasim and Barrister Haya Emaan Zahid, ‘Sindh Prisons: A Review of the Criminal Justice System’ *Annual Research Report 2015*, Legal Aid Office, Committee for Welfare of Prisons, 2015.

595 Professor Akmal Wasim and Barrister Haya Emaan Zahid, ‘Sindh Prisons: A Review of the Criminal Justice System’ *Annual Research Report 2015*, Legal Aid Office, Committee for Welfare of Prisons, 2015.

596 U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Pakistan* available at <https://www.state.gov/documents/organization/265758.pdf> (last accessed on December 22, 2017).

597 Juvenile Justice System Ordinance 2000, Section 4. *The Provincial Government shall, in consultation with the Chief Justice of High Court, by notification in the official Gazette, establish one or more juvenile courts for any local area within its jurisdiction.*

598 Juvenile Justice System Ordinance 2000, Section 4(2).

599 Juvenile Justice System Ordinance 2000, Section 4(6).

600 See for example, Karachi High Court, *Sikandar v State*, 2006 PCrLJ 1648;

Once a child is placed in custody by the juvenile court, the child may be released on bail.⁶⁰¹ If it appears to the court that there are reasonable grounds for believing that the release on bail of the child will expose him to any danger or will bring him into association with any criminal, then in such cases the child is to be placed under the custody of a probation officer.⁶⁰² However, in no circumstances can the child be kept in a police station or in jail with adult prisoners.⁶⁰³

On February 14, 2018, the National Assembly passed the Juvenile Justice System Bill 2018.⁶⁰⁴ This bill provides for speedy disposal of cases through diversion using different methods including restitution of movable property, reparation of the damage caused, written or oral apology, participation in community service, payments of fines and cost of the proceedings, placement in juvenile rehabilitation centers and written and oral reprimand.⁶⁰⁵ Juvenile Justice Committees, headed by judicial magistrate, are mandated to dispose the case with one month upon referral from the police, prosecutor or the Juvenile Court.⁶⁰⁶

There are many advantages inherent in the process of diversion. For the offenders, they may avoid a criminal record and its negative consequences, benefit educationally particularly from the programmes designed to prevent re-offending, or be able to make direct amends to the victim and through this, may develop empathy and a sense of social responsibility. In restorative justice processes, victims often express higher levels of satisfaction with results. The prosecution service and courts benefit as well, since resources are freed to address more serious or complex cases and, where diversion programs are effective, the likelihood that the defendant will offend in the future is reduced.⁶⁰⁷

4.7.4 Alternate Dispute Resolution Mechanisms

Alternate dispute resolution (ADR) mechanisms are practiced in Pakistan at a small scale and with much debate. The International Crisis Group expressed some concerns in 2011 that, “police in some stations have experimented with alternative dispute resolution mechanisms for lesser offences to reduce the burden on the courts, but these have been ad hoc, lacked legal sanction and removed the role of the judge.”⁶⁰⁸ The different mechanisms for dispute resolution in Pakistan are discussed below.

4.7.4.1 Jirga Dispute Resolution

In several places in Pakistan, particularly in Balochistan and the FATA, the citizens resort to resolving their cases through informally constituted ADRs, such as *Jirgas* or Panchayats.⁶⁰⁹ The rural population finds *Jirgas* particularly convenient, because they are less time-consuming and inexpensive as opposed to the judicial system.⁶¹⁰ Regardless, it must be borne in mind that such informally constituted *Jirgas* do not have any constitutional or legal authority.⁶¹¹

On the other hand, when the destitute segments approach courts for their civil cases and justice is delayed, at times, they take the law in their own hands to avail a remedy, and thus, civil cases turn into criminal ones. Therefore, institutionalization of the ADRs has long been on the agenda of the government, not only to provide affordable justice to the poor but also to discourage informal *Jirgas* from issuing parallel decisions even in heinous crimes like rape and murder.⁶¹²

601 Juvenile Justice System Ordinance 2000, Section 10.

602 Juvenile Justice System Ordinance 2000, Section 10(3).

603 Juvenile Justice System Ordinance 2000, Section 10(3).

604 See the Juvenile Justice System Bill 2018.

605 Section 9, Juvenile Justice System Bill 2018.

606 Section 10, Juvenile Justice System Bill 2018.

607 *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., p. 102.

608 International Crisis Group, *Reforming Pakistan's Prison System*, Crisis Group Asia Report N°212, 12 October 2011.

609 See Dr. Muhammad Ramzan and Kashif Mahmood, 'Rationalizing Alternate Dispute Resolution in Pakistan' IJRS Vol. 6 Issue 1; 'Study on Informational Justice System in Pakistan' *Sindh Judicial Academy* p. 16.

610 Interview with two senior-level prisons officials of Balochistan in Quetta on June 8, 2017; Interview with two senior-level prosecutors of Balochistan in Quetta on June 9, 2017.

611 Samar Minallah, *Judiciary as a Catalyst for Social Change*, p.2. available at <http://www.supremecourt.gov.pk/ijc/Articles/9/2.pdf> (last accessed on December 22, 2017).

612 Umair Jamal, 'Pakistan's Parallel legal system' *Pakistan Today*, February 12, 2017.

4.7.4.2 Reconciliation committees in the Local Government Act

There was a provision of *Musalihati Anjumans* (Reconciliation Committees) in the Local Governments Act, providing for some qualifications for its members (three male and one female).⁶¹³ Those *Musalihati Anjumans*, however, were nominated in advance in different cases and would not be engaged after a first information report (FIR) is lodged with the police.⁶¹⁴

4.7.4.3 Conciliation Courts Ordinance

The Conciliation Courts Ordinance 1961 provides for establishment of Conciliation Courts for dispute resolution outside of courts.⁶¹⁵ Cases that may be referred to Conciliation Courts have been enumerated in Schedule I of the Ordinance, entailing both civil and criminal cases.⁶¹⁶

4.7.4.4 Shar'i Nazam-e-Adl Regulation 2009

The *Shar'i Nazam-e-Adl Regulation 2009* (applicable only in PATA),⁶¹⁷ Regulation 13 also provides for referral of civil and criminal matters outside of courts for settlement with mutual consent of the parties.

4.7.4.5 Small and Minor Claims Offences Ordinance

In Small and Minor Claims Offences Ordinance, 2002, mechanism is provided for 'amicable settlement'.⁶¹⁸ This can be at any stage of proceedings, and with consent of the parties, that the court may refer the matter for any form of ADR, e.g. mediation, arbitration, conciliation etc.⁶¹⁹ However, non-compoundable cases may not be referred to ADR and neither may cases that the settlement of which outside of courts is considered against the public policy or interest of the state.⁶²⁰

4.7.4.5 Section 89A of CPC and Section 345 of CrPC

Referral of civil matters to ADR may find its legal authority in S. 89A of CPC as well.⁶²¹ As for criminal matters, it was opined that perhaps S. 345 CrPC could include such mechanisms, however, others remained skeptical as it only recognizes compromise and not referral of cases to ADR. That said, it is a positive initiative, even though the scope of these mechanisms is limited and in most cases, cannot be resorted to during the trial or even after an FIR is lodged with the police.⁶²²

613 The KP Local Government Act 2013; The Punjab Local Government Act 2013; The Sindh Local Government Act 2013; The Balochistan Local Government Act 2010.

614 Shared by a senior-level official of the Federal Judicial Academy during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

615 S 3-9 of the Conciliation Courts Ordinance 1961.

616 See Schedule I of the Conciliation Courts Ordinance 1961.

617 Comments made by a senior-level judge of the Islamabad Judiciary during consultation with the judiciary organized by NACTA in Islamabad on December 19, 2017. Regulation 13, Shariah Nizam-e-Adal Regulation 2009: *Any civil or criminal case, subject to mutual consent of parties, may be referred to Musleh or, as the case may be, musleheen before recording of evidence, either on the agreement of the parties regarding the names of such musleh or musleheen, or in case of their disagreement, to such musleh or musleheen whose names appear on the list maintained by the court for such purpose: Provided that the cases falling within the purview of Hudoob laws and cases by or against the Federal or Provincial Government or any statutory body or persons under legal disabilities shall not be referred for sul'h.*

618 S 14-15 Small Claims and Minor Offences Courts Ordinance 2002.

619 S 14 Small Claims and Minor Offences Courts Ordinance 2002.

620 S 14 Small Claims and Minor Offences Courts Ordinance 2002.

621 Section 89A, Civil Procedure Code 1908: *All courts shall, in cases of civil or commercial nature at any stage of the case, preferably at the initial stage require the parties to have resort to one of alternative dispute resolution methods such as mediation or conciliation.*

622 In criminal cases, only compoundable offences may be referred to for ADR, and not other offences. Those offence in which the law authorises private compromise between the parties, these offences have been mentioned in the second schedule to the Code of Criminal Procedure 1898 (CrPC). Under the special laws the law itself provides as to which offence is compoundable and which one is not. It has been held by the Superior Courts of Pakistan that court could consider compromise even in non-compoundable offences which were not affecting the community at large (PLD 2006 SC 53 – 2016 MLD 48 LHC).

The ADR centres operating in Punjab were opined to be operating under the CPC and CrPC provisions.⁶²³ On June 1, 2017, the Provincial Government of Punjab opened its first ADR centre in Lahore to handle disputes of low intensity outside the court, and was planning to open more centres across the province. The ADR in Lahore was opened in collaboration with the World Bank.⁶²⁴ A judge from Punjab maintained that courts in Punjab have been directed to refer parties for ADR where cases qualify for resolution through alternative modes.⁶²⁵ He recalled that these cases referred to ADR were proving to be exceedingly successful.⁶²⁶ Between June 2017 and January 2018, 13,638 cases were referred for ADR by the Punjab courts, out of which 8564 were successful, giving it a 62 percent success rate.⁶²⁷ He even maintained that several murder cases and other criminal compoundable offences were among those that were mediated,⁶²⁸ even through online mediation (through Skype and WhatsApp) for people who were unable to travel.⁶²⁹

4.7.4.7 Police Dispute Resolution Councils

Dispute Resolution Councils are also operative under the KP Police Act 2017.⁶³⁰ The provincial police officer may constitute DRCs at sub-divisional, district or police station level for amicable settlement of petty nature cases outside of courts.⁶³¹

4.7.4.8 ADR Act 2017

On May 30, 2017, the Parliament of Pakistan passed the ADR Act 2017 for out-of-court settlements, through arbitrators appointed by trial courts with the consent of parties.⁶³² Under the ADR Act, 2017, if any party disagrees with the decision of the “neutral” chosen by the court from a panel notified by the government, the case will be heard by the court.⁶³³ After the parties convey their consent, the court will issue a decree in terms of the settlement between the parties.⁶³⁴ The ADR Act 2017, however, is only applicable to Islamabad.⁶³⁵

4.8 Obstacles and Delays in Accessing Justice

According to the *Federal Ombudsman’s Report*, “the state bears huge cost due to delays in adjudication of criminal cases in courts. The delay in court processes results in unnecessary incarcerating of some of the accused who ultimately are acquitted.”

Figure 39 on the next page illustrates the criminal case timeline for prisoners from the time of arrest until a conviction/acquittal is pronounced in court, indicating the prescribed period and legal remedies available for each step in the criminal justice process.

623 Comments made by a senior-level judge of the Punjab Judiciary during consultation with the judiciary organized by NACTA in Islamabad on December 19, 2017.

624 ‘ADR Centers to help courts in providing speedy justice in Punjab’, Pakistan Today, < <https://www.pakistantoday.com.pk/2017/05/30/adrs-to-help-courts-in-providing-speedy-justice-in-punjab/>> last accessed 14 February 2018.

625 Comments made by a senior-level judge of the Punjab Judiciary during consultation with the judiciary organized by NACTA in Islamabad on December 19, 2017.

626 Comments made by a senior-level judge of the Punjab Judiciary during consultation with the judiciary organized by NACTA in Islamabad on December 19, 2017.

627 Lahore High Court, ‘Consolidated ADR Report from 1-6-2017 to 12-1-2018’ accessed at <http://lhc.punjab.gov.pk/system/files/ADR%20Consolidated%20till%2012.01.2018.pdf> last accessed 15 February 2018.

628 4740 criminal cases were referred for ADR between June 2017 and January 2018 in Punjab. See Lahore High Court, ‘Consolidated ADR Report from 1-6-2017 to 12-1-2018’ accessed at <http://lhc.punjab.gov.pk/system/files/ADR%20Consolidated%20till%2012.01.2018.pdf> last accessed 15 February 2018.

629 Comments made by a senior-level judge of the Punjab Judiciary during consultation with the judiciary organized by NACTA in Islamabad on December 19, 2017; the online ADR point was also seconded by another senior-level judge of the Punjab Judiciary during consultation with the judiciary organized by NACTA in Islamabad on December 19, 2017 who added that online ADR was also available for parties to the dispute not residing in Pakistan.

630 Section 73 of KP Police Act 2017.

631 Section 73 of KP Police Act 2017.

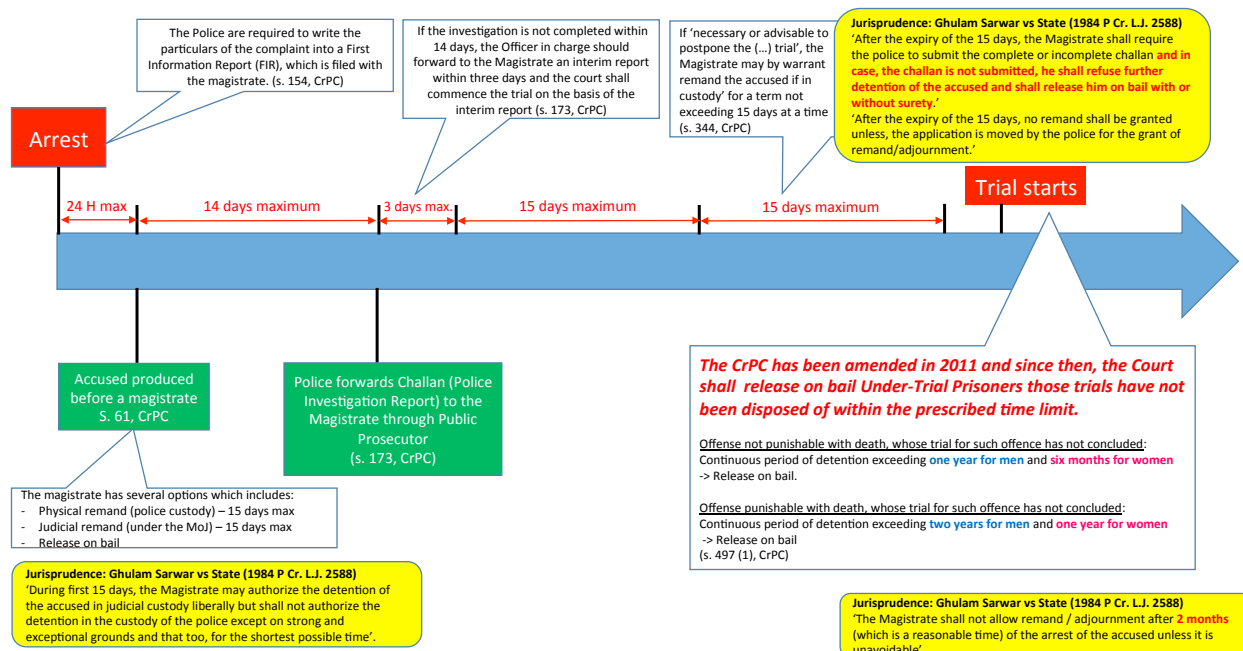
632 Section 3 and Section 14 of Alternative Dispute Resolutions Act 2017.

633 Sections 11 and 12 of Alternative Dispute Resolutions Act 2017.

634 Section 10 (5) of Alternative Dispute Resolutions Act 2017.

635 Section 1(2) of Alternative Dispute Resolutions Act 2017.

Figure 39: Criminal Case Timeline for Prisoners



4.8.1 Non-Production of the Accused before the Magistrate within 24 Hours

Under Section 154 of the CrPC as soon as a crime has been committed, a First Information Report (FIR) has to be lodged and the accused must be presented to the Magistrate within 24 hours after the arrest. The practice, however, in most cases is contrary to the law.⁶³⁶

4.8.2 Extension of the Remand in the Absence of the Accused

According to Section 344 of the CrPC, if necessary or advisable, the magistrate may postpone the trial and “remand an accused person to custody... for a term not exceeding 15 days at a time.”

The *National Judicial Policy* (revised edition 2012) noted, “No judge should grant remand in the absence of the accused and while granting the remand should strictly adhere to the relevant provisions of the Code of Criminal Procedure and principles laid down in the Hakim Mumtaz case (PLD 2002 SC 590).”⁶³⁷ The Policy further states that in “each district at least one Judicial Magistrate should be designated to visit jails and grant judicial remand [for those accused] who could not be produced before the Court on account of strike/ law and order situation.”⁶³⁸ As excessive strikes by lawyers contribute to delay in hearings and thereby, release of UTPs,⁶³⁹ this measure, if implemented would reduce the delays caused by such strikes. There is also a need to control the strikes by lawyers, now conducted on a frequent basis.⁶⁴⁰

In addition, the *National Judicial Policy* strongly advocates for regular visits of District and Sessions Judges to the prisons; below are the excerpts.

The District and Sessions Judges should regularly visit Jails on a monthly basis to hear the complaints of the prisoners and issue directions for resolution of their problems/difficulties and may release the prisoners involved in petty offenses.⁶⁴¹

636 See Bashiran Bibi v SHO, Police Station Kot Sabzal 2013 MLD 1359; Peter G. Strasser, *The Evolving Pakistan Criminal Justice System: A Study of the Raymond Davis Matter*, 2014.

637 National Judicial (Policy Making) Committee, *National Judicial Policy*, Revised edition, 2012, Section D, Paragraph 8.

638 National Judicial (Policy Making) Committee, *National Judicial Policy*, Revised edition, 2012, Section D, Paragraph 8-A.

639 Comments made by Advocate Hasan Khan during consultations with lawyers of the Islamabad Bar Council in Islamabad on October 23, 2017.

640 Comments made by a senior lawyer during consultations with lawyers of the Islamabad Bar Council in Islamabad on October 23, 2017.

641 National Judicial (Policy Making) Committee, *National Judicial Policy*, Revised edition, 2012, Section D, Paragraph 8 (i).

During Jail visits the Judicial Officers should ensure that cases be decided in presence of prosecutors and defence counsels, if any. Alternatively, the D&SJ [District and Sessions Judges] may call the list of prisoners involved in petty crimes together with *Challan* for entrusting the same to a Magistrate for disposal.⁶⁴²

During one of the consultations conducted for this report, a former District Judge admitted that he never saw the accused when he signed the Jail Warrant to extend the detention on remand every 15 days.⁶⁴³ Under common practice, the detainees were physically brought to court, but remained in the lock-up in the court premises while the Magistrate systematically signed the Jail Warrants. He said that it was the least of his priority. Other activities such as listening to a witness or an accused who chose to confess could take one to several hours, and these activities were time-consuming.

4.8.3 Frequent Postponement of Trial

In 2014-2015, the Sindh Legal Aid Office interviewed Judges and UTPs in Sindh to understand the reasons for adjournment of trials. Some of the primary causes were identified as prosecution asking for repeated adjournments, defense counsel being absent from hearings, and non-production of witnesses.⁶⁴⁴

4.8.3.1 Adjournments by Prosecution

Delays are caused by the prosecution by delaying submission of challan under Section 173 of CrPC, often due to lack of cooperation between police and prosecution.⁶⁴⁵ Furthermore, the prosecution also seeks frequent adjournments due to non-production of witnesses, sometimes due to lack of resources within their own department.⁶⁴⁶

4.8.3.2 Non-production of witnesses

One reason for non-production of witnesses is lack of willingness of people to appear in courts for giving evidence. People who are not directly linked to one of the parties (family, close friends, etc.) rarely accept to become witnesses, fearing retaliation from the other party.⁶⁴⁷ The non-production of witnesses includes the non-production of police witnesses. In 2017, Sindh Police made an analysis on the performance of their own criminal justice system and found that “around 54% of all police witnesses were not examined by the courts and about 40% of all case properties not exhibited, although these were available with investigating officers and experts.”⁶⁴⁸

Regarding witnesses other than the police, the Pakistan Institute of Legal Development and Transparency (PILDAT) commented that the number of dates of hearing that witnesses are called upon to attend caused loss of time and money; witnesses may be intimidated by the accused and are offered little or no protection.⁶⁴⁹

The UN Special Rapporteur’s Report on the independence of judges and lawyers also noted that “the lack of victim and witness protection mechanisms also has a strong negative effect on the efficiency of the justice system, especially regarding criminal cases. Setting up appropriate victim and witness protection mechanisms represents a challenge as it requires financial and technical resources, as well as strong political leadership. Notwithstanding, this is a basic requirement indispensable to any functioning criminal justice system.”⁶⁵⁰

642 National Judicial (Policy Making) Committee, *National Judicial Policy*, Revised edition, 2012, Section D, Paragraph 8 (ii).

643 Comments made by a former judge of the KP Judiciary during consultation with the judiciary organized by NACTA in Islamabad on December 19, 2017.

644 Legal Aid Office, *Sindh prisons: A review of the criminal justice system*, 2015.

645 Interview with Prosecutor General of the High Court of Balochistan Mr. Amir Zaman Jomezai and Deputy Prosecutor General of the High Court of Balochistan Mr. Naeem Kakar in Quetta on June 9, 2017.

646 Vrinda Bhandari for Open Society Justice Initiative, *Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh*, 2014.

647 Legal Aid Office, *Sindh prisons: A review of the criminal justice system*, 2015.

648 Dawn, *Sindh police recommend steps to improve criminal justice system*, 19 June 2017.

649 PILDAT, *Prosecution Services in Punjab and Sindh*, October 2015.

650 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaut, A/HRC/23/43/Add. 2, 4 April 2013.

The non-production of police witnesses was a recurring issue discussed during the district-level Criminal Justice Coordination Committee in Peshawar. The SSP (Senior Superintendent of Police) Investigation said that the salaries of 456 police officers, who were not appearing as witnesses in criminal trials, were blocked in October-November 2015. Once these witnesses appeared to give evidence in cases, their salaries were released. Both SSP Investigations and the District and Sessions Judge were convinced that this strict measure would ensure the presence of police witnesses and reduce delay in cases.⁶⁵¹

The Sindh Witness Protection Act (2013) provides for the security of witnesses in criminal cases.⁶⁵² The Act, however, was not immediately implemented. In 2017, after four years, the Sindh Government was planning to establish a Witness Protection Unit and was in process of hiring a consultant for the unit. According to Daily Times, the Sindh Witness Protection Act serves as a precedent to other provinces as well, as no such law exists either at the provincial or the federal level in Pakistan.⁶⁵³

In Punjab, a few Model Courts have been set up where a model environment is created with judges given a set of few cases a day, instead of hundreds of them.⁶⁵⁴ As a result, 20 cases a month are being disposed of instead of 2-3 murder cases a month. Civil suits are also decided in six months and civil appeals in 60 days in such courts. The Model Courts are deciding murder cases within a predicted timeline based on a tentative timeline prepared in advance.⁶⁵⁵ The model needs further exploration for application elsewhere as a best practice in the field.

4.8.3.3 The Role of Lawyers in Delaying Adjudication of Cases

Defense counsels contribute to the postponement of trials as follows:

It is quite simple for defense counsel, in order to ensure an acquittal of a client, to delay the case until the evidence is lost or the witnesses become unavailable. The judges acquiesce, and it is thereby the lawyers who effectively have control of the courts' calendars. Thus, trials routinely take years to complete.⁶⁵⁶

The *National Judicial Policy* (drafted in 2009, revised in 2012) noted:

In criminal cases, non-representation of accused by Counsel is also a source of delay in trial, therefore, the Chief Justices of High Courts, in consultation with (...) the Provincial Bar Councils or the Pakistan Bar Council, may appoint a lawyer in such cases to avoid delay. In this regard a list of the advocates should be maintained in each district so that they can be appointed for provision of legal aid to accused person who cannot afford to hire the services of Counsels.

Lawyers who declare strikes against the courts were also a major reason for delays in trial.⁶⁵⁷ The practice of lawyers boycotting the courts started in 2007, when through a strike, the lawyers successfully reinstated a removed Chief Justice within a four-month period. Since then, it has also been used as a delaying tactic.⁶⁵⁸

The role of lawyers in slowing down the judicial process was also highlighted by some government officials, who estimated that around 25 strikes are held by lawyers every year.⁶⁵⁹ While lawyers have a right to protest, the exercise of this right should not in turn violate the higher rights of prisoners to a speedy trial, a day in court and his freedom.

651 Khyber Pakhtunkhwa Judicial Academy and UNDP, HYPERLINK «<http://www.kpja.edu.pk/sites/default/files/digitalibrary/Report%20-%20Criminal%20Justice%20Cooridation%20Committees-KPJA%20Dec-2015.pdf>» *Research evaluating the functioning of the Criminal Justice Coordination Committees in Khyber Pakhtunkhwa*, December 2015.

652 PILDAT, *Legislative brief: Sindh Witness Protection Act 2013*, December 2015.

653 Daily Times, *Where is the Sindh Witness Protection Act 2013?*, 12 March 2017.

654 District model courts to ensure justice, CJP, LHC, Dawn, <https://tribune.com.pk/story/1599967/1-district-model-courts-ensure-justice-cjp-lhc/> last accessed 14 February 2018.

655 Information about the Model Courts of Punjab shared by a senior-level judge of the Punjab Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017.

656 Peter G. Strasser, *The Evolving Pakistan Criminal Justice System: A Study of the Raymond Davis Matter*, 2014.

657 Comments made by various lawyers during consultations with lawyers of the Punjab Bar Council in Lahore on October 26, 2017 and Islamabad Bar Council in Islamabad on 23 October 2017.

658 Comments made by various lawyers during consultations with lawyers of the Punjab Bar Council in Lahore on October 26, 2017.

659 Comments made by a senior-level prosecutor of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

The poor quality of legal education producing substandard lawyers was also identified as a reason for the delays.⁶⁶⁰ At times, the quality of the legal counsel provided to indigent detainee is so poor that the judges assume majority of the responsibility themselves. A prison official recalled a case of a death row inmate in Multan High Court where the lawyer assigned to a detainee was so ill-prepared that he was mostly ignorant of the case facts in the face of the questions of the judge. When the judge asked the concerned lawyer about his lack of preparation, the lawyer simply replied that he did not have the time to read the case file.⁶⁶¹

Sometimes detainees cannot even afford the fee of a lawyer to represent them in courts to secure themselves an early bail. The provincial Law Departments give funds to the respective bar councils for the upkeep of the bar libraries as well as for providing defense lawyers for poor detainees, but the system is not very effective because of the amount paid to the lawyers per case.⁶⁶²

The KP government recently raised the payments to Defense Counsels for poor detainees to Rs. 25,000, which, according to some, has helped in improving the quality of legal assistance provided to indigent detainees because better lawyers are now taking their cases because of the increased amount involved.⁶⁶³ On the other hand, however, some lawyers still believe that the remuneration for the lawyers is still not up to the level desired by better lawyers.⁶⁶⁴ Some provincial governments have also entered into partnerships with non-government organizations (NGOs) to help indigent detainees.⁶⁶⁵

In KP, the District Legal Empowerment Committee was constituted to administer and manage funds for the purpose of provision of legal aid to the deserving litigants. The committees, are virtually ineffective because of lack of funds.⁶⁶⁶ Some judges even call for creation of defense benches similar to the prosecution benches in district courts.⁶⁶⁷

Although category-wise specialization is not mentioned on the licenses of lawyers, some judges maintain that a practice of registration of lawyers on the basis of specialty would contribute to the speedy disposal of cases by diminishing the monopoly of a few senior lawyers in each district who are always ready to accept briefs in civil/criminal/family cases and then request for their adjournment on grounds of being overburdened, directly contributing to the backlog of cases in courts.⁶⁶⁸ To implement such a strategy in the long-run, however, the role of Bar Councils and law colleges would remain crucial as they can offer specialized courses in law based on interest from the very beginning.⁶⁶⁹ Some judges even maintain that categorization of lawyers could not only be based on specialization but also court-wise as this would be beneficial for the purpose of ensuring attendance of lawyers in courts, because of senior lawyers prioritizing cases in higher courts request for adjournments of cases in lower courts.⁶⁷⁰

660 See Dr. Faqir Hussain, "Continuing Legal/Judicial Education in Pakistan," *Centre of Excellence for Law and Judicial Education, Federal Judicial Academy*; Professor Ahmed Ali Khan, "Legal Education in Pakistan - A Review" available at <http://www.supremecourt.gov.pk/ijc/Articles/6/1.pdf> (last accessed on December 22, 2017); Comments made by a senior-level official of the Federal Judicial Academy during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017; Comments made by senior lawyers during consultation with the lawyers of the KP Bar Council in Mansehra on December 14, 2017.

661 Interview with a senior-level prisons official of Punjab in Rawalpindi on May 19, 2017.

662 Comments made by a senior-level official of the Federal Judicial Academy and a senior-level prisons official of the Government of Sindh during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

663 Comments made by a senior-level prosecutor of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

664 Comments made by various lawyers during consultation with the lawyers of the KP Bar Council in Mansehra on December 14, 2017.

665 Comments made by a senior-level official of NACTA during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

666 Comments made by a senior-level prisons official of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

667 Comments made by a senior-level judge of Islamabad Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017. The point, however, was contested by a senior-level judge of the Sindh Judiciary during the same consultation on the ground that the UTPs might not always want to accept services of lawyers provided by the courts.

668 Comments made by a senior-level judge of the Punjab Judiciary and a senior-level judge of the Sindh Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017.

669 Comments made by a senior-level judge of the Punjab Judiciary and a senior-level judge of the Sindh Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017.

670 Comments made by a senior-level judge of Islamabad Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017.

4.8.4 Prescribed Time Limit for Pre-Conviction Detention Not Respected

The right to fair trial is enshrined in Article 10A of the Constitution of Pakistan, and to 'ensure inexpensive and expeditious justice' is a principle of policy for the state to follow.⁶⁷¹ After the 2011 amendment to the CrPC, Courts are mandated to release UTPs on bail where their trials have not been disposed of within the prescribed time limit.⁶⁷² Under this provision:

- regarding an offense not punishable with death, whose trial for such offense has not concluded: if the continuous period of detention exceeds one year for men and six months for women, the accused should be released on bail;
- regarding an offense punishable with death, whose trial for such offense has not concluded: if the continuous period of detention exceeding two years for men and one year for women, the accused should be released on bail; unless the delay in the trial of the accused has been occasioned by an act or omission of the accused.

The juvenile UTPs whose trials have not been disposed within the prescribed time limit should also be released on bail.⁶⁷³

- Regarding an offense punishable with death: if the accused juvenile has been detained for a continuous period exceeding one year, the juvenile should be released on bail.
- Regarding an offense punishable with life imprisonment: if the accused juvenile has been detained for a continuous period exceeding six months, the juvenile should be released on bail.
- Regarding an offense not punishable with death or life imprisonment: if the accused juvenile has been detained for a continuous period exceeding four months, the juvenile should be released on bail.

The LJCP compiled data on the number of UTPs in the four provinces according to their length of detention. It found that 8,955 prisoners out of 52,920 UTPs (i.e., 17% of all UTPs) were detained for more than two years (see Figure 6). It must be noted that Balochistan reported that no UTP is detained in the province for more than a year.

The *National Judicial Policy* gave additional time limits which are stricter than what was prescribed by the CrPC. It mentions that 'all criminal cases punishable with imprisonment for up to 7 years registered after 1st January 2009 be kept on fast track for disposal within 6 months'; and 'all criminal cases punishable with imprisonment from 7 years and above including death cases shall be decided within a period of 1 year'.⁶⁷⁴

In the landmark case of *Ghulam Sarwar v the State*,⁶⁷⁵ the Lahore High Court held that 'the Magistrate shall not allow remand/adjournment after two months -- which is a reasonable time- of the arrest of the accused unless it is unavoidable'. This judgment was also passed to ensure that undue delays were not caused in disposal of cases. This judgment is binding on the courts subordinate to the Lahore High Court, i.e. the subordinate courts to said High Court, and holds persuasive value for other high courts and lower courts.⁶⁷⁶

671 Article 37 (d) of the Constitution of Islamic Republic of Pakistan 1973.

672 Section 497(1), Code of Criminal Procedure 1898. The case of *Adnan Prince v the State*, PLD 2017 SC 147 also expressed that "(r)ecord showed that three years and three months had passed since arrest of accused. Delay in conclusion of trial had mainly been caused by the prosecution or the court itself. Even if the adjournments sought by the accused due to the absence of his counsel or his non-availability were excluded, his total detention during the trial was more than two years. Despite lapse of three years and three months examination in chief of only a single witness had been recorded during trial. Speedy trial was the right of every accused person, therefore, unnecessary delay in trial of such cases would amount to denial of justice. Accused had made out a case for grant of bail due to inordinate delay in conclusion of his trial. Accused was granted bail accordingly."

673 Section 10 (7), Juvenile Justice System Ordinance, 2000)

674 *National Judicial Policy* 2009, as amended in 2012, provision 9 and 10.

675 Lahore High Court, *Ghulam Sarwar v the State*, 1984 PCrLJ 2588.

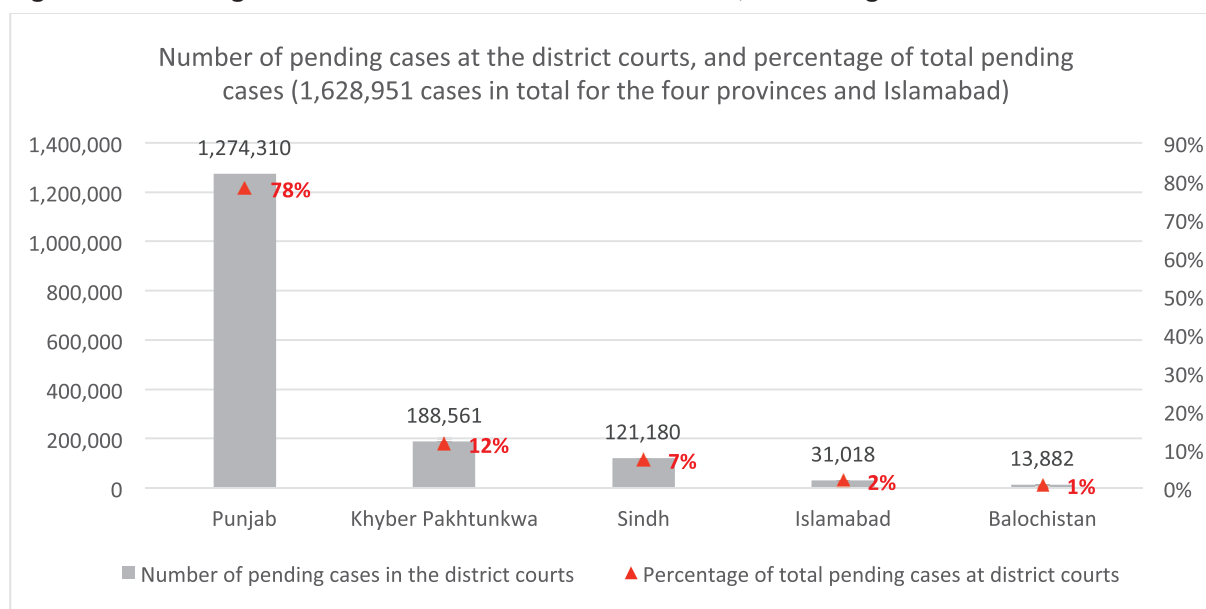
676 Article 201, Constitution of the Islamic Republic of Pakistan 1973.

Thus, if the prescribed time for affording bail to those who had been lingering in prison for more than the prescribed time limit for pre-conviction detention, Pakistan's prisons could still be decongested by about 17 percent of its total prison population, and that is about 9,000 prisoners, based on the figures published on the website of the Law and Justice Commission of Pakistan as of November 2017.⁶⁷⁷

4.8.5 Backlog of Cases

Lack of judges, poor or non-existent training for judges and need for more courts exacerbate the problem that contributes to prison overcrowding.⁶⁷⁸ The Human Rights Commission of Pakistan (HRCP), in its report on the State of Human Rights (2016), reported a very high number of backlog of cases at the district courts. In the four provinces and in Islamabad Capital Territory, there was a total of 1,628,951 pending cases at the District Courts, out of which 78% were in Punjab (see Figure 40).⁶⁷⁹

Figure 40: Pending Cases in Islamabad and the Provinces, according to HRCP



The backlog of cases has been hampering the efficiency of the criminal justice system for years. In 2012, the UN Special Rapporteur on the independence of judges and lawyers noted:

Throughout Pakistan there exists a considerable backlog of cases at all levels of the judiciary, but especially in the lower courts. The number of pending cases per judge is alarmingly high and contributes to further delays in the delivery of justice. On average, judges apparently have 200 cases to adjudicate per day – sometimes up to 300 cases. This situation is humanly impossible to deal with.⁶⁸⁰

In line with the National Judiciary Policy, old cases may be decided by prioritization of the same according to the following categorization:⁶⁸¹

A. Old cases Category-I

- i) Cases filed up to the year 2000 as the oldest category.
- ii) Cases filed from 2001 to 2005 as older category
- iii) Cases filed from 2006 to 31st December 2008 as old category.

⁶⁷⁷ Law and Justice Commission of Pakistan, available at http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf, (last accessed on February 14, 2018).

⁶⁷⁸ Comments made by a senior lawyer during consultations with lawyers of the Sindh Bar Council in Karachi on November 22, 2017.

⁶⁷⁹ Human Rights Commission of Pakistan, *State of Human Rights*, 2016.

⁶⁸⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/23/43/Add. 2, 4 April 2013.

⁶⁸¹ *National Judicial Policy* 2009, as amended in 2012, Part D, provision 9A.

B. Old cases Category-II

Cases instituted from 1st January 2009 to 28th February.⁶⁸²

However, the recommendations had limited effect, as illustrated by the number of pending cases in 2016. It is unclear whether this recommendation to prioritize old cases was backed up by a national backlog reduction program, which would provide clear guidance to reduce the existing backlog, as adopted by several former Yugoslav countries. One of them, Kosovo, had adopted a National Backlog Reduction Strategy in 2010.⁶⁸³ In 2015, USAID, in its Effective Rule of Law program, supported the courts in Kosovo in reducing the backlog by 16% in six months.⁶⁸⁴

In Punjab, a few Model Courts have been set up where a model environment is created with judges given a set of few cases a day, instead of hundreds of them.⁶⁸⁵ As a result, 20 cases a month were being disposed of instead of two to three murder cases a month. Civil suits were also decided in six months and civil appeals in 60 days. The Model Courts were deciding murder cases within a predicted timeline based on a tentative timeline prepared in advance.⁶⁸⁶ The model needs further exploration for application elsewhere as a best practice in the field.

4.8.6 Human Resource Constraints of the Judiciary

It is important to note that the causes of prison overcrowding discussed in this report so far also contribute to the overburdening of the judiciary. Thus, if these causes are addressed, the human resource constraints of the judiciary may diminish and even cease to be an issue.

In 2014, there were 1.8 million pending cases in courts.⁶⁸⁷ One of the main causes of the judicial delays in Pakistan is that there are not enough judges in the country.⁶⁸⁸ In Pakistan, there were 11 judges per million population,⁶⁸⁹ which is far less than the 50 judges per million standard that India's Law Commission was considering to adopt in 2016,⁶⁹⁰ and far lower than the ratio of 107 per million judges in US, 51 in UK and 75 in Canada.⁶⁹¹ In Punjab alone, there are 1.3 million pending court cases, while the number of judges in the provinces is only 1,700.⁶⁹²

In 2012, the UN Special Rapporteur on the independence of judges and lawyers noted that, "the insufficient number of judges at the first instance level also seriously delays the delivery of justice and therefore negatively affects the public's confidence in the judiciary."⁶⁹³ The efficiency of the criminal justice system was hampered by the insufficient number of judges and by the high number of cases to process. Daily court dockets often contain hundreds of cases, making it impossible for parties to know which matters will actually proceed on any given day."⁶⁹⁴

682 *National Judicial Policy* 2009, as amended in 2012, Part D, provision 9A.

683 Regional Cooperation Council, *Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries*, Final Report, 2016.

684 USAID Kosovo, *SUCCESS STORY – Kosovo Courts Reduce Backlog*, June 2015.

685 District model courts to ensure justice, CJP, LHC, Dawn, <https://tribune.com.pk/story/1599967/1-district-model-courts-ensure-justice-cjp-lhc/> last accessed 14 February 2018.

686 Information about the Model Courts of Punjab shared by a senior-level judge of the Punjab Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017.

687 See: *Judicial Statistics of Pakistan 2014*, Law and Justice Commission of Pakistan. Also discussed in Comments made by a senior-level official of the LJCP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

688 Faisal Siddiqi, 'Is speedy Justice Possible' *Dawn*, May 3, 2016.

689 Comment made by a senior-level official of the LJCP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017; See also, *Judicial Statistics of Pakistan 2014*, Law and Justice Commission of Pakistan. In 2012, this was reported to be 12 judges to one million by the IMF.

690 The 50 judges per million standard was quoted by LJCP representative as a potential standard for Pakistan. See also: Pradeep Thakuri, 'India has 17 judges for a million people: 5000 vacant posts' *the Times of India* 17 April 2016.

691 Pradeep Thakuri, 'India has 17 judges for a million people: 5000 vacant posts' *the Times of India* 17 April 2016.

692 Comments made by a senior-level official of the LJCP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017. See also, *Judicial Statistics of Pakistan 2014*, Law and Justice Commission of Pakistan.

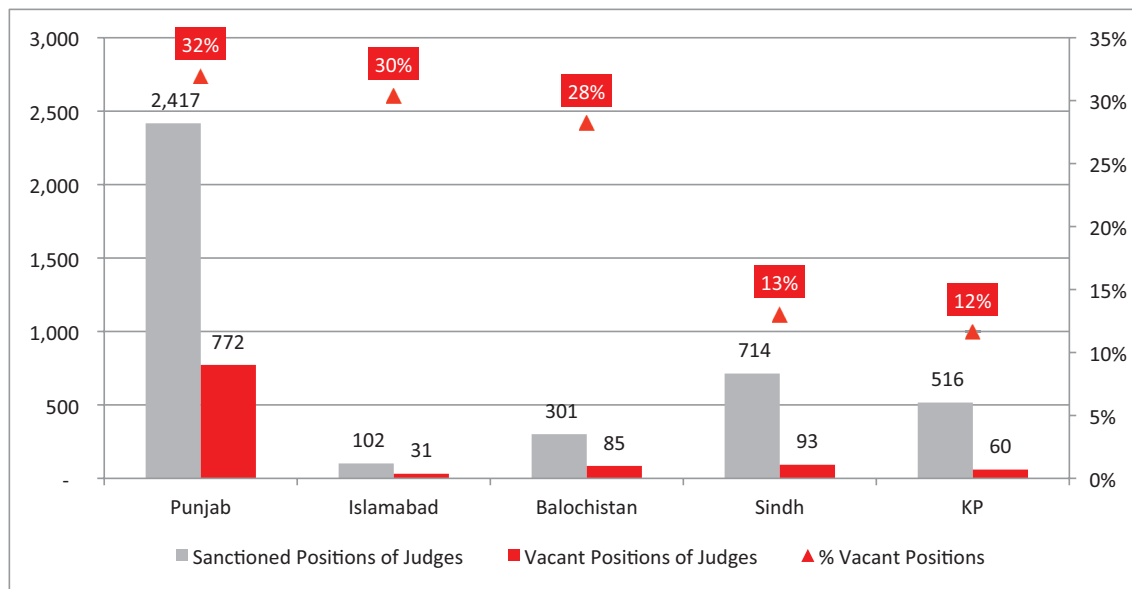
693 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaut, A/HRC/23/43/Add. 2, 4 April 2013. Accessed at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=51b9a0844>.

694 Peter G. Strasser, *The Evolving Pakistan Criminal Justice System: A Study of the Raymond Davis Matter*, 2014.

As of October 1, 2017, based on official data for Islamabad and the four provinces, there was a total of 3,009 judges, translating to an improved ratio of about 15 judges per million population. These judges had to address 915,946 criminal cases, or an average of 304 criminal cases per judge. In Punjab, 1,645 judges had to address a pendency of 745,413 criminal cases, or 453 criminal cases per judge. In KP, 456 KP judges had to address a pendency of 88,910 criminal cases, or 195 cases per judge. In Sindh, 621 judges had to address a pendency of 60,518 criminal cases, or 97 criminal cases per judge. In Islamabad, there were merely 71 judges who had a pendency of 13,492 criminal cases, or 190 criminal cases per judge. In Balochistan, 216 judges had to address 7,613 criminal cases, or 35 criminal cases per judge.⁶⁹⁵

In Islamabad and the four provinces, there was 1,041 vacant judges' positions against 4,050 total sanctioned positions, or a vacancy rate of 26 percent. Figure 41 below shows the number vacant positions of all judges serving at the district courts by province/territory. In Punjab, 32 percent of the positions of judges at the district-level are vacant, followed by 30 percent in Islamabad Capital Territory (ICT), 28 percent in Balochistan, 13 percent in Sindh, and 12 percent in KP.

Figure 41: Number of District-level Vacant Positions of Judges⁶⁹⁶



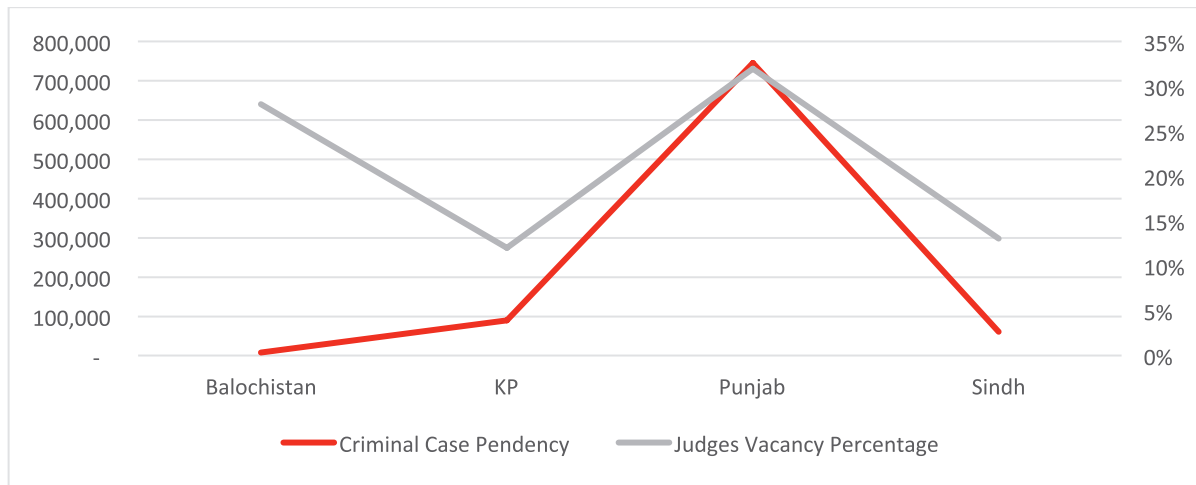
These figures represent numerous vacancies that significantly impact the case load of the judges and the judges available in each province. Considering the percentage of judges' vacant positions on an already stressed district courts, the quality of performance is expected to ultimately decrease and cases expected to go in pendency *ipso facto*.

In Figure 42 below, the judges' vacancy rates of the four provinces were charted with pendency of criminal cases. The chart clearly shows a similar trend between the percentage of judges' vacancies with the total number of pending criminal cases in that province, except for Balochistan where criminal case pendency remains lower in comparison to the high incidence of judges' vacancies. While it is worth considering transferring district judges from one province to another to remedy the situation, such transfers, however cannot be ordered by any authority under Pakistani law.

⁶⁹⁵ Data received from the registrars of the four provincial High Courts, as well as Islamabad High Court, through NACTA.

⁶⁹⁶ Based on data received from the registrars of the four provincial High Courts, as well as Islamabad High Court through NACTA.

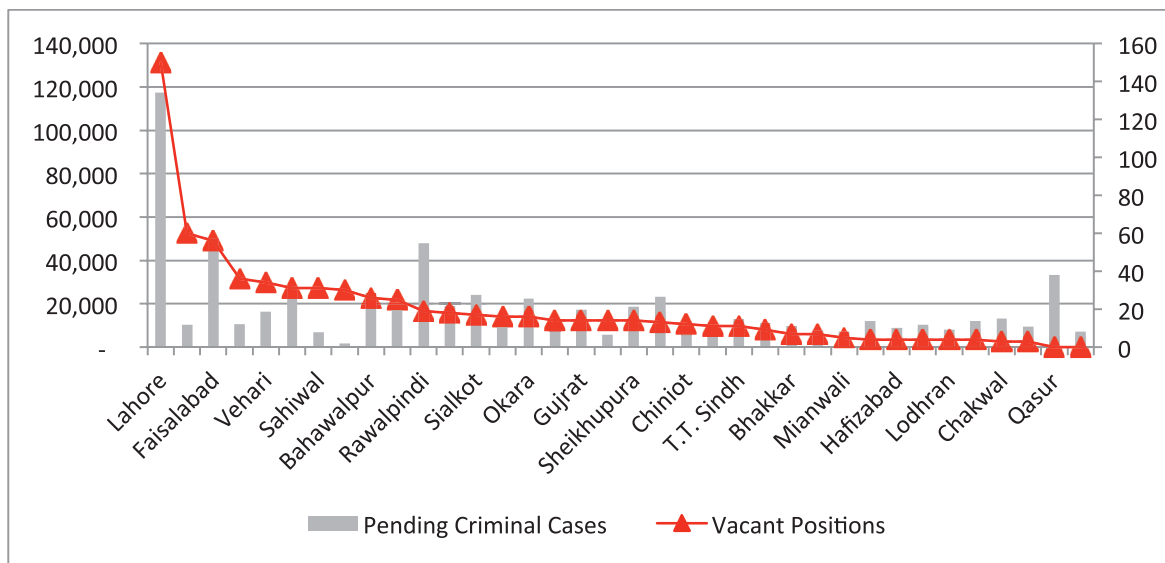
Figure 42: Comparison of judges' vacancy rate with criminal case pendency



The official data of vacant positions of judges at the district and special courts obtained from the provincial High Courts of the four provinces also indicate that the vacancies of judges are directly proportional to the pendency of cases in several districts. In this regard, reapportionment of judges to districts with high UTPs and high pendency of criminal cases should be considered in favor of districts with high vacancy rate.

As shown in Figure 43 below for the Punjab Judiciary, in districts like Bahawalnagar, Bahawalpur, Faisalabad, Lahore, etc. where the vacancies of judges are on the higher side, the pendency of criminal cases is also high. There are only a few districts like Kasur and Rawalpindi where pendency of criminal cases is high despite lower number of vacancies of judges. In such districts, other factors could be examined as to what else is affecting the pendency rate of criminal cases alongside the shortage of human resources in the judiciary.

Figure 43: Vacancies of Judges and Pendency of Criminal Cases in Punjab⁶⁹⁷

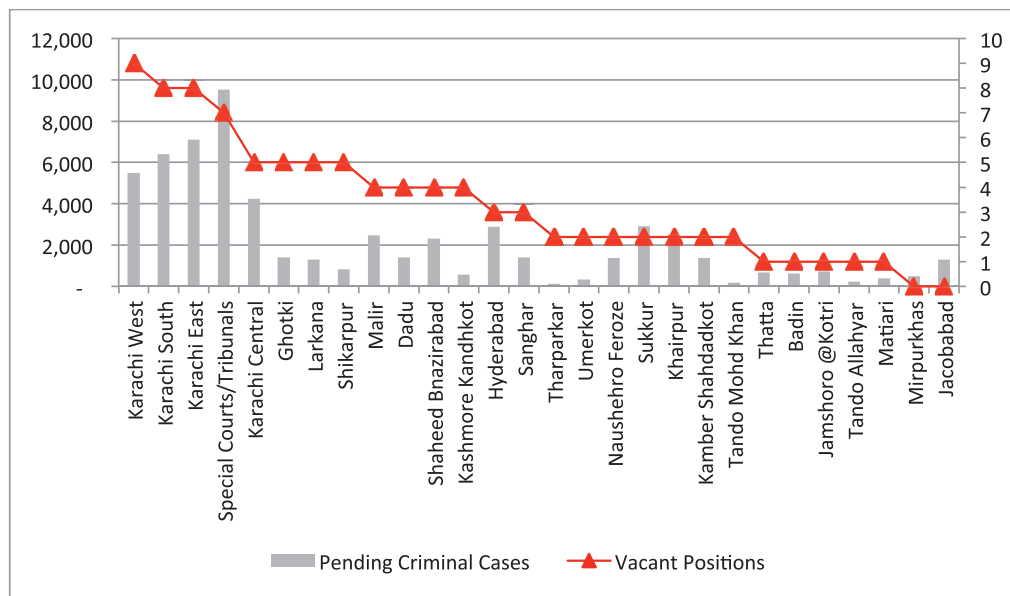


Similarly, if one takes a look at the comparison of the vacant positions of the judiciary and the numbers of pending criminal cases in Sindh, as shown in Figure 44 below, the same conclusion could be drawn. In all the judicial districts of Karachi, where judges' vacancies are higher, the pendency of criminal cases is also high. The high numbers of vacancies in the special courts/tribunals in Sindh has also contributed to higher

⁶⁹⁷ Based on data received from the registrar of the Punjab High Court through NACTA.

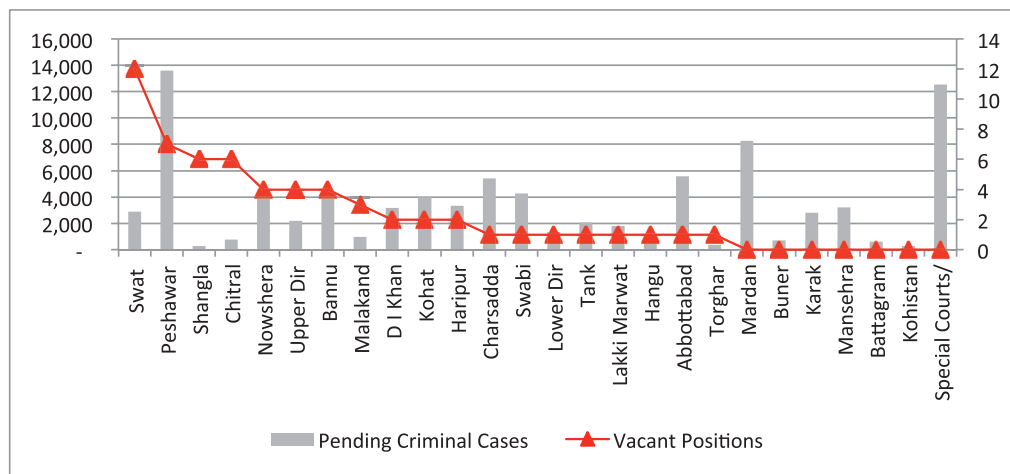
criminal cases pendency in those courts, as shown in Figure 44 below. Similarly, in districts like Thatta, Badin, and Mirpurkhas, where the number of judges' vacancies is low, there are fewer pending criminal cases. There are some exceptions like Ghotki, Larkana, Shikarpur, and Kashmore where the criminal case pendency is high despite lower incidence of vacant judicial positions, which is an indication that other factors are also contributing to the pendency rate alongside vacancies of judges.

Figure 44: Vacancies of Judges and Pendency of Criminal Cases in Sindh⁶⁹⁸



When one looks at the comparison of judges' vacancies with pendency of criminal cases in KP, a somewhat different picture emerges. While the judges' vacancies correspond with the incidence of high criminal cases pendency in some districts, in others the case seems to be quite opposite. As shown in Figure 45 below, Peshawar and Bannu seem to be the only two districts where criminal cases pendency seems to correspond to the incidence of judges' vacancies. Charsadda, Mardan, Karak, Abbottabad, as well as special courts/tribunals, have lower number of vacant judges' positions but criminal cases pendency is still quite high. In contrast, while there is a very high incidence of judges' vacancies in Swat, criminal case pendency remains low.

Figure 45: Vacancies of Judges and Pendency of Criminal Cases in KP⁶⁹⁹

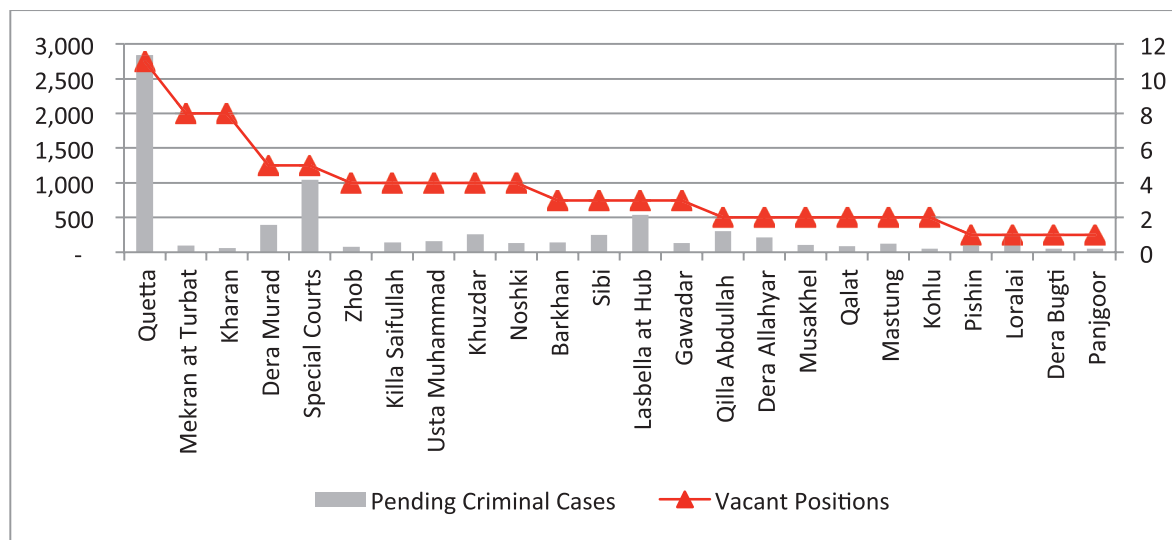


698 Based on data received from the registrar of the Sindh High Court through NACTA..

699 Based on data received from the registrar of the Peshawar High Court through NACTA..

Balochistan represents a completely different scenario, as shown in Figure 46 below, where the pendency rate of criminal cases corresponds to the judges' vacancies only in Quetta district and the special courts/tribunals. In all other districts, the pendency of criminal cases have no correlation with the judges' vacancies.

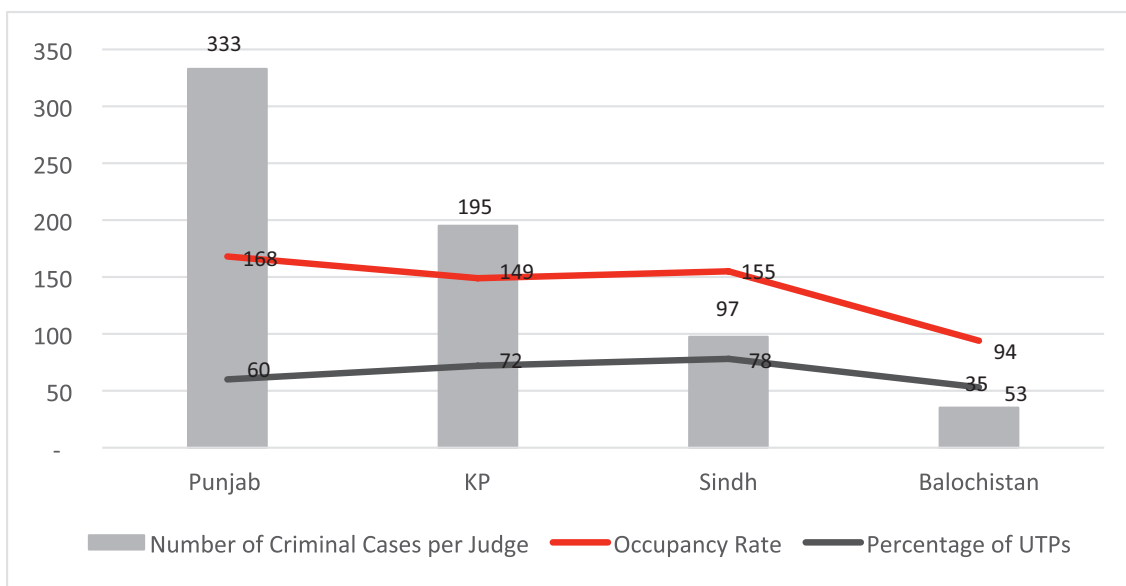
Figure 46: Vacancies of Judges and Pendency of Criminal Cases in Balochistan⁷⁰⁰



Therefore, while judges' vacancies is an important element in high rate of criminal cases pendency, it is not the sole factor.

Figure 47 below charts the number of criminal cases per judge in the lower judiciary in the provinces against their prison occupancy rate and UTPs rate. The higher the number of criminal cases per judge in a province, the higher the provincial prison occupancy rate is, except for Sindh. On the other hand, the higher the number of pending criminal cases per judge in a province, the lower the UTP rate is, except for Balochistan, which may suggest that among the three other provinces, Punjab is best at keeping its UTP rate lower despite being overburdened by cases.

Figure 47: Comparison between pending criminal cases per judge and prison occupancy rate



700 Based on data received from the registrar of the Balochistan High Court through NACTA..

4.8.7 Criminal Justice Coordination Committees

A Criminal Justice Coordination Committee (CJCC) was created in every district following the Police Order of 2002.⁷⁰¹ The Committee was chaired by the District and Sessions Judge, and included the Head of District Police, the District Public Prosecutor, the District Superintendent Jail, the District Probation Officer, the District Parole Officer, and the Head of Investigation.⁷⁰² The committee was supposed to meet once a month and was required to perform the following functions:

- a. Keep under review the operation of the criminal justice system and work towards the improvement of the system as a whole; and
- b. Promote understanding, co-operation and coordination in the administration of the criminal justice system.⁷⁰³

In December 2015, the KP Judicial Academy and UNDP published a research study evaluating the functioning of CJCCs in KP. The CJCCs were able to identify the shortcomings in the criminal justice system, but not necessarily solved. As an example in Peshawar district, delays in the submission of *challan* were repeatedly highlighted by the CCJC but the report observed that, “while repeated directions were given to the District Public Prosecutor and Senior Superintendent (Police) Investigation to ensure timely submission of *challans*, no improvement seemed to have taken place and the issue remained recurring.”⁷⁰⁴

The Committee could play a key role in improving the efficiency of the criminal justice system by improving cooperation between the criminal justice actors. A former judge from KP shared that he had chaired several meetings of one such committee but it did not solve bigger issues notably owing to financial constraints of the different departments/agencies that were supposed to implement the recommendations of the committees.⁷⁰⁵ Another judge from Punjab observed that a CJCC was given an insignificant budget of Rs.200,000 (around \$1,820) per year, making its effectiveness redundant.⁷⁰⁶

4.9 Prison Management

While some are of the view that authorities should not be lenient toward prisoners just because the prisons were lacking in their capacity to manage detainees,⁷⁰⁷ it must be recalled that when a state deprives a person of their liberty, it incurs a duty of care to ensure that the dignity of that person is respected. States must also ensure that prisons are safe and secure for detainees, staff, visitors and the outside community. These two State obligations are not contradictory, but go hand in hand, as security can be best ensured in a well ordered and justly administered system, which treats prisoners with humanity and fairness.⁷⁰⁸

There was also a view that since the incarceration rate in Pakistan had remained low in the past several years despite a steadily increasing national population, there is a need to treat the issues of overcrowding and under-trial detention separately.⁷⁰⁹ Notwithstanding the fact of the low per capita prison population, however, most prisons in Pakistan were operating well above their official capacities, while pre-conviction imprisonment remained alarmingly high, especially among women and children. The causes of overcrowding for each affected prison in Pakistan varied from one another, but almost all of them would benefit from decongestion through reduction of pre-conviction imprisonment.

701 Police Order of 2002, Section 109.

702 Police Order of 2002, Section 110.

703 Police Order of 2002, Section 111.

704 Khyber Pakhtunkhwa Judicial Academy and UNDP, *Research Study Evaluating functioning of Criminal Justice Coordination Committees in Khyber Pakhtunkhwa*, December 2015.

705 Interview with a former judge of the KP Judiciary on August 24, 2017.

706 Comments made by a senior-level judge of the Punjab Judiciary during consultations with the judiciary organized by NACTA in Islamabad on December 19, 2017. There was some disagreement on this point as during the same consultation, a senior-level judge from the Balochistan Judiciary maintained that the amount disbursed was subject to its expenditure in Balochistan, meaning thereby that another Rs.200,000 was disbursed to the concerned CJCC if it exhausted its allocated budget of Rs.200,000 before year end.

707 Comments made by a senior-level official of the Federal Judicial Academy and a senior-level official of NACTA during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

708 Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (International Centre for Prison Studies, 2002) p58.

709 Comments made by a senior-level police officer serving in Punjab during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

Another view was that instead of comparing the situation in Pakistan's prisons with international best practices, there is a need to compare it with the socioeconomic context outside the prison walls in Pakistan. The situation inside the prisons cannot be like that in the West when the situation outside the prisons is far different as well.⁷¹⁰ Other authorities believe that Pakistan could at least provide the basic facilities to inmates according to its international treaty obligations.⁷¹¹

This necessitates a discussion on how the prison administration may contribute in the reduction of pre-conviction detention in prisons. These measures include assisting with social reintegration thereby reducing reoffending, managing prisoner files efficiently and managing prison capacity effectively.

4.9.1 *Assisting with Social Reintegration and Addressing Recidivism*

Prisons play a crucial role in social reintegration and reducing reoffending. Aside from mitigating the harmful impact of overcrowding by maintaining health and hygiene, relieving pressure on space, increasing family links and increasing activities in the prisons, prison management could reduce tension inside the prisons by maximizing the use of resources in order to ensure minimum essential services, increasing staff availability and training, enhancing communication and preventing corruption within the prisons.⁷¹² In some countries, however, prison authorities share that poor pay structure, low social esteem, lack of staff, frequent transfers, dismal housing conditions and lack of security safeguards negatively affect their effectiveness and motivation in rehabilitating prisoners.

Research shows that family visits reduce the likelihood of prisoners committing crimes after release. The study, by researchers with the Minnesota Department of Corrections, determined that prisoners who received at least one personal visit at any time during their imprisonment were 13 percent less likely to commit another felony and 25 percent less likely to end up back in prison on a technical parole violation.⁷¹³ In Pakistan, the importance of social ties in drawing people out of violent groups has been highlighted.⁷¹⁴

The facilities for juvenile prisoners in Sindh are provided with six teachers for teaching different subjects, better food than the rest of the prisoners, family rooms to meet with relatives, and an overall environment that allows the young inmates to smoothly reintegrate back into society at the completion of their sentences.⁷¹⁵ The situation in Balochistan is a bit different where virtually no such vocational training facility is available since the factory in Machh Central Prison for woodwork, cloth-making, and carpet weaving was destroyed in a fire incident and has not been made functional for want of funds.⁷¹⁶ The NGO Society for Empowering Human Resource (SEHER)⁷¹⁷ is running computer training centers in prisons and in some prisons educated prisoners have also been employed as teachers to help with the education of juvenile prisoners, which earns them up to 8 days remission under the prison remission system.⁷¹⁸

In Sindh, four out of the total of 25 prisons—located in Karachi, Hyderabad, Sukkur, and Larkana—are assigned exclusively for female detainees. The detainees in female prisons are also provided with beautician courses to give them a source of generating income upon release.⁷¹⁹ Similarly, schooling for the children accompanying their mothers in prisons is also arranged by the Government of Sindh and has even initiated day-trip activities for such children for their recreation and knowledge, according to Government of Sindh officials.⁷²⁰

710 Interview with a senior-level official of the Prisons Department of the Government of Punjab in Lahore on May 24, 2017. Comments made by a senior-level prisons official of the Government of Sindh during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

711 Comments made by a senior-level official of the Federal Judicial Academy during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

712 *Handbook on Strategies to Reduce Overcrowding in Prisons*, op.cit., p. 141-145.

713 *The Effects of Prison Visitation on Offender Recidivism*, Minnesota Department of Corrections, November 2011, available at https://mn.gov/doc/assets/11-11MNPisonVisitationStudy_tcm1089-272781.pdf (last accessed on February 21, 2018).

714 Shazadi Beg and Laila Bokhari, "Pakistan in Search of a Disengagement Strategy," in *Leaving Terrorism Behind: Individual and Collective Disengagement*, ed. Tore Bjorgo and John Horgan (Oxford: Routledge, 2008).

715 Interview with Home Secretary of the Government of Sindh Mr. Qazi Shahid Pervez in Karachi on June 6, 2017.

716 Interview with a senior-level official of the Home Department of the Government of Balochistan in Quetta on June 8, 2017; Interview with two senior-level prisons officials of the Government of Balochistan in Quetta on June 8, 2017.

717 See, <http://seher.org.pk/> (last accessed on December 22, 2017).

718 Interview with two senior-level prisons officials of the Government of Balochistan in Quetta on June 8, 2017.

719 Interview with a senior-level prisons official of the Government of Sindh in Karachi on June 6, 2017.

720 Interview with a senior-level prisons official of the Government of Sindh in Karachi on June 6, 2017.

While correctional facilities are not up to international standards in most prisons in the country, efforts are being made in prisons in Punjab. The Technical Education and Vocational Training Authority (TEVTA) is collaborating to provide vocational training to inmates in a wide range of fields, such as, tailoring, welding, electrical wiring, agriculture, and computers to beautician courses for female detainees.⁷²¹ Some prisons in Punjab are also offering courses in subjects such as mathematics and English in order to enable sustainable rehabilitation by giving inmates a greater chance at finding employment once released.⁷²²

There are some correctional facilities in Pakistan such as Dost Foundation in Peshawar,⁷²³ working with drug addicts and destitute female prisoners, and some rehabilitation centers for drug addicts in Punjab.⁷²⁴ Since drug addicts constitute a considerable proportion of recidivists, rehabilitation centers for drug addicts were established a few years ago in every prison in Punjab.⁷²⁵ The impact of the rehabilitation centers for drug addicts seems to be limited since drug addicts still constitute a significant number of recidivists in prisons.⁷²⁶

The *Federal Ombudsman's Report* acknowledged that there was "a near absence of proper training and rehabilitation of the inmates in the prison which denies them an opportunity of participating in useful labour while in the prison and later professional work on their release."⁷²⁷ The Federal Ombudsman's Office was collaborating with Higher Education Commission (HEC), COMSAT University, Allama Iqbal Open University (AIOU) and Pakistan Sweet Homes to provide education and skills development programs for detainees, including women and children, 'so that prisoners after confinement become useful citizens of the society'.

4.9.2 Prison Data Management System

Under both national⁷²⁸ and international law,⁷²⁹ details of all prisoners must be accurately registered. Accurate

721 Available at http://www.prisons.punjab.gov.pk/educational_activities (last accessed on December 22, 2017); available at http://www.prisons.punjab.gov.pk/vocational_training_prisoners (last accessed on December 22, 2017); Interview with a senior-level prisons official of Punjab in Lahore on May 24, 2017.

722 Interview with a senior-level prisons official of Punjab in Lahore on May 24, 2017.

723 See <http://www.dostfoundation.org/> (last accessed on December 22, 2017).

724 'Drug Rehabilitation Center' *Social Welfare Department Government of Punjab*; 'Rehabilitation Centres' *Punjab Prisons Government of Punjab*; Comments made by two senior-level police officers during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

725 'Rehabilitation Centres' *Punjab Prisons Government of Punjab*; Interview with a senior-level prisons official of Punjab in Rawalpindi on May 19, 2017.

726 Comments made by senior-level police officers and senior-level prison officials during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

727 Federal Ombudsman's Office, Report of the National Committee on Prison Reforms, op.cit., p.69.

728 Rule 65 of Prisons Rules 1978. (i) *Every prisoner shall be provided with a history ticket in the prescribed form at the time of admission. The Assistant Superintendent in charge of admissions shall record the full information required by the columns provided in the ticket. The Medical Officer shall record the prisoner's age, weight, state of health and the class of labour for which he is fit. Entries of weightment shall be recorded monthly, Admission and discharges from hospital with the disease from which he suffered and also admission and discharges from the convalescent party shall also be recorded. (ii) The Superintendent shall check allotment of labour in the history ticket. He shall record in his own hand all punishments awarded to a prisoner. Entries of special remission, promotion and employment on out parties shall also be made by him. (iii) Entries relating to appeals, letters received and sent, interviews, issue of clothing and awards of ordinary remissions shall be made and initialled by the Assistant Superintendent or other Officer entrusted by the Superintendent with these duties.*

729 The UN Nelson Mandela Rules provide the following:

Rule 6: There shall be a standardized prisoner file management system in every place where persons are imprisoned. Such a system may be an electronic database of records or a registration book with numbered and signed pages. Procedures shall be in place to ensure a secure audit trail and to prevent unauthorized access to or modification of any information contained in the system.

Rule 7: No person shall be received in a prison without a valid commitment order. The following information shall be entered in the prisoner file management system upon admission of every prisoner:

- (a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;
- (b) The reasons for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;
- (c) The day and hour of his or her admission and release as well as of any transfer;
- (d) Any visible injuries and complaints about prior ill-treatment;
- (e) An inventory of his or her personal property;
- (f) The names of his or her family members, including, where applicable, his or her children, the children's ages, location and custody or guardianship status;
- (g) Emergency contact details and information on the prisoner's next of kin.

Rule 8: The following information shall be entered in the prisoner file management system in the course of imprisonment, where applicable:

- (a) Information related to the judicial process, including dates of court hearings and legal representation;

information about those held in prisons is essential to improve prisoners' access to justice—including the monitoring of their cases, trial dates, sentences, eligibility for early release and release dates. If accurate prisoner information is lacking, the possibility of following the cases of individual prisoners on a systematic basis is undermined. It is also more difficult to accurately and comprehensively identify the major causes of growth in prisoner numbers, resulting in poor identification of relevant and appropriate measures to be agreed and coordinated across relevant agencies.

In the course of compiling data for this report, some of the data collected from the provinces/administrative territories had discrepancies that were impossible to reconcile, which led to the exclusion of these data from the analysis of this report. It was also observed that as the prison data management system was different for every province/administrative territory, extracting statistics that are useful at the national level was complicated and time consuming.

With a strong prison data management system, prison authorities could easily set up a monitoring mechanism for the attendance of UTPs in courts for their hearings on time. Most of the prisons in Pakistan, however, lacked a digitalized system.⁷³⁰ The *Federal Ombudsman's Report* noted that “it is extremely important that the record of prisoners is computerized as it would not be possible for the District and Sessions Judge or Magistrate to see the details of each case manually.” Until very recently, prisons in Punjab operated via a paper-based manual system. The process was very lengthy and time consuming, requiring a lot of effort and man-power to track information of any detainee⁷³¹.

On July 2, 2014, the Home Department of Punjab Province and UNODC signed an MoU for the development of a Prisons Management Information System (PMIS). The pilot project was developed in District Prison Lahore and later extended to 20 prisons in the province.⁷³² The PMIS is designed to facilitate the prison authorities in the operations such as Admission and Release, Daily Court Production Management, Court Decisions and Sentence Management, etc.⁷³³

A Prison Management Information System is also in place in the Central Prison of Peshawar designed to completely computerize all the records of prisoners including their presentation in courts, and if not presented in courts, their reasons for non-production.⁷³⁴ The records in the system are tallied with the records of the National Database and Registration Authority (NADRA), to ensure that no false identity is given.⁷³⁵ Such a system, however, is not yet available in other prisons of the country.

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- (b) Initial assessment and classification reports;
 - (c) Information related to behaviour and discipline;
 - (d) Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, unless they are of a confidential nature;
 - (e) Information on the imposition of disciplinary sanctions;
 - (f) Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the remains.

Rule 9: All records referred to in rules 7 and 8 shall be kept confidential and made available only to those whose professional responsibilities require access to such records. Every prisoner shall be granted access to the records pertaining to him or her, subject to redactions authorized under domestic legislation, and shall be entitled to receive an official copy of such records upon his or her release.

Rule 10: Prisoner file management systems shall also be used to generate reliable data about trends relating to and characteristics of the prison population, including occupancy rates, in order to create a basis for evidence-based decision-making.

730 Interview with a senior-level police officer in Islamabad on May 18, 2017.

731 “PMIS to replace manual system in Punjab jails,” *Daily Times*, May 22, 2017.

732 Website of the Punjab Prisons on the Prison Management Information System, available at <http://www.prisons.punjab.gov.pk/pmis> (last accessed on December 22, 2017).

733 UNODC, Seminar at the launch of Prison Management Information System (PMIS) in Prisons of Punjab, August 10, 2016, available at https://www.unodc.org/pakistan/en/press-release_-_operations-in-20-prisons-of-punjab-are-getting-computerized-and-automated-seminar-at-the-launch-of-prison-management-information-system-pmis-in-prisons-of-punjab.html (last accessed on December 22, 2017).

734 Comments made by a senior-level prisons official of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

735 Comments made by a senior-level prisons official of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

4.9.3 Inadequacy of Prison Infrastructure and Capacity

Increasing prison capacity does not, on its own, constitute a sustainable strategy against prison overcrowding. Where the underlying causes are not addressed, newly constructed facilities will just be filled and in the long term may even lead to an increase in incarceration rates. Thus, authorities are advised to conduct a proper assessment and planning process before any building is started to ensure valuable resources are not wasted in construction of prisons that are neither suitable for the environment, nor reflect the core values and management principles of the prison system.

The federal capital, Islamabad, has no prison despite its high population, and relies on the nearest prison (Central Prison in Rawalpindi, known as Adiala Jail in Punjab province) which is overcrowded with around 6,000 detainees as of August 2017⁷³⁶ and with an official occupancy rate of 239 percent in October 2017. The district authorities were reportedly in the process of acquiring land in Islamabad for the construction of a new jail as of August 2017.⁷³⁷ An official of the LJCP shared that 450 prisoners could not be produced in courts for 14 days in Islamabad because of the lack of place to hold them.⁷³⁸ There is not even a *Bakhshi Khana*⁷³⁹ within the premises of Islamabad courts and even the housing of the district judiciary is in rented accommodation in Islamabad.⁷⁴⁰ On the other hand, while the Adiala Central Prison located in Rawalpindi accommodates Islamabad's prisoners, there is no district prison in Rawalpindi,⁷⁴¹ as well as no separate prisons for women or juveniles.⁷⁴² Therefore, it may be the case that instead of considering to build a Central Prison in Islamabad, what may be needed may just be a place for holding prisoners when they come to court in Islamabad, resources may be more well spent on building separate prisons for women and juveniles in Rawalpindi.

While one of the options for controlling overcrowding in some prisons could be shifting prisoners to another prison facility with under capacity occupancy, in practice, there are problems with the implementation of this approach. In most instances, the inmates do not want to be shifted to another prison because of relatively easier access of their family members visiting them and even developing friendships within a prison.⁷⁴³ In other cases relocation may be a more feasible option, for instance, in the case of the newly constructed Central Prison Mardan where prisoners have been successfully relocated from prisons in Swabi, Nowshera, and Timergara.⁷⁴⁴ This step has contributed in minimizing overcrowding of prisons in those regions and utilizing best the available space in under populated Mardan Central Prison.⁷⁴⁵ Taking into consideration that the overall prison capacity in Balochistan was higher than its prison population, yet four of its prisons exceeded their individual prison's capacity, then shifting of prisoners to prisons where they have more space could be explored, respecting the prisoners' preference, especially where their safety, family visits and social interactions are concerned.

In Balochistan, National Assembly constituency no. 271, sharing borders with Afghanistan and Iran covers an area equal to the whole province of KP, and yet there is no jail in the whole constituency.⁷⁴⁶ National Assembly Constituency No. 269, which spreads from the Iran border to DI. Khan in KP has only one sub jail in the entire area.⁷⁴⁷ One central jail in district of Jaffarabad was demolished by the Government due to

736 "Process to acquire land for new jail begins in Islamabad," Dawn, August 27, 2017.

737 "Process to acquire land for new jail begins in Islamabad," Dawn, August 27, 2017.

738 Shard by a senior-level official of the LJCP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

739 *Bakhshi Khana* is a place reserved for holding up the prisoners when they come to the courts for their trial hearings

740 Comments made by a senior-level official of the LJCP and a senior-level official of NACTA during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

741 After former prime minister of Pakistan Z.A. Bhutto was hanged to death in District Prison Rawalpindi, General Zia ordered construction of central prison Rawalpindi (Adiala), which was commissioned in 1986 and later in 1988. The District Prison was demolished and converted into a park called the Jinnah Park.

742 Interview with a senior-level prisons official of Punjab in Rawalpindi on May 19, 2017.

743 Interview with a senior-level prisons official of Punjab in Rawalpindi on May 19, 2017.

744 Timergara District Prison also houses prisoners from Swat and Dir districts because Swat District Prison is under construction and there is no permanent prison in Dir.

745 Interview with a senior-level official of the Home Department of KP in Peshawar on May 22, 2017.

746 Comments made by a senior lawyer during consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017.

747 Comments made by a senior lawyer during consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017.

design being faulty, before being commissioned to the prisons department, leading to a waste of resources and time.⁷⁴⁸ Transportation of prisoners from one district to another, particularly in context of the law and order scenario, is a big challenge for the police and many a times cases are adjourned without hearing due to non-availability and non-production of the accused before the court.⁷⁴⁹

Interestingly, the Province of Sindh decided to tackle the issue of overcrowding by increasing the prison infrastructure and capacity. In October 2016, the Chief Minister of Sindh directed the Inspector General of Prisons in Sindh to prepare schemes for the construction of prisons in five locations (District West, Gaghar, and Deh Thming Malir, Mithi, Umerkot). He also directed the IG to prepare a plan for shifting prisons to the Open Prison in Badin. He said that most of the prisons have been under construction for the last many years and warned the relevant authorities to complete them otherwise strict action will be taken against them.⁷⁵⁰ Yet, according to official data, the Open Prison in Badin remained inoperative, along with the Youthful Offender Industrial School in Dadu.

In Swat (KP), overcrowding was discussed in the district-level criminal justice coordination committee (CJCC). CJCC identified overcrowding in the district prisons of Timergara and Buner as an issue, following the destruction of the district prison in Swat in the 2005 earthquake. In 2015, the CJCC persistently pushed for the reconstruction of the district prison in Swat.⁷⁵¹ Work on the reconstruction of Swat prison finally started in August 2017.⁷⁵² Aside from the district prison of Swat, the one in Abbottabad is also inoperative according to official data.

In Punjab, the provincial government installed cameras and jammers in around 40 prisons across the province to allow for better monitoring of the facility.⁷⁵³ It also provided family rooms in certain prisons for family visits and even allow families to stay for a day or two.⁷⁵⁴ Interestingly, while many prisons are overcrowded in Punjab, its high security prison in Sahiwal is under-populated at 25 percent occupancy rate.

Both GB and Balochistan had a total occupancy rate of less than a hundred percent, yet some of their individual prisons were accommodating well above their official capacity. In these cases, a prison population management strategy at the provincial/administrative territory level may well be the key to addressing the consequences of prison overcrowding and reducing pre-conviction detention,

4.10 Harassment, Threats and Assaults on Criminal Justice Actors

In 2012, the UN Special Rapporteur on the independence of judges and lawyers gave an overview of the difficulties of the criminal justice actors to perform their duties, as they were frequently threatened, and sometimes attacked or killed:

The judiciary, legal profession and prosecution services in Pakistan regularly come under pressure from all kinds of public and private actors, including non-State actors such as extremist religious groups, insurgents and terrorists. The Special Rapporteur is seriously worried by the number and nature of reported cases of threats, attacks and killings of judges and lawyers. In the face of such criminal violence and intimidation, the State seems to have been unable to provide protection and secure the lives and safety of some of its citizens, judges in particular. Physical

748 Comments made by a senior lawyer during consultations with lawyers of the Balochistan Bar Council in Quetta on November 21, 2017.

749 As per unanimous opinion of members of Balochistan Bar Council and Balochistan High Court Bar Association; Balochistan Bar Council Consultations.

750 "Out of space: CM orders measures to reduce overcrowding in prisons," *The Express Tribune*, October 6, 2017, available at <https://tribune.com.pk/story/1194703/space-cm-orders-measures-reduce-overcrowding-prisons/> (last accessed on December 22, 2017).

751 Khyber Pakhtunkhwa Judicial Academy and UNDP, *Research Study Evaluating functioning of Criminal Justice Coordination Committees in Khyber Pakhtunkhwa*, December 2015.

752 "Reconstruction of Swat jail starts," *Dawn*, August 22, 2017, available at <https://tribune.com.pk/story/1194703/space-cm-orders-measures-reduce-overcrowding-prisons/> (last accessed on December 22, 2017).

753 Complete CCTV Matrix Punjab Prisons, Government of the Punjab, available at http://www.prisons.punjab.gov.pk/CCTV_cameras_installed (last accessed May 4, 2018); Mobile Jammers' Punjab Prisons, Government of the Punjab.

754 "Three jails now have family rooms for prisoners," *Pakistan Today*, December 11, 2013; Interview with a senior-level official of the Home Department of Government of Punjab in Lahore on May 24, 2017

security is an essential condition for judges to carry out their duties independently and impartially, yet there is no institutionalized protection mechanism for judges and other actors of the justice system.⁷⁵⁵

Such threats and assaults are detrimental to not only the direct victims but also have grave and at times long-lasting consequences for the community. For instance, when the lawyers in Quetta were brutally attacked on 8 August 2016, killing 50 of them, Balochistan suffered a serious shortage of lawyers. According to the Human Rights Commission of Pakistan (HRCP):

2,000 clients remained without legal representation, causing unprecedented delays in the high court and lower trial courts – both previously strained with increasing civil and criminal cases. 40 percent of court cases in the province were pending at the year end. Out of 32 districts, almost 26 had no legal representatives implying that Quetta-based lawyers must defend clients by traveling long distances. Consequently, 13,000 cases remained pending in the district courts and around over 6,000 in the Balochistan High Court and two circuit benches in Sibi and Turbat.⁷⁵⁶

The UN Special Rapporteur recommended to set-up a mechanism for the protection of judges, as well as court officials, prosecutors and lawyers and investigate promptly any acts of harassment, threats or physical assaults, including killings of judges, prosecutors, lawyers, and have the perpetrators sanctioned.⁷⁵⁷

755 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/23/43/Add. 2, 4 April 2013.

756 Human Rights Commission of Pakistan, *State of Human Rights in 2016*.

757 United Nations Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/23/43/Add. 2, 4 April 2013.

5 Conclusion and Recommendations

Despite having one of the lowest incarceration rates in the world, prison overcrowding in Pakistan is evident from its national prison occupancy rate of 157 percent, i.e. 84,287 inmates housed in prisons authorized for 53,744. Should there be no major change in the criminal justice system policies and implementation, as well as in the country's peace and order situation, the country can expect the rise of prison population to 91,921 prisoners in ten years' time.

The prison occupancy rate in each of the 112 prisons in the country varies from zero to 503 percent. The most overcrowded being Peshawar Central Prison, followed by judicial lock ups in Tank (485%) and Swabi (442%) in KP, then by Punjab's district prisons in Bahawalnagar, Rajanpur, Lahore and Muzzafar Garh, and Sindh's district prison in Shaheed Benazirabad, all above 300 percent.

In prisons with severe levels of overcrowding, the humanitarian and security consequences can become appalling -- with poor conditions of detention and difficulty in implementing prisoner classification and separation. The serious consequences are far reaching, extending outside the prison walls as prison staff and visitors leave the premises on a daily basis and as prisoners are released. They also affect not just the families and the community, but the entire criminal justice system, public health and government's finances.

Part of the cause of prison overcrowding in Pakistan is the high pre-conviction detention. There were 55,426 prisoners, or 66 percent of the total prison population, who were not yet found guilty of the offence they had been imprisoned for. The ratio of under trial prisoners (UTPs) for women and children were higher at 68 and 90 percent, respectively, indicating their vulnerability in this phenomenon. Majority of all UTPs have stayed there for less than a year, but 17 percent were there for more than two years, signaling prolonged periods of detention well beyond the legal limits. More than 1.3 percent of those not yet convicted were also waiting for trial due to non-submission of the charge sheet/challan by the police to the court.

5.1 Conclusions

After examining the causes of high pre-conviction detention, the conclusions can be summarized as follows:

1. Socio-economic causes
 - a. In this report, high pre-conviction detention was not proven to be caused by poverty. Prisoners exposed to excessive pre-conviction detention, however, together with their families, suffer economic hardship. The government, in turn, loses tax payments and ability to invest in other spheres of socio-economic development such as education, health care, etc.
 - b. High pre-conviction detention in Pakistan was shown to be slightly worse for women, and extremely worse for children. Thus, specific vulnerabilities play a role in excessive pre-conviction detention.
 - c. Arbitrary misuse of authority by some of the criminal justice actors leads to certain problems, such as over-arrests and delays in conclusion of trial. Reducing pre-conviction detention, though, can minimize these opportunities for arbitrary misuse of powers.
2. Overuse of imprisonment in the criminal justice policies
 - a. The law provides for imprisonment for socially undesirable behavior and petty offences such as being vagabonds, for loitering, and for disturbing public peace.
 - b. Surges of arrest and imprisonment were reported in the crackdown against irregular Afghans. Deportation arrangements were only initiated at least three months prior to the expiration of sentence for those who were convicted.
 - c. Imprisonment for defaulting to pay fines and/or furnish securities is one of the main causes of imprisonment. The court may choose not to imprison fine defaulters by providing options for paying in installments, etc., or it may also release them.

3. Preventing unnecessary arrests and imprisonment at the police level
 - a. Overuse of arrest is practiced on street vendors and many who are ignorant of the law for petty offences, to which a repeal of the law or resort to alternatives to detention could be made. Due to lack of investigation resources and skills, innocent bystanders and family members of the suspect are also included in the arrest. Police performance institutionally is also based on the number of arrests, instead of efficiency based on actual convictions. While the law provides checks such as production of the arrested to the court within 24 hours, this is not always observed.
 - b. Arrest based on frivolous and false charges accounts for a substantive portion of cases litigated in court. Such tactic is used for pressurizing, harassing or intimidating opponents, especially of local elites. While the law penalizes such tactics, judges are not keen at pronouncing cases to be such as they further clog the court dockets. The recently enacted Cost of Litigation Act of 2017 was passed to deter such tactics by directing payment of cost of litigation to the acquitted.
 - c. The police has the power to release prisoners where evidence against them is deficient, but is reluctant for fear of strict oversight.
4. Resource constraints and investigative shortcoming of the police
 - a. Transporting the prisoners to attend their court hearings is not the top priority in the allocation of limited police resources in terms of fuel, vehicle and security staff. The 2012 National Judicial Policy instructed all district courts for video-conference facilities, but the outcome of the project remains unknown.
 - b. Over-reliance on witness testimony and delays in the submission of the investigation report are caused by the lack of capacity and resources to collect and analyze material and forensic evidence within the prescribed 14 day-period prior to filing of the investigation report/challan. Police officers are not motivated to be assigned as investigating officers as they would rather be part of operations in the field/community.
5. Issues pertaining to prosecution
 - a. Efforts to strengthen cooperation between police and prosecutors were made, including the adoption of the SOPs on Effective Police-Prosecutor Cooperation in Punjab, but their efforts are yet to be evaluated, as hundreds of UTPs in Punjab and KP were still reported to have been waiting for trial due to non-submission of challan.
 - b. One in three prosecutor positions was vacant. In KP, Punjab and Sindh, the higher the percentage of vacancy, the higher the UTP rate is. While there are some training opportunities provided to prosecutors, the position of prosecutors is not attractive for most competent lawyers.
 - c. Prosecutors are empowered to discharge prisoners/dismiss their cases for lack of evidence, but prosecutors rarely exercise it.
6. Lack of access to legal counsel
 - a. While there are several ways in which prisoners may access legal counsel, such as through appointment of one by the court, referral by the prison authorities to the bar council, and through application with the District Legal Empowerment Committee (DLEC), prisoners are not aware of these services.
 - b. The challenges of the DLEC are evident from the under-utilization of DLEC's budget and lack of awareness of criminal justice stakeholders of the existence of DLECs.
7. Inadequate use of alternatives to pre-trial detention
 - a. The law on bail could be improved to allow more prisoners to be qualified according to the nature of their alleged offence and their economic stature, and to simplify procedures for its availment particularly on what is acceptable as surety and expansion of release on personal recognizance. The implementation of the existing law both by the police and the judges show

- a general reluctance to grant bail for fear of abscondment. Prisoners are also not aware if they could qualify for bail.
- b. Many of those granted bail (about half in Sindh and in most juvenile cases) were nevertheless not released due to their inability to pay the surety amounts.
 - c. There was no process of diversion in effect for juvenile prisoner, although the Juvenile Justice System Bill 2018 aim to introduce such process for speedy disposal of cases of juveniles.
 - d. Alternative dispute resolution mechanisms exist in Pakistan, with varying levels of effectiveness, scope in terms of type of offences and/or at what stage in the criminal justice process a case is at, legal basis, geographical applicability and degree of judicial oversight. For Punjab, the provisions in the Code of Criminal Procedure is enough basis to create ADR centres with 62 percent success rate. For KP and Islamabad, new laws were passed to strengthen the ADRs' legal basis and judicial oversight.
8. Obstacles and delays in accessing justice
- a. Despite the requirement of the law, many accused are not presented before a Magistrate within 24 hours.
 - b. Extension of a 15-day remand is not always granted in the presence of the accused.
 - c. Trials are postponed frequently by prosecutors asking for repeated adjournments, defense counsel being absent during hearings and non-production of witnesses including the police.
 - i. Members of the community are intimidated by the other party due to little to zero witness protection afforded to them.
 - ii. The police also did not appear as witnesses until at one time their salary was withheld until they do so. Case properties were also not exhibited as evidence in court despite their availability with the investigation officers
 - iii. Lawyers contribute to high pre-conviction detention by using delay as a tactic to weaken the case of the prosecution, participating in numerous lawyers strikes and providing poor quality of legal service. The quality of lawyers' education and admission to the bar should be improved, while the para-legal profession should be encouraged.
 - d. Release on bail is not happening for about 9,000 UTPs who exceeded their stay in prisons based on prescribed time limits for disposal of their cases. Strict implementation of the prescribed time limits could decongest prisons by at least 17 percent of UTPs.
 - e. The number of pending cases per judge is alarmingly high and contributes to further delays in the disposal of UTPs' cases: 304 criminal cases per judge on the average. In Punjab, the average number of criminal cases per judge is 453, while in Balochistan, there were only 35 criminal cases to a judge.
 - f. More than one in four judges positions were vacant. The ratio of judges to the population has increased from 11 judges per million population reported in 2014 to 15 judges per million population based on official data in 2017. Vacancies in the position of judges generally increase the backlog of the courts contributing in delay in the disposal of cases.
 - g. The Criminal Justice Coordination Committees played a big role in identifying and understanding of the problems of the criminal justice system at the district level. Unfortunately, some of the issues that needed to be resolved were not solvable at their level, especially where the solution requires budget adjustment within the agencies/departments concerned.
9. Prison management
- a. Prisons can play a big role on social reintegration and reducing re-offending. Aside from mitigating the harmful impact of overcrowding by maintaining health and hygiene, relieving pressure on space, increasing family links and increasing activities in the prisons, prison management could reduce tension inside the prisons by maximizing the use of resources in order to ensure minimum essential services, increasing staff availability and training, enhancing communication and preventing corruption within the prisons.

- b. At the national level, prison data was difficult to compile and had discrepancies due to lack of uniformity among the provinces and administrative territories in the way data is collected and analyzed. Federal oversight over these data must be clearly established and a uniform standard in collecting, analyzing and reporting data should be considered in order to monitor the progress of any action plan on prison overcrowding and reduction of pre-conviction detention.
- c. Digitalization of prisoners records ensures that no prisoner's case is being neglected and it is timely processed in the criminal justice system.
- d. Increasing prison capacity may result in more harm than good, i.e. increase the country's incarceration rate in the long term, if the causes of overcrowding is not addressed. Nevertheless, any decision to increase prison capacity has to be part of a national strategy based on the values of the criminal justice system (rehabilitative instead of punitive) and careful planning and assessment of actual needs, taking into consideration the achievement and failures of criminal justice system reforms.

10. Harassment, threats and assault on criminal justice actors

- a. The establishment of a mechanism for the protection of judges, as well as court officials, prosecutors and lawyers should be considered.
- b. Any acts of harassment, threats or physical assaults, including killings of judges, prosecutors, lawyers, should be promptly investigated, and the perpetrators sanctioned.

5.2 Recommendations

The recommendations consist of two parts: the first part comprises of the most urgent ones based on the findings and conclusions from the collected prison data and the consequences of overcrowding in Pakistan; while the second part provides recommendations based on the findings and conclusions of the main causes of high pre-conviction detention.

5.2.1 Urgent Measures

Based on the conclusions on prison data and the consequences of overcrowding in Pakistan, the most urgent recommendations are as follows:

1. To avoid a major health crisis in the eight most overcrowded prisons in Pakistan, exhibiting from 300 to over 500 percent occupancy rate, an urgent prison assessment should be carried out to ensure that the prisoners have:
 - well-ventilated quarters;
 - 10-15 liters of water each per day;
 - access at all times to drinking water stored in appropriate containers;
 - a balanced diet comprising food which is adequate in terms of quality and quantity and which is prepared in accordance with proper standards of hygiene;
 - a sufficient number of toilets in working order;
 - access to exercise yards or any other place in the open air during the day;
 - access to medical care; and
 - know the emergency evacuation procedures to be adapted accordingly.

During the inspection, a mapping of the infrastructure of these eight prisons taking into account the actual floor space per prisoner when they are locked in their quarters would be recommended.

2. In prisons where there is both extreme levels of overcrowding (initially at over 200 percent) and extremely high rates of UTP (initially at 80 over percent), an emergency visit by the judiciary is recommended to be organized urgently in order to release prisoners based on having exceeded the prescribed time limits for UTP's stay in prison.
3. At the time of admission of a prisoner into a prison, the necessary screening should be conducted

for various prevailing communicable and non-communicable diseases. A fully equipped pathology lab should be set up in all prisons.

4. Child UTPs should be urgently referred to any of the ADR mechanisms in place to secure their release/transfer from prisons, especially the overcrowded ones.
5. Amnesty, early release schemes and redistribution of prisoners should be considered for prisons with over 200 percent occupancy rate.
6. As prisons population fluctuates from day-to-day, monitoring of prison population must be done on a real-time basis to monitor if any of the prisons are reaching critical levels of overcrowding and UTP rates, preferably through a web-based monitoring application. An emergency prison overcrowding response team could then be urgently deployed to assist the prisons in mitigating harmful effects of overcrowding and maximizing capacity within the individual prisons. The judiciary could also be alerted to send a judge to visit the affected prison to release prisoners on bail and other modes of release. Cases of child UTPs could be followed up more closely.
7. The prison authorities should devise a workable mechanism for managing health, education and psychological wellbeing of the children who are accompanying their incarcerated mothers.

5.2.2 *Short, Medium, and Long Term Measures*

On the addressing the causes of high pre-conviction detention, the recommendations are grouped into ten main points following the order of the conclusions – in line with the topics discussed in Chapter 4 on the causes of high pre-conviction detention. At the end of each of these ten main points, indicators are provided which should be used in developing a monitoring strategy.

Some of the specific recommendations are also more detailed than others within the ten main points, but they are not necessarily more important than the rest. They serve as guide for policymakers to take when considering the rest of the recommendations, as the more detailed ones elucidate impact and timeframe. In the development of a national strategy to reduce pre-conviction detention, measures have to be categorized into short, medium and long term strategies to ensure their effectiveness and sustainability.

5.2.2.1 *Addressing socio-economic causes leading to high pre-conviction detention*

- a. Sufficient support system must be set up to reduce socio-economic marginalization. These may include social welfare assistance, support for housing, employment and treatment for substance dependencies and mental health care needs, among others to help people to overcome their challenges and live positive, self-supporting lives.
- b. As children remain the most vulnerable, it is recommended that the age of criminal responsibility in legislation be reviewed, and where appropriate, increase it. Moreover, the determination of age of a detainee should be made with appropriate medical examinations, like jawbone and wrist tests, at the time of the arrest. Imprisonment of children should be made a measure of last resort. Prisons for children should be converted into delinquent and juvenile centers with separate rules applicable to children.
- c. Special efforts should be made to keep women and children away from pre-conviction detention. Special attention should be given to children accompanying their mothers in prisons.⁷⁵⁸
- d. Strengthening transparency and accountability measures should be considered, i.e. recruitment of criminal justice actors based on merit, human rights and rule of law based training, adequate remuneration, mechanism for strict supervision of arrest, internal prison inspection, judge prison visitation and independent monitoring of prisons.

758 Comments made by a senior-level official of NACTA during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017

Monitoring indicators:

- Incarceration rate nationwide and by province.
- Actual floor space per detainee while locked inside the sleeping quarters.
- Occupancy rate by province/AT and by prison.
- Rate of female UTPs, juvenile UTPs, foreign UTPs and mentally-challenged UTPs by province/AT and by prison.
- Number of children accompanying their mothers in prison by province and by prison.
- Budget for prisons nationwide, by province/AT and by prison.

5.2.2.2 *Balancing the use of imprisonment in the criminal justice policies*

- e. Enactment/amendment/pepeal of legislation to decriminalize, depenalize or refer to alternatives to imprisonment should be considered for petty offences.
- f. Community service could be used as one alternative to imprisonment.
Enactment: A Community Services Act needs to be enacted in Islamabad and provincially. Said Act would provide for allowing community service as an alternative to execution of sentences for minor offences, especially if committed by juveniles. For this purpose, corresponding provisions in Pakistan Penal Code 1860, Code of Criminal Procedure 1898, and Juvenile Justice Ordinance 2000 and Juvenile Justice System Rules 2002 would be needed. Public-private partnerships could be encouraged for execution of these community service orders by the courts. The authority of ordering a person to do community service instead of a prison sentence should vest in the judiciary. The caution system as used in the UK should be adopted in Pakistan, wherein a juvenile is cautioned thrice before being subjected to trial.
Impact: Introduction of community service would directly lead to rehabilitation and diversion of convicted offenders' population from prisoners to elsewhere, hence reducing overcrowding in the future via implementation of non-custodial measures.
Time frame: Long term – This needs to be developed and implemented as a working model first.
- g. Imprisonment should be made a measure of last resort for irregular migrants/refugees. Deportation arrangements should also be initiated at least three months prior to the expiration of sentence for those who are convicted.
- h. The courts should consider releasing fine defaulters as it is in their power to do so. Remunerated work by state program could be adopted as an option to allow fine defaulters to work with a portion of their pay as installment for payment of the fine. The recommendation of the Federal Ombudsman's Prison Endowment Fund and zakat to source payment for fines could also be explored.

Monitoring indicators:

- Number of UTPs detained based on petty offences (loitering, vagabonds, habitual robbers, disturbing public peace, etc.), default in payment of fines and illegally entering Pakistan, by province/administrative territory, and by district.
- Number of Afghan nationals detained in each province/AT and in each prison; the type of offence they were accused of or convicted for; whether or not they have a PoR card; their status (asylum-seeker, refugee, economic migrant); average length of stay in prison by offence and how they were released (bail, deportation, released in Pakistan, etc.).
- Number of foreign prisoners who completed service of sentence but could not be deported due to inability to pay for deportation to their home countries, by province/AT and by prison.

5.2.2.3 Preventing unnecessary arrests and imprisonment at the police level

- i. A review of how police performance institutionally should be considered so that the evaluation focuses on the qualitative and not the quantitative aspect of arrests. Senior police leadership may take the lead in instituting such a performance-based system in practice.

Administrative Action for all provinces:

- Revising the police performance evaluation criteria in line with performance outcomes instead of merely outputs. The provincial Inspectors General may be approached to devise a set of standards best suited for application in their province. Such revisions should reflect in additional evaluation reports with respect to their impact on promotions and other career-related aspects.
- To reinforce the new guiding criteria for police performance, specialized trainings should be introduced to educate police officials on the best practices for arresting and sensitize them on the challenges created by over-arresting for the overall criminal justice system.
- Accountability measures should be laid out and implemented, in letter and spirit, to discourage persistent use of over-arresting practices.
- To aid in conducting quality based arrests, the practice of arresting a suspect immediately after a First Information Report (FIR) is lodged should be minimized. This is not a requisite of the law and as such the SHO has the discretion to initiate investigation prior to arrest to confirm the existence of sufficient evidence.
- A high ranking police officer, preferably not below the rank of Assistant Superintendent of Police (ASP), should be entitled to order for the arrest an accused person.
- The space between the theory of law and the practice of law is visible in many provisions and must be addressed through rule-making by Inspector Generals who have the power to fill this gap and translate the law into practice.
- A framework should be developed with a provision for monitoring which allows police officers to exercise bail in certain cases. Due to apprehension over the misuse of the powers for bail by the SHOs under section 496 and to avoid its application in a vacuum, the IGs should provide a regulatory framework.
- Discharge under section 169 is not allowed by police leadership in many cases and is disliked by the judiciary but the creation of a corresponding framework can dissolve this issue.

Impact: The abovementioned measure for capacity building of police officials would trickle down to benefit the criminal justice system as a whole by producing higher conviction rates reflecting positively on police performance and eliminating unnecessary detention.

Timeframe: Short-term – This should have a direct impact on the number of UTPs and help reduce the overburdened court system.

- j. Police training on putting legislation into practice, especially on safeguards against over-arresting and timely submission of challans, should be enhanced within the national and provincial police academies. The time of submission of challan may also be extended by introducing necessary amendments.
- k. The effectiveness of the recently enacted Cost of Litigation Act of 2017 in eradicating filing of frivolous and false charges, should be monitored and evaluated. The police should also not effect arrest based on complainant's statement alone, but should be backed up by other evidence or compelling circumstances. The police should also be encouraged to implement the law which affords police officials the power to file complaints against those proven responsible for registering false charges.⁷⁵⁹

759 Section 195 of Code of Criminal Procedure 1898 pertains to public officers reporting the crime of giving them false information under section 182 of Pakistan Penal Code 1860, and a court can only take action if a complaint is filed by the officer himself. Sections 211, 192 and 193 of Pakistan Penal Code 1860 also deal with false evidence, for which a complaint can be filed by the police to the court.

Section 195: Prosecution for contempt of lawful authority of public servants; Prosecution for certain offences against public justice: *Prosecution for certain offences relating to documents given in evidence. (1) No Court shall take cognizance:*

Administrative Action for all provinces:

- Implement specialized trainings to raise awareness of not effecting arrest based on complainants' statements alone, and the legislative provisions available with which to combat reports of false allegations and encourage the use of such in practice by educating police staff on the impact of filing of false and frivolous cases over the criminal justice system as a whole.
- A public campaign against complaining based on false and frivolous cases should also be considered.

Impact: The above action would educate the public and motivate police officials to set an effective precedent in the criminal justice system, which would subsequently take root and eradicate the exhaustion of resources resulting from frivolous cases and lead to the reduction of prison population.

Timeframe: Short-term – This should have a direct impact in the number of UTPs and help reduce the overburdened court system.

- I. To promote a system of incentivizing the application of release by police officials, senior police leadership may guide initiatives to reinforce an environment of greater trust between senior and lower level police staff.⁷⁶⁰

Administrative action for all provinces:

- The police should be guided through focused trainings and seminars to exercise their power to release accused by executing bonds, with or without sureties, depending on the circumstances. They should be motivated in its application by highlighting the benefits of such practices in reducing overcrowding in jails and improving the overall efficiency of the criminal justice system with the principles of transparency and accountability. Furthermore, for exercising their powers of bail⁷⁶¹, their capacity needs to be enhanced.
- In the performance evaluation of police, considerable weight/incentive should be given in the use of this power.
- To facilitate the application of section 169 and 496 of CrPC, practicable methods should be investigated and in response greater and more specialized resources should be allocated to ensure greater confidence in its use, e.g. use of wearable tracking devices.

Impact: A transparent and accountable mechanism established by the police in the proper application of law on granting release in petty matters would directly impact overcrowding of prisons at pre-conviction stage and reduce the case load for prosecution and judicial officers.

Timeframe: Short term – This should have a direct impact in the number of UTPs.

(a) *of any offence punishable under sections 172 to 188 [Section 182 of Pakistan Penal Code 1960 deals with false information with the intent to cause public servant to injure another] of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate.*

760 While by law the police have been granted the power to exercise bail at their discretion, in practice this power is rarely utilized. S.169 of the CrPC - **Release of accused when evidence deficient.** *If, upon an investigation under this Chapter, it appears to the officer incharge of the police-station, or to the police-officer making the investigation that there is no sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or [send] him for trial.*

761 And s.496 of the CrPC - **In what cases bail to be taken.** *When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer incharge of a police-station or appears or is brought before a Court, and is prepared at any lime while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer of Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided: Provided further that nothing in this section shall be deemed to affect the provisions of section 107, subsection (4), or section 117, sub-section (3).*

And s.497 of the CrPC - **When bail may be taken in cases of non-bailable offence.** *(1) When any person accused of nonbailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or [imprisonment for life or imprisonment for ten years].*

Monitoring indicators:

- Number of arrests based on encroachments on public properties by private individuals, maintaining public order, travelling without an identity card, etc. by the police by province and by district.
- Number of arrest based on FIR alone.
- Number of cases filed for false information with intent to cause public servant to use his lawful power to the injury of another person and false charge of offence made with intent to injure.
- Number of frivolous litigation, number of acquittals as a result of the key witness resiling, and the acquittal rate.
- Number of releases made by the Station House Officer with or without sureties when evidence is deficient by province and by district.

5.2.2.4 Maximizing police resource and modernizing investigation methods

- m. Planning at the provincial level of all available resources for its apportionment to affected police units based on actual and forecasted number of UTPs for each prison should be done regularly, and appeals for support/assistance at the federal level could be made based on such planning. A determination of the reasons why the National Judicial Policy's recommendation to use video-conferencing was not fully implemented should also be taken before carrying out the recommendation.
- n. Incentivizing police officers to become investigation officers should start from the police academies. The police institution should then reinforce the investigation officers' motivation, for example by creating an elite investigation cadre.

Administrative action for all provinces:

- Standard operating procedures would have to be drafted for administering the role of this cadre of investigation officers and determining inter-departmental coordination policies.
- Specialized curriculums and trainings would have to be prepared before recruitment and periodically during service.
- **Impact:** Creating specialist cadres for investigating officers in the police would be an incentive for people to join investigation forces and would increase specialization in the area. This would directly impact the quality of investigations, timely disposal of cases, and hence, overcrowding in jails.

Amendments: To strengthen the cadre of IOs, amendments in the Police Act/Police Order or its Rules could be introduced.

- **Islamabad:** The applicable rules as prevalent in Islamabad need to be revised to create an Investigations Division or Branch.
- **Punjab:** Section 8 of Police Order⁷⁶² be amended to allow for a separate specialist cadre for investigations, where investigation officers may not be posted to another branch. This cadre of investigation officers should be given incentives in promotion, salary packages, and specialized trainings before recruitment and periodically during service. Relevant rules, as applicable, should also be revised.

762 **Police to be organized on functional basis.** - (1) The police establishment constituted under Article 7 shall, as far as practicable, be organised on functional basis into branches, divisions, bureaus and sections.

(2) The branches, divisions, bureaus and sections referred to in clause (1) may include -

(a) Investigation;

(b) Intelligence;

...

(3) The specialist investigators shall be operationally responsible to the officer in-charge of the investigation branch.

(4) Every police officer shall be liable for posting to any branch, division, bureau and section, or anywhere in or outside the police:

(5) Posting to any specialist branch, division, bureau or section shall be subject to necessary training and experience in accordance with the rules.

- **Khyber Pakhtunkhwa:** Section 13 of Police Act 2017⁷⁶³ needs to be revised to introduce an Investigations Department. Relevant rules, as applicable, should also be revised in this regard.
- **Sindh:** The applicable rules as prevalent in Sindh need to be revised to create an Investigations Division or Branch.
- **Balochistan:** The applicable rules as prevalent in Balochistan need to be revised to create an Investigations Division or Branch.
- **Impact:** Creating specialist cadres for investigating officers in police would incentivize the profession and more able people would be willing to join the investigations department, and speciality to the subject would be ensured. This would directly impact the quality of investigations, timely disposal of cases, and hence, overcrowding in jails.

Timeframe: Medium to long term – This should be linked to an overall human resource strategy for the police and the criminal justice system.

- o. There is a need to use modern and scientific investigative techniques. This would include reliance on evidence other than witness testimonies and would create ease for the Investigations Officers. The establishment of a system of improved efficiency and reliability can be achieved through the employment of modern technology and investigative techniques in the criminal justice process.

Administrative action for all provinces:

- The police should be guided through specialized and regular trainings on the latest investigation techniques. Currently, the trainings for investigation officers held in the Punjab Police Training Branch, the Punjab Forensic Science Agency and the investigation training school in KP are operating independently. With guidance from these institutions, involvement of police training centres operating provincially, the National Police Bureau and the National Police Academy, a standard curriculum could be designed for training of investigation officers with specialization in forensic science in all provinces.
- Standard operating procedures would also have to be laid out to regulate and direct the process for utilization of modern investigative techniques and resources.
- To supplement such efforts, greater resources should be made available - such as an increase in fully equipped forensics labs, CCTV surveillance systems, and crime scene and evidence collection kits - to ensure authenticity of evidence in tandem with trainings on management and utilization of said resources.
- Introducing a standard digitized database of records for efficient follow-up of court cases and efficient management of case handling. This would have to be tailored to specific provinces keeping in mind linguistic limitations.
- Mainstreaming the use of video-links through teleconferencing is an initiative taken by the Punjab home department with the potential for improving efficiency in the trial process by eliminating the need for transporting criminals from prisons to courts in cases where resourcing mobility and security are difficult and costly. The technology can also be implemented for remand, case management and sentencing hearings with police stations

763 **Police Establishment to be organized on functional basis.**---(1) *The Police Establishment constituted under section 7 of this Act shall, as far as practicable, be organized on functional or territorial basis into branches, divisions, bureaus and sections.*

(2) *The branches, divisions, bureaus and sections referred to in subsection (1) may include but not limited to, Investigation, Intelligence, Operation, Watch and Ward, Reserve Police, Training and Development, Human Resource Management, Traffic Planning and Management, Information Technology, Transport, Bomb Disposal Unit, Canine, Mounted Police, Research and Development, Estate Management, Telecommunication, Criminal Record Office and Forensic Science Laboratory and shall be headed by such police officers as the Provincial Police Officer may determine.*

(3) *Notwithstanding anything contained in sub-section (2), for effective performance of functions under this Act, the Police shall have (i) a Counter Terrorism Department .. (ii) Special Branch ... (iii) an Elite Force ... (iv) a Public Relations Section ... (v) Finance and Procurement Branch ... (vi) Internal Accountability Branch ... (vii) a Legal Affairs Branch ... (viii) Reserve Police ... (ix) Traffic Branch ... (x) Warden Traffic Police Service ... (xi) Welfare Branch ... (xii) Infrastructure Development Unit ... (xiii) Telecommunication and Transport Branch ...*

...
(8) *Every police officer shall be liable for posting to any branch, division, bureau and section, or anywhere in or outside the police unless otherwise provided under this Act.*

(9) *Posting to any specialized branch, division, bureau or section shall be subject to necessary training and experience.*

and prisons.

- **Impact:** The adoption of modern technological resources and techniques is the catalyst needed to improve the competency of the investigative process. Such a change in the system would have the added benefit of significantly improving coordination and confidence between police and prosecution, boosting case disposal rates, and consequently reducing overcrowding in prisons. It would have the added benefit of less reliance on ocular evidence which may not be readily available to material evidence that is sound and verified.
- **Timeframe:** Medium to long term.

Amendments: Either a new legislation be enacted introducing use of new modern and scientific investigative techniques for the police. The police should not only be able to present evidence in court for admission upon courts discretion, as per Article 164, but also facilitated and should carry a certain amount of evidentiary value if procured through official sources. The corresponding provisions of Code of Criminal Procedure 1898, and Qanun e Shahadat Order 1984 be amended to make these effective. The relevant provisions of provincial Police Rules 1934 may also need to be amended.

- **Impact:** This amendment would have the most significant impact on revolutionizing the investigations of police in Pakistan. Difficulty in investigations has currently hampered the efficiency of the whole criminal justice system, and has increased the burden on jails due to extensive time consumed in collecting ocular evidence during investigations. This can be reversed and investigations sped up by introducing these new investigative methods. Not only would overcrowding be reduced, but the effectiveness of the criminal justice system would be improved.
 - **Timeframe:** Medium term.
- p. Use of forensic and digital evidence would aid in overcoming the hindrances faced in excessive reliance upon witness testimonies, which also lead to delay in adjudication of cases when adjournments are sought due to non-availability of witnesses in court. Greater efforts should be made towards establishing a system of improved investigation and evidence preservation to expedite the trial process and reduce the burden on the prosecution service.⁷⁶⁴

Administrative action for all provinces:

- Ensure the establishment of multiple fully equipped forensic science labs at divisional level or at the very least at district level. Once established, these labs need to be made fully functional and operational.
- Establish and maintain fully equipped and functional case property cells (*Malkhana*) for all police stations. Such cells should also be set up at district levels as 'district *malkhanas*'.
- Introduce standard operating procedures to regulate the management of evidence and case property.
- Introduce specialized trainings for prosecution services on the proper handling and management of evidence and case property.
- Mandate additional trainings for personnel on the utilization and upkeep of specialized equipment.
- **Impact:** This action would accelerate the investigation process by authenticating evidence and preserving its value for the trial process, thereby improving the efficiency of the prosecution department and reducing the case backlog.

Amendments: The Qanun e Shahadat Order 1894, as applicable to all provinces, would need amendment in Article 164. Article 164⁷⁶⁵ should be amended to make forensic and digital evidence admissible in court with higher evidentiary value, subject to a system ensuring the authenticity of the evidence.

Impact: Use of forensic and digital evidence in addition to witness testimonies will make

764 The only fully equipped forensic lab in the country currently operates in Punjab. The Supreme Court directed KP in 2013 to set up forensic labs but the order was not executed.

765 *Production of evidence that has become available because of modern devices, etc.: In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.*

effective use of modern technologies and the delay caused due to witness testimonies will also be avoided if electronic evidence can be submitted as a substitute. This will decrease time taken in disposal of cases and directly decrease overcrowding in prisons.

Timeframe: Medium term.

Monitoring indicators:

- Number of hearings postponed due to non-production of prisoner in court.
- Number of districts with video-conference facility for hearings of court cases, and number of cases where such facility was used by the court.
- Number of prisoners arrested without being presented to a Magistrate within 24 hours.
- Number of cases where there is delay in the filing of challans, per province/AT and per district; length of delay.
- Number of investigative officers against the total police personnel by province/AT and by district.

5.2.2.5 Responding to issues pertaining to the prosecution

- q. Police-Prosecution coordination is essential. While there were efforts in KP and Punjab to strengthen it, non-submission of challans on time persisted, so these measures have to be evaluated as to their implementation and effectiveness.

Administrative action in all provinces: Strengthen police-prosecution coordination by taking inspiration in the informal mechanisms set up in Sindh and KP or the formal institutionalization of the Standard Operating Procedures on Effective Police-Prosecution Cooperation (2011)⁷⁶⁶ in Punjab.

- Specialized trainings should be mandated to promote coordination and cooperation between the police and prosecutors with consideration to the extent to which the responsibilities of both can be kept independent to preclude any sense of power imbalance that might undermine such efforts all together.
- A system of early stage consultations between police and prosecution as may be provided in the law should be implemented for efficient investigation and timely completion of the case files.
- **Impact:** The abovementioned action will have the impact of exponentially increasing the efficiency of collaboration between the prosecution and the police, strengthening any specific case by focusing efforts on pre decided action plans and eliminating the risk of wasted time, efforts and resources. This process would ensure compliance of the mandatory provision of Section 173 CrPC.⁷⁶⁷ The long-term outcome of such action would manifest in a system of timely case disposal and less populated prisons.

Legislative recommendations: The model of Punjab may be followed with the improvement of giving status of statutory provisions to these coordination mechanisms, in which case, the following laws could be amended:

- Islamabad: The Islamabad Police Act 1861 should be amended.
- Punjab: The Punjab Police Order 2002 and the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 should be amended.
- Balochistan: The Balochistan Police Act 2011 and the Balochistan Criminal Prosecution Service (Constitution, Functions and Powers) Act 2003 should be amended.
- Sindh: The Sindh Police Act 1861 and the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act 2009 should be amended.
- Khyber Pakhtunkhwa: The Police Act 2017 and the Khyber Pakhtunkhwa Criminal Prosecution Service (Constitution, Functions and Powers) Act 2005 needs to be amended.
- **Impact:** Coordination between police and prosecution, especially during investigation

766 Government of Punjab, Standard Operating Procedure for Police Prosecution Cooperation in the Province of Punjab, 2011, available at <http://prosecution.punjab.gov.pk/system/files/Police%2520Prosecution%2520Cooperation.pdf> (last accessed on December 22, 2017).

767 Section 173 CrPC provides that Challan should be submitted within 14 days

stage, would ensure timely adjudication of cases because of efficient investigation, early disposal of frivolous cases, timely and complete submission of challan. All of this would not only decrease the overall burden on police, prosecution and judiciary, but would also have a direct impact on overcrowding due to disposal of cases with no substantive evidence and disposal of other matters in time before the court. Time wasted on submission of challan and lack of coordination would be saved.

Timeframe: Short term.

- r. The attractiveness of working in the prosecution may be enhanced by revising the current structure to incorporate an improved framework of service conditions.

Administrative action for all provinces:

- Revise pay structures to incentivize greater performance and provide adequate compensation for caseload. Establish uniform packages in replication of the KP pay structure.⁷⁶⁸
- Improve promotional avenues within the career structure for greater service retention and apply uniformity in said structure to increase clarity.
- Ensure that all sanctioned positions for prosecutorial appointments are filled and increase budget allocations for additional hiring of prosecution services.
- Enhance strength of prosecutors to meet with court requirements.

Impact: The abovementioned actions would serve to motivate prosecutors to improve their performance, boost morale and positively influence the retention rates of trained and experienced prosecutors, thereby facilitating greater efficiency of case management and disposal in the criminal justice system.

Timeframe: Medium to long term. This should be linked to an overall human resource strategy for the criminal justice system.

- s. Empowering the prosecution service by creating a system that better enables them to efficiently use their discretionary powers in withdrawing cases where sufficient evidence is lacking should be considered.⁷⁶⁹

Administrative action for all provinces:

- Encourage implementation of existing laws empowering them to discharge prisoners/ dismiss cases.
- Introduce trainings to motivate and raise awareness amongst prosecutors on the advantage of exercising the power to discharge cases lacking evidence.
- Facilitate dialogue between prosecutors and the judiciary to create a support structure that promotes the use of the power of the prosecution to discharge cases.
- Take steps to develop performance evaluation criteria for the prosecution service that is not based on the number of cases taken up but the quality of work, including incentivizing them for using their power in cases where evidence is weak.
- **Impact:** Such steps will have the benefit of reducing case back-log in the criminal justice system and freeing the relevant stakeholders to better attend to those cases that have a basis for trial, thereby impacting prison population by reducing detention rates. The evaluation on the basis of overall performance would also ensure service security and independence in discharge of official duties.

768 In KPK prosecutors got improved service structure as compared to other provinces. APP's have been given grade 17, DPP grade 18 and Senior PP's grade 19 & 20. Similarly KP government has announced special allowance for the public prosecutors of all grades across the province.

769 Section 494 of the CrPC provides that 'any Public Prosecutor may, with the consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person (...) and upon such withdrawal, a) if it is made before a charge has been framed, the accused shall be discharged (...); (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted'. This authority of the Public Prosecutor has now been mentioned in the prosecution services acts of the provinces. The Criminal Prosecution Services Act 2006 is applicable in Punjab whereas in Sindh the 2005 Prosecution Services Act is relevant by virtue of which, subject to a procedure, the prosecution can withdraw cases.

Legislative amendment: To strengthen the ruling of the Supreme Court that prosecution that the prosecution on its own has the discretion to scrutinize case files and reject flawed cases, all provincial Criminal Prosecution Service (Constitution, Functions and Powers) Acts in all provinces/AT could be amended, whereas an Islamabad Prosecution Service Act needs to be enacted with a provision to the effect discussed above.

- **Islamabad:** This power should be ensured in the Islamabad Prosecution Services Act, as recommended to be legislated. The example of section 4 (1)(c)(ii) of Khyber Pakhtunkhwa Criminal Prosecution Service (Constitution, Functions and Powers) Act 2005 and section 7(d) of Balochistan Criminal Prosecution Service (Constitution, Functions and Powers) Act 2003 can be followed in this regard.
- **Punjab:** The Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2005, sections 9 (4), 12(2) and 13(9)(b) need to be amended in this regard, whereby the prosecution should be given independent power to apply for discharge of case to the court, without being bound by waiting for a recommendation to do the same from the police.
- **Sindh:** The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act 2009, sections 9(3), 10(2) and 11(8)(b) need to be amended to incorporate the amendments proposed above in respect of Punjab.
- **Impact:** This authority of the Public Prosecutor to apply for discharge of cases which lack evidentiary support or are tainted with malafide, would save the time of the court, and innocent persons from being apprehended in false or baseless charges. This could directly reduce overcrowding of prisons in Pakistan.

Time frame: Short term – This should have a direct impact on the number of UTPs and help reduce the overburdened court system

Monitoring indicators:

- Number of UTPs waiting for trial due to non-submission of challans by province/AT and by district.
- Rate of vacancies in the prosecution service by province/AT and by district.
- Caseload of prosecutors by province/AT, by district and by prosecutor.
- Number of cases rejected by the prosecution for lack of evidence by province and by district.

5.2.2.6 Improving access to legal counsel

- t. To ensure that prisoners are aware of the legal services that they could access, the position of a paralegal officer within the police stations and prisons to promote the legal aid facilities to the prisoners and their families closer to the time of arrest could be considered.
- u. Under utilization of DLEC's budget and lack of awareness of criminal justice, stakeholders of the existence of DLECs are among the challenges that DLECs would have to address to be effective.
- v. To be effective, the provision of free legal aid needs to be implemented well and enhanced through the Free Legal Aid Committees set up under the Pakistan Bar Council Free Legal Aid Rules 1999.

Administrative action for all provinces:

- In order to ensure utilization of DLEC funds, all the courts must be sensitized to play an active role in order to forward applications of deserving litigants.
- Lawyers should be sensitized to raise awareness among general litigants regarding DLEC funds. A committee may be constituted at each Sub-divisional and District Bar Association level.
- The membership of DLECs should be changed and the procedure for approval of cases for funding from the DLECs should be simplified by increasing the powers of the District and Sessions Judges for approving applications of deserving litigants for funding from the

DLECs.

- Establish fully resourced legal aid committees at grass root levels.
- Provide sensitization trainings to lawyers working in legal aid committees.
- Educate Bar Council members on their responsibility for constituting and supervising the performance of free legal aid committees. Moreover, motivate them to actively take on this role by highlighting the benefits of doing so in context of the criminal justice system and those it serves.
- **Impact:** A more accessible legal aid system would enable a greater number of prisoners to be released from prison, especially those who are detained due to lack of resources.

Amendments: The Pakistan Bar Council Free Legal Aid Rules 1999 set up committees at central, provincial and district level.⁷⁷⁰ There needs to be a mechanism for accountability for the funds of these committees and how they are discharged. For the same, amendments and additions need to be made in the Pakistan Bar Council Free Legal Aid Rules 1999.

Impact: Allocation of free legal aid would help the detainees in prisons who could get out by being provided legal aid. The existing mechanism of free legal aid at central, provincial and district level, if utilized, would help in reducing overcrowding by taking minimum administrative measures.

Timeframe: Short term.

- w. The setting up of an office of the Defence Attorney, independent from prosecution, exclusively providing legal aid to indigent prisoners should be considered. The recently constituted Punjab model of the Defense Attorneys should be studied for best practices and learning.

Enactment/Amendments: A new law would be needed to establish such office. There can be a provision on public-private partnership for the office of the Defense Attorney to work in collaboration with the NGOs active in this regard.

Impact: Establishment of the office of Defence Attorney or defence services, for providing legal aid to poor detainees is a necessary measure to reduce overcrowding. This would balance the recent strengthening of prosecution services, by giving effectiveness to an institution that works in favour of accused. An efficient office of Defence Attorney would protect those languishing behind bars for prolonged periods due to lack of legal representation or under false charges etc. Their bail could be ensured as well as disposal of their cases, when handled with due care.

Timeframe: Medium term.

Monitoring indicators:

- Number of UTPs with no lawyers by province/AT and by prison.
- Number of lawyers available to represent the poor in each province/AT.
- Number of disciplinary actions against lawyers as against the number of cases filed against lawyers for disciplinary action.
- Number of NGOs providing legal services to UTPs, number of cases and types of cases.

5.2.2.7 Reinforcing alternatives to pre-trial detention

- x. The law and procedures on bail could be improved to allow more prisoners to be qualified according to the nature of their alleged offence and their economic stature, and to simplify procedures for its availment, particularly on what is acceptable as surety and expansion of release on personal recognizance. Restrictions or confinement in a specific location such as the home or a specified geographic area or institution could be explored, with or without the use of trackers.

Amendment: The pertinent rules of the Code of Criminal Procedure 1898 need to be revised

⁷⁷⁰ Rule 4 of Pakistan Bar Council Free Legal Aid Rules 1999.

or simplified for a more effective use of bail.

Impact: More qualified prisoners will be able to be released on bail, increasing the trust in the criminal justice system and accessibility.

Timeframe: Medium term, with long term impact.

- y. To ensure careful monitoring of UTPs for making legal support available for benefitting from alternative measures to detention under the existing laws an online monitoring mechanism that would be able to monitor detainee population, with a special focus on UTPs, needs to be established.

Administrative action for all provinces: Make publicly available, through a website, a daily or weekly updated data on all detainees in all the prisons segregated by age, gender, and judicial status, so that concerned members of the criminal justice system or civil society could take up the cases of the most vulnerable like women, juveniles, the physically or mentally challenged, and the elderly—as well as the physically and mentally challenged or poor petty offenders—for bail applications

Impact: More qualified UTPs will be released on bail, which will reduce overcrowding in prisons.

Timeframe: Medium term, with long term impact.

- z. To address the fear of criminal justice authorities of abscondment, implementation of the existing laws both by the police and the judges should be reinforced.

Administrative action for all provinces:

- Encourage judicial officers to administer bail as a rule and not the exception through trainings that educate them on the benefit of bail application.⁷⁷¹
- Institute trainings for judicial officers that discourage the practice of setting excessive bail amounts.
- Allocate resources and equipment for establishing an improved system for tracking and locating those released on bail.
- The monthly visitation by judges in prisons should also be strengthened to monitor the implementation of the law, including that of bail.

Impact: The abovementioned will have the benefit of diverting pressure from an overburdened detention system to improve prison management and respect of prisoner rights thereby limiting the risk of recidivism.

Timeframe: Short term.

- bb. For those granted bail with surety but are unable to provide such surety, release at pre-trial stage with reporting to a probation officer should be considered, with or without the use of technology for tracking them. The offices of the probation and parole in all provinces/ATs need to be strengthened to provide alternatives to pre-trial detention, especially to juveniles under the about to be enacted Juvenile Justice Bill 2018.

Enactment/Amendments: The Probation of Offenders Ordinance 1960 would need to be amended in this regard and new provisions would have to be inserted. To enhance the role of probation officer and make it more effective, the corresponding provisions in Probation of Offenders Ordinance 1960 and the Probation of Offenders Rules 1961 would also have to be amended. Currently, the role of probation officer is defined but it is not detailed. The probation and parole offices in all provinces would need to be equipped with training and resources to meet the demands of the increased workload. Offices of female probation officers should be established in all provinces.

Impact: The implementation of this measure would lead to enhanced role of probation officer and effectiveness of the system of probation. Currently, it is only being used to a minimum, and the non-custodial measures as prevalent in Pakistan are not being implemented, hence, contributing to overcrowding.

Timeframe: Short term.

771 Section 496 and 497 of the CrPC and Section 10(3) of the Juvenile Justice System Ordinance.

- cc. The speedy disposal of cases through a process of diversion in the Juvenile Justice Bill of 2018 should be immediately enacted, then implemented and monitored. As the bill provides for an increased role for probation officers, the strengthening of their capacity should also be considered.

Enactment: The Juvenile Justice Bill of 2018 should be immediately passed by Senate and signed by the President.

Administrative action for all provinces:

- Establish uniform and improved standard operating procedures to guide the management practices and protocols for effective implementation of the Juvenile Justice Systems Act 2018, once enacted.
- Ensure the hiring of additional probation and parole officers including female probation officers to meet the requirements for effective implementation of the system.
- Review the pay structures of officials in the Reclamation and Probation Departments to incentivize improved performance and retention.
- Mandate regular trainings for probation and parole officers to promote strict adherence of dictated protocols and to educate them on the benefits of improving the specified area for the overall juvenile justice system.
- Promote exposure visits on national and international forums to share and learn from best practices in the field.
- Allocate necessary resources on evidence-based demand – setting up offices, transport facilities etc. - to facilitate probation and parole officers in carrying out their responsibilities.
- Digitalize all paper records for the probation and parole office.
- Establish a comprehensive and integrated system for data collection, management and monitoring.
- Train the relevant personnel on the utilization and management of modern digital equipment.
- Have probation and parole officers accompany district and sessions judges during jail visits to assist them in assessing cases for release.
- Familiarize key stakeholders of the juvenile justice process to the probation and parole system by incorporating information of such in their training curricula.
- Conduct multi-agency trainings to educate and integrate efforts in promoting the effectiveness of the juvenile justice system.
- Supplement such efforts by creating a platform to encourage dialogue between all juvenile justice actors to bridge existing communication gaps.
- Provide specialized trainings to probation and parole departments on the benefits of community involvement.
- Engage the families of juveniles, probationers and parolees in efforts to motivate them towards rehabilitation.
- Engage community participation to support reintegration of juveniles, probationers and parolees into the community.
- Provide trainings to families and community participants to facilitate the process.

Impact: Diversion of juvenile cases from the criminal justice system will benefit the offender by avoiding a criminal record and its negative consequences, benefit educationally to prevent reoffending, be able to make direct amends to the victim, develop empathy and a sense of social responsibility. For the victims, higher levels of satisfaction with the result has been shown. For the criminal justice system, resources are freed to address more serious and complex cases and recidivism reduced.

A stronger probation and parole office will enable said department to play a greater role in the juvenile justice system in offering an alternative to detention that is rehabilitative and re-integrative. Introducing modern information technology in probation and parole practices would improve the efficiency of the system to engender greater trust in its use within the criminal justice process, thereby reducing dependence on prisons. The criminal justice system as a whole by opening communication channels, building interdepartmental confidence and facilitating smoother case management practices would be more effective. By engaging family and community support to better motivate and supervise the concerned, the risk of recidivism

is reduced, and as such prison overcrowding, and lessening the burden of responsibility for the officers in charge of monitoring the concerned.

Timeframe: Medium to long term.

- dd. Alternative dispute resolution mechanisms where they have a solid legal basis and are subject of judicial oversight should be implemented and monitored. For Punjab, the provisions in the Code of Criminal Procedure is enough basis to create ADR centres with 62 percent success rate, while for KP and Islamabad, new laws were passed to strengthen the ADRs' legal basis and judicial oversight.

Administrative action:

- Set standard operating procedures should be established to administer the dispute resolution proceedings, determine the scope and role of ADR bodies, and the rights, privileges and obligations of those party to the proceedings, if not yet provided.
- To ensure that the ADR mechanisms work effectively, trainings will be provided to all employees involved in implementing laws related to ADR. The trainings should entail a well-rounded understanding of the theory and practice of negotiation, mediation, arbitration and related techniques. Trainings should also encompass awareness of government guidelines, awareness of gender dimensions of justice and the distinction between criminal cases that may be referred to ADRs in particular.
- **Impact:** The ADR mechanisms introduce an alternative to formal, costly and often lengthy court proceedings which add to the overall case load for the judiciary and related criminal justice actors. This can be avoided in petty matters that may not require judicial scrutiny and may be resolved amicably. Such alternative means offer a more efficient and affordable option which concurrently reduces the overall resource strain on criminal justice actors and diverts from prison overcrowding.
- **Timeframe:** Short term - this should have a significant impact on the cases going before the courts and may be able to positively affect other issues.

Legislative action:

- **Enactment:** Passage of new ADR laws can be considered in other provinces/ administrative territories. For example, the ADR law applicable in Islamabad could be used as a model law. Alternatively, the Police Act/Police Order can be amended to incorporate provisions for Dispute Resolution Councils (DRCs) such as what is provided in Section 73 of the KP Police Act 2017. In this regard, the Balochistan Police Act 2011 and Sindh Police Act 1861 could be amended.
- **Impact:** This would directly have an impact on overcrowding, as well as reducing case overload of judiciary (another cause of overcrowding). Less cases being registered would mean lesser prisoners in jails, lesser filing of petty matters in courts for lengthy proceedings, and lesser burden on all criminal justice actors.
- **Timeframe:** Short term.

Monitoring indicators:

- Number of UTPs charged with bailable offences as against the proportion of them who filed for bail, by province/AT, and by district.
- Number of bail granted and number of bail denied for those who applied for bail in court for bailable offences by province/AT, and by district.
- Number of UTPs who were granted bail but stayed in prison for not being able to secure the required surety or payment for bail, by province/AT, and by district.
- Number of UTPs who exceeded the time limit for pre-conviction detention, by province/AT and by prison.
- Number of UTPs released on bail through judge's prison visitation, by province/AT and by prison.
- Number of UTP cases referred to alternative dispute resolution mechanisms, by province/AT and by prison, and of those, the number of cases resolved and the number referred back to the court.

5.2.2.8 Removing obstacles and delays in accessing justice

- ee. Administrative disciplinary action should be introduced in cases where:
- i. the arrested are not presented before a Magistrate within 24 hours,
 - ii. extension of a 15-day remand is not granted by the judge in the presence of the accused,
 - iii. case properties are not exhibited as evidence in court despite their availability with the investigation officers.
- ff. Trials are postponed frequently by prosecutors asking for repeated adjournments, defense counsel being absent during hearings and non-production of witnesses including the police.
- i. The police should consider incentivizing participation of their ranks as witnesses, either monetarily or in their performance evaluation.
 - ii. Penalties should be introduced for prosecution and defense for requesting more than a specified number of adjournments in a court case.
 - iii. The witness protection program as stipulated by the Sindh Witness Protection Act, 2013 should be implemented and evaluated.⁷⁷²

Administrative action for all provinces:

- Allocate resources for setting up the witness protection program.
- Provide specialized trainings to the witness protection unit and necessary personnel.
- Encourage effective application of this model in other provinces following the requisite legal amendments.

Enactment/ Amendment: A Witness Protection Act or Rules⁷⁷³ need to be enacted/ adopted in Punjab, Khyber Pakhtunkhwa, Balochistan, and Islamabad for the protection of witnesses. The witness protection law should also enable submission of evidence through video links, skype, video-conferencing, and by use of screens etc. to hide identity of witness, where necessary. It is crucial that such means be adopted at a premises designated by the Court, or through arrangements that have been approved by the Court in advance, so as to ensure that no unauthorized persons have access.

Impact: Witness protection will enable and encourage witnesses to come forward without fear and expedite criminal proceedings. This will reduce case load by efficient disposal of cases, strengthen proper administration of justice, effectively redress the grievances of victims and consequently reduce overcrowding.

Timeframe: Long term.

- iv. There needs to be oversight of excessive strikes by the legal fraternity, which lead to unnecessary adjournments and delay in hearings, thereby contributing to overcrowding in prisons. The legal community should also realize that using delay as a 'legal' tactic is harmful to the profession, which needs to be addressed by strengthening accountability measures against the use of such tactic.
- v. Categorization of lawyers by specialty (e.g. criminal law, political law, commercial law) and putting a cap on the maximum number of cases a lawyer can accept would help those operating in the criminal justice system determine who among the lawyers in the district could act as defense counsel effectively and efficiently.

Amendments: The Legal Practitioners and Bar Councils Act 1973, Chapter VI,⁷⁷⁴ needs to be amended as well as the Legal Practitioners and Bar Councils Rules 1976, Chapters VI,⁷⁷⁵

772 **Witness Protection Program.** (1) As soon as after the commencement of this Act, Government shall establish a Witness Protection Programme for protection and safety of a witness in any proceedings relating to this Act.

(2) The actions in the Programme may include the following:-

(iii) to allow video conferencing in order to secure the protected person; provided that such arrangements are approved by the concerned authority under this Act;

(c) Witness protection programmes may be established by the Government through law or rules.

773 trial may be held in jail premises or through video link.

774 Pertaining to Advocates, Their Enrolment, Right to Practice, Seniority, Pre-Audience etc.

775 Pertaining to Common Role of Advocates.

VII,⁷⁷⁶ VII-A,⁷⁷⁷ and VIII,⁷⁷⁸ as applicable to Pakistan. Additionally, provisions would be added for trainings of these lawyers in the areas that they would specialize in. There would also be provisions for regulation of practice in higher courts, in such a way that appearing for cases in lower courts is not compromised.

Impact: These amendments would help reduce excessive adjournments due to senior lawyers not presenting themselves in trial courts on the pretext of having proceedings in the higher courts. Another impact will be easy identification of criminal lawyers in various districts and areas in the future for representation of accused in the courts by experienced criminal lawyers. Both the initiatives will reduce overcrowding in the long run, if successfully implemented.

Timeframe: Long term.

- vi. Strengthening of the Legal Practitioners and Bar Councils Act and empowerment of the disciplinary committees of the bar councils should be considered.

Administrative action for all provinces:

- Institute trainings to educate members of the disciplinary committee on the need for regular hearings and timely disposal of complaints to ensure proper implementation of legal ethics.
- Provide the necessary tools and mechanisms to facilitate regular hearings and timely disposal of complaints.
- Adopt a check and balance system to evaluate performance with regard to the proper implementation of legal ethics by the Committees.
- **Impact:** A strengthened disciplinary committee would provide a better monitoring mechanism for lawyers, thereby, ensuring that such legal services are delivered in a just, ethical and competent manner. This in turn would facilitate the growth and development of legal professionals to establish a system of accountability, improved access to justice and administration of justice.
- **Timeframe:** Medium term.

Amendments: The Legal Practitioners and Bar Councils Act 1973, section 43 provides for Disciplinary Committees set up under the Bar Councils to refer the matter to an independent tribunal set up by Pakistan Bar Council.⁷⁷⁹ It is recommended that the Disciplinary Committee, as constituted under Section 10(aa)⁷⁸⁰ of the Legal Practitioners and Bar Councils Act 1973 should have a retired judge or an independent member of minimum experience as judge of a district court preside over them when rendering decisions. If the judge notices irregularity of procedure, he may refer the case to the Tribunal on his own motion. The corresponding provisions in the Legal Practitioners and Bar Councils Act, and Chapter X of Legal Practitioners and Bar Councils Rules 1976 would also need amendment.⁷⁸¹

- **Impact:** These amendments would help reduce excessive adjournments and delays in case proceedings due to malpractices observed by lawyers. Due to transparency in procedure and more accountability, the legal fraternity may also slowly become sensitized to the issue of increasing overcrowding due to delaying tactics observed by them.
- **Timeframe:** Short term.

- vii. Strengthening of the service structure of lawyers and incorporation of capacity-based initiatives into the framework should be considered.

Administrative action for all provinces:

- Obligate lawyers to undertake continuing legal education to keep abreast with developments in law and jurisprudence, to reinforce the ethics of the legal profession and to expand familiarization on human rights and emerging issues in the national and international context.

776 Pertaining to Enrolment of Advocates to the Supreme Court.

777 Pertaining to Enrolment and Training of Advocates.

778 Pertaining to Forms and Fees etc. for Enrolment of Advocates.

779 See Section 43 and 45 of the Legal Practitioners and Bar Councils Act 1973.

780 A disciplinary Committee consisting of not more than five members to be elected by the Council from amongst its members.

781 Pertaining to Disciplinary Proceedings.

- Sensitize lawyers to the benefits of continuing legal professional development and provide trainings to discourage negative practices such as seeking unnecessary adjournments and non-serious approach to cases by educating lawyers on the severity of their impact.
- Introduce a uniform fee structure for lawyers.
- Identify a standard formula to dictate policy on average caseload.
- Ensure strict adherence to said restrictions through proper auditing to ensure that lawyers do not exceed the amount of cases and fees allowed.
- Introduce guidelines for administering registration of complaints and protests to eliminate the risk of unnecessary strikes.
- Set guidelines for court-wise categorization of lawyers to establish a culture that prevents a specific class of lawyers from monopolizing cases.

Impact: The above recommendation would target the capacity and performance of lawyers to elevate the standards of the practice of law through greater observance of legal ethics and professionalism. In consequence, the above would enhance the efficiency of practicing lawyers, and as such, that of the criminal justice system.

Timeframe: Medium to long term. This should be linked to an overall human resource strategy for the criminal justice system.

viii. Investing on education of future lawyers and paralegal professionals should also be considered.

Administrative action for all provinces:

- Instate a uniform curriculum for law programs that are designed to offer a well-rounded legal education with focus on knowledge of the core issues of legal ethics.
- Encourage Bar Councils to play a greater role in monitoring and supervising law schools to ensure they are not just operating on a corporate basis.
- Promote greater interaction between Bar Council members and law students through guest lectures, trainings, seminars, etc. focusing on the importance of professional conduct in the interest of the administration of justice.
- Establish legal incubators⁷⁸² to educate and train the future generation of lawyers. Legal incubators allow law school graduates to obtain additional skills and specialize in certain areas, facilitating the transition from educational to professional world.
- The para-legal profession should be encouraged.
- Law schools may be incentivized to set up legal clinics for prisoners.

Impact: The above recommendation would produce a cadre of future lawyers that is equipped with the fundamental tenets of professionalism and legal ethics to better serve in their legal capacity to improve access to justice and uphold the rule of law.

Timeframe: Long term.

- gg. A pronouncement by the Supreme Court of a general grant of release on bail following the strict implementation of the prescribed time limits for pre-trial detention should be explored.
- hh. A national backlog reduction strategy like in Kosovo⁷⁸³ and the setting up of Model Courts like in Punjab could be explored to reduce the number of pending cases per judge.
- ii. More judges' positions should be created in provinces exhibiting the highest rates of criminal cases per judges. Voluntary transfer of judges to another province with high vacancy rates and number of criminal cases per judge should be incentivized.
- jj. Regular interface of the criminal justice stakeholders at the district, provincial and national levels should be institutionalized. The work of the Criminal Justice Coordination Committees should be strengthened by having the mechanisms to submit their recommendations to higher criminal justice coordination bodies that could well address issues such as budget allocation at their level.

782 Legal incubators allow law school graduates to obtain additional skills and specialize in certain areas, facilitating the transition from educational to professional world.

783 In 2015 USAID, in its Effective Rule of Law program, supported the courts in Kosovo in reducing the backlog by 16% in six months (USAID Kosovo, *SUCCESS STORY – Kosovo Courts Reduce Backlog*, June 2015). See also Regional Cooperation Council, *Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries*, Final Report, 2016.

- i. Implement the existing statutory provisions on interface mechanisms for greater coordination between the police, prosecution, prisons, Bar, and judiciary.⁷⁸⁴

Administrative action for all provinces:

Organize trainings to highlight the importance and benefits of a better inter-connected criminal justice system and offer coaching for improved communication techniques to facilitate constructive dialogue between the different criminal justice actors.

Impact: The above should have the impact of significantly improving the capability and efficiency of the criminal justice system by opening communication channels and facilitating smoother case management practices.

- ii. The Provincial Criminal Justice Coordination Committees as set up under the Police Order 2002⁷⁸⁵ were done away with when the Police Order 2002 was repealed in Balochistan⁷⁸⁶ and Sindh.⁷⁸⁷ They are currently only operative in Punjab and KP.⁷⁸⁸ These committees are crucial to greater coordination in the criminal justice system.⁷⁸⁹

Amendment: The Criminal Justice Coordination Committees need to be set up in Islamabad, Sindh and Balochistan via amendment in the Police Acts in these provinces, which would be headed by the District and Session Judge as the Chairperson.

- **Islamabad:** In addition to revising the Police Act 1861, as recommended in police recommendations, a provision for establishment of Criminal Justice Coordination Committees need to be added.
- **Sindh:** In addition to revising the Police Act 1861, as recommended in police recommendations, a provision for establishment of Criminal Justice Coordination Committees need to be added.
- **Balochistan:** In addition to revising the Police Act 2011, as recommended in police recommendations, a provision for establishment of Criminal Justice Coordination Committees need to be added.

Impact: Overall, there is a need for greater coordination between the various institutions of the criminal justice system through mechanisms such as Criminal Justice Coordination Committees. Greater coordination would ensure a smooth criminal justice system and reduce overcrowding in the long run by achieving the same.

Timeframe: Medium term.

- iii. The convening of a National Criminal Justice Coordination Committee (NCJCC) should be considered. The NCJCC should serve as the federal coordination body for steering the national efforts for improving the criminal justice system. The role of the committee would primarily be to make policy recommendations and ensure its implementation, particularly in addressing overcrowding in prisons by reducing pre-conviction imprisonment.

Monitoring indicators:

- Number of cases where UTP was not produced to the magistrate within 24 hours from arrest, by province/AT and by district.
- Number of extension of remands granted by the court by province and by district by province/AT and by district.
- Number of adjournments by the prosecution and by defence per province/AT and per district.
- Number of lawyers strikes and number of criminal cases adjourned due to these strikes, by province/AT.
- Number of criminal cases pending in court, by province/AT and by district.
- Number of judges and vacancy rate of judges position, by province/AT and by district.

784 s.109 of The Police Order 2002 and s. 74 KP Police Act 2017.

785 Chapter XI, Police Order 2002.

786 Balochistan Police Act 2011.

787 Sindh (Repeal of the Police Order 2002 and the Revival of the Police Act 1861) Act 2011.

788 Section 74 and 75, KP Police Act 2017.

789 Please refer to the way forward for details.

5.2.2.9 Supporting effective prison management and rehabilitation

- kk. The Law and Justice Commission Pakistan (LJCP) and the prison authorities in each province/ AT should agree on a format to report the prison population data, which should include for each prison the occupancy rate, the percentage of UTPs, the percentage of detainees held without the submission of challan, and the number of detainees according to the length of detention. The LJCP should consider investing on developing its analytical skills; compiling and analysing the prison population data, and measuring the efficiency of the criminal justice system in each District.
- ll. A shift in focus from punitive detention to rehabilitation of prisoners through programs and services that offer prisoners the opportunity to reform should be considered.

Administrative action in all provinces:

- Utilize trainings to inculcate in prison officials the comparative advantage of rehabilitation over punitive and preventative detention.
- Introduce effective drug rehabilitative programs and strengthen the existing mechanism within or outside of prison structures through partnerships with specialized institutions to target recidivism arising from drug addiction.
- Prepare uniform standard operating procedures for the health assessment of inmates.
- Train and hire specialized medical personnel for health assessment and treatment of inmates.
- Procure the necessary medical equipment and supplies to support a fully functional rehabilitative program with training for personnel on the utilization and upkeep of the provided equipment.
- Relieve pressure on space by having provincial authorities ensure that the official capacity is calculated accurately.
- Increase family links.
- Maximizing the use of resources to ensure minimum essential services.
- Enhancing communication.
- Prevent corruption within the prisons.
- Expand access to a wider range of improved educational and vocational training programs under a uniform curriculum. Engage in collaborations with relevant institutions to supplement such efforts.
- Conduct monthly seminars and meeting sessions with prisoners to educate them on the detriment of crime and encourage them to reform.
- Secure minimum wages for convict labour that are at par with market standards.⁷⁹⁰
- Ensure the allocation of budget for setting up said programs and facilities.

Impact: By focusing on a reform-based approach, the above-mentioned actions will assist prisoners to better reintegrate into society in a meaningful and productive manner, *ipso facto*, reducing the risk of recidivism and cutting down prison population.

Timeframe: Short to medium term.

- mm. Measures to better implement the laws regulating classification and separation of prisoner should be considered.

Administrative action in all provinces:

- Sensitize prison officials to the importance of strict implementation through trainings ad workshops.
- Like in Punjab and Sindh, designate separate prison facilities for women and juveniles with special standard operating procedures to regulate their management in AJK, Balochistan, GB, and KP.
- Provide external oversight mechanisms to ensure implementation of such practices with the formation of a committee, which may undertake visits to determine performance in this regard.

790 Rule 827 of Pakistan Prisons Rules, 1978

Impact: Prisoner classification and separation significantly impacts recidivism rates and, consequently, prison overcrowding by ensuring that first-time offenders and juveniles are kept away from the influence of hard-core criminals. The increased ease in monitoring from observance of such practices also improves the efficiency of prison staff and, by extension, the criminal justice system.

Timeframe: Medium term - should be linked to a transformative strategy to becoming a Correctional service.

- nn. Enhancement of the efficiency of prison management by including structural changes to the existing framework of the Pakistan prison service and training manual should be considered.

Administrative action:

- Revise pay structures to incentivize greater performance and instate uniform pay packages across provinces. Additional allowances should be apportioned to staff in eligible roles.
- Improve promotional development opportunities for greater service retention and apply uniformity in said structure to increase clarity.
- Ensure that all sanctioned positions for appointments are filled and increase budget allocation for additional hiring of prison staff where needed.
- Ensure efficient utilization of budget through the formation of oversight bodies to keep a constant check on performance of prisons and budget expenditure.
- Introduce periodical technical trainings for prison officials under uniform curricula in partnership with associated institutions.
- Strengthen the National Academy for Prison Administration by taking administrative actions.

Impact: The abovementioned actions would serve to motivate prison officials to improve their performance and build their confidence, thereby facilitating greater efficiency in the criminal justice system.

Timeframe: Medium to long term - should be linked to a transformative strategy to becoming a Correctional service.

- oo. The Prisons Act of 1894 should be revised to keep up with the developments of the criminal justice system and for effective and efficient management of prisons geared towards rehabilitation of prisoners.

Revision to a Correctional Act: The Prisons Act 1894, as applicable to Pakistan, and the Prisons Rules 1978, as applicable to Punjab, Sindh, and Balochistan, and the NWFP Prisons Rules 1985 would need to be revised.

- The revised correctional law should incorporate provisions related to compulsory pre-service and periodical in-service trainings of prison staff and officials and establishment of provincial training centres for prison officials and staff.
- It should also be made mandatory to have monthly and periodical seminars, lectures, or other consultative sessions for inmates of prisons on prison premises or beyond.
- The revision should include the repeal of prison rules which are not or cannot be implemented, such as Rule 745⁷⁹¹ pertaining to capacity of buildings in prisons, and enactment of more practical and effective provisions, in accordance with international standards and the local context.

791 Pertaining to capacity of buildings in prisons.

- Revision of wages of prisoners: Rule 827 (ii),⁷⁹² Rule 846,⁷⁹³ and Rule 853 (6)⁷⁹⁴ of the Prisons Rules 1978, as applicable to Punjab, Sindh, and Balochistan, and the KP Prison Rules 1985, provide for situations in which prisoners may be granted wages, but the same are subject to approval of Inspector Generals and in case of labour, outside the premises only. The new law should inculcate provisions on providing remuneration to prisoners for work done on prison premises, with said wages at par with minimum wages fixed by the government, and market value of labour that prisoners are engaged in.
- The Prisons Act 1894, Section 59, grants power to the provincial governments to make rules on “treatment and release of prisoners,”⁷⁹⁵ as well as “generally for carrying into effect the purposes of this Act [the Prisons Act 1894].”⁷⁹⁶ The new law should be framed by each provincial government, providing for rehabilitative programs in prisons.
- The new law should include open prisons which could accommodate low security risk prisoners, as well as function as a halfway house between detention and release. A risk based classification system would enable prisoners to be classified based on the risk they present to staff, other prisoners, to escape and to the community. Based on the criteria developed, many prisoners may be eligible to be placed directly into open prisons and avoid the negative influences of higher security prisoners. A risk based assessment and classification process should be introduced.
- Parole and probation laws could be included in this new Corrections Act.

Impact: Prisons suffer from mismanagement and corruption at the moment. The revision of prison laws to improve the management and operation of prisons would improve the current conditions of prisoners, until overcrowding is controlled. Furthermore, certain measures taken by prison officials can even reduce overcrowding, such as transfer of prisoners from one jail to another one in close proximity. Other measures of the sort can also be introduced in revised laws to address overcrowding. The training institutes of prisons on the other hand would enhance capacity of prison officials and staff, and the revision of laws would also ensure that the laws made are pragmatic and can be implemented. If prisoners have sufficient money while working in prisons, they can support their families and can also support themselves when they leave the prison premises. This would decrease recidivism and hardening of criminals due to lack of resources when prisoners are finally released. Hence, impacting overcrowding in the long run. Rehabilitative programs, aimed at controlling drug abusers and other criminals who are not yet hardened would promote future reduction in jail population of those prisoners whose initial incarceration leads to multiple incarcerations in the future. This will result in reducing overcrowding by tackling recidivism. The success of Open Prisons can be seen in Rajasthan Open Prisons in India, and in Badin Open Prison in Pakistan, which is no longer operative. Open prisons allow prisoners to work within the premises during the day, interact in an open environment with each other, and work on their own daily maintenance. They come back to the open prison premises at night to sleep, and the next day is spent in the same fashion. This is a healthy and rehabilitative program in its very nature, which encourages integration in society and a healthy attitude towards employment and working. This would decrease overcrowding in two ways: first, the prison population would be divided when some of it is diverted to open prisons, and second, it would result in reduction in recidivism by having a good healthy program for prison integration that will prove effective in the long run in promoting reintegration of prisoners in society after their release.

Timeframe: Long term.

792 Subject of such general or special directions as the Inspector-General may from time to time give in that behalf, prisoners may be employed without the prison premises, on public works which are at any time carried out under the supervision and control of any Government Department or of a local authority on daily wages as may be specified by the Inspector-General.

793 (i) In calculating the price of prison-made article the following shall be taken into account: (a) The cost of raw materials; (b) One-third of the cost of raw materials towards wages of labour and profit. (ii) In case where the price worked out according to the above sub-rule is such below the current market rates, the ratio of onethird may be increased to adjust the price.

794 Except with the special permission of the Inspector-General, work on the wages system shall not be permitted in the prisons. When any work on this system is accepted i.e., when materials are supplied by other departments, or private firms and the prison charges for the cost of labour only, the quantity of the materials received shall be entered, in the appropriate register on separate pages, the column of price being left blank. In the books of the factories also full details as to the disposal of materials shall be shown on a separate page marked “Work on wages”.

795 Section 59 (27).

796 Section 59 (28).

- pp. At the national level, prison data was difficult to compile and had discrepancies due to lack of uniformity among the provinces and administrative territories in the way data is collected and analyzed. Federal oversight over these data must be clearly established and a uniform standard in collecting, analyzing and reporting data should be considered in order to monitor the progress of any action plan on prison overcrowding and reduction of pre-conviction detention.
- qq. Digitalization of prisoners records should also be encouraged to ensure that no prisoner's case is being forgotten and it is timely processed in the criminal justice system. Introduction of modern technology to support and strengthen the structural regime of the prison system should be considered.

Administrative action in all provinces:

- Establish effective prisoner file management system. Provincial authorities establish electronic database of records to manage the prisoners' file; the provincial databases should be compatible to allow the exchange for information in case of transfer or re-arrest. The database must include information related to the judicial process.
- Prioritize the conversion of paper records to digital format in all provinces on the lines introduced in Punjab with the support of UNODC.⁷⁹⁷
- Introduce an integrated information management system linked with databases of the criminal justice system and other relevant institutions—such as the National Database and Registration Authority (NADRA)—to collect, store, and process comprehensive records of all prisoners. A proto-type model has already been set up in the central prison in Peshawar⁷⁹⁸ and should be replicated nation-wide. Trainings should be provided on the utilization, operation and maintenance of the integrated information management system. Resources should be allocated for continuous improvement and modernization of the system.
- Standardize the use of video-links for teleconferencing to eliminate the need to transport criminals from prisons to courts in cases where resourcing mobility and security are difficult and costly. Since such video trials are being conducted in terrorism cases in KP⁷⁹⁹ and Punjab is also working on institutionalizing video trials through teleconferencing,⁸⁰⁰ these could be used as lessons for other provinces as well. Moreover, the scope of the technology can be broadened for multiple other purposes, such as scheduling video conferencing of prisoners with their families, lawyers, and relevant criminal justice actors in addition to mandatory family visits.
- Modernize prison structures by adopting digital systems that improve the safety of prisoners and prison staff.

Impact: Digital reforms in the prison system would strengthen management, monitoring, and security mechanisms in prisons and decrease the burden of work for prison officials. This would concurrently improve the performance and operation of the Prisons Department and, in consequence, that of the criminal justice system. The establishment of a system providing immediate access to uniform data by the criminal justice system would facilitate greater information sharing improving efficiency and effectiveness in the dispensation of justice.

Timeframe: Short term – already in progress through UNODC.

- rr. Increasing prison capacity may result in more harm than good, i.e. increase the country's incarceration rate in the long term, if the causes of overcrowding is not addressed. Nevertheless, any decision to increase prison capacity has to be part of a national strategy based on the values of the criminal justice system (rehabilitative instead of punitive) and careful planning and assessment of actual needs, taking into consideration the achievement and failures of criminal justice system reforms.
- ss. A risk-based assessment and classification process for prisoners should be introduced so that many may be eligible to be placed directly into open prisons.⁸⁰¹ Open Prisons are effective in preventing prisoners from facing the harsh environment of confinement in jails. Rule 6 (iii)

797 Please see https://www.unodc.org/pakistan/en/press-release_-_operations-in-20-prisons-of-punjab-are-getting-computerized-and-automated-seminar-at-the-launch-of-prison-management-information-system-pmis-in-prisons-of-punjab.html.

798 Please see http://home_tribal_affairs.kp.gov.pk/page/prisons_new_initiatives.

799 Comments made by a senior-level prisons official of KP during Consultations with Criminal Justice Officials regarding Overcrowding in Pakistan's Prisons at NACTA in Islamabad on July 27-28, 2017.

800 Interview with a senior-level official of the Home Department of the Government of Punjab in Lahore on May 24, 2017.

801 Rule 6(iii) of Pakistan Prisons rules

of Prison Rules 1978⁸⁰² provides for open prisons as special prisons, but there is no other provision in law dealing with the same. Cost of maintaining open prisons is also minimal in the long run as the prisoners work and support themselves at these. Furthermore, such prisons require minimal infrastructure. However, they should only be used for prisoners who do not pose a high risk to fellow prisoners and prison staff.

Administrative action in all provinces:

- Allocate resources—in terms of land and infrastructure—for the establishment of open prisons that are suitable to the security requirements of prisoners.
- Draft SOPs for regulating the management of open prisons based on the SOPs for the now closed Open Prison Badin in a manner that is uniform and transparent.
- Provide specialized trainings to prison personnel assigned the responsibility of administration within such a facility.
- Engage universities in partnership for agricultural and other skill-based programs. Secure the resources and equipment necessary for the adoption of such programs along with training essentials for their operation.

Impact: The above recommendation has multiple benefits in terms of impact. It not only lifts the resource burden off of the congested prisons by relocating prisoners to alternative facilities but also gradually reintegrates prisoners into society, thereby eliminating the risk of recidivism.

Timeframe: Medium term - should be linked to a transformative strategy to becoming a Correctional service.

Monitoring indicators:

- Number of UTPs referred by prison authorities to the Bar Council or the District Legal Empowerment Committee to be represented by a counsel.
- Number of UTPs referred by prison authorities to visiting judges.
- Number of reoffending prisoners/recidivists, by types of crime, by gender, by age when the first arrest occurred, per province/AT and per prison.
- Number of prisoners with family visits.
- Mortality rate inside the prison compared to outside the prison.

5.2.2.10 Ensuring the safety and well-being of criminal justice stakeholders

uu. The strengthening of the criminal justice system through all the abovementioned measures recommended should impact the overall safety and well-being of criminal justice actors. In the meantime, however, a security risk assessment for the protection of judges, court officials, prosecutors, lawyers, police, prison staff, witnesses and prisoners should be considered to distinguish real from perceived threats, and accordingly adopt the necessary and least restrictive security measures.

vv. Any acts of harassment, threats or physical assaults, including killings of judges, prosecutors, lawyers, police, prison staff, prisoners, witnesses and prisoners should be promptly investigated, and the perpetrators sanctioned.

Monitoring indicators:

- Number of attacks to judges, court officials, prosecutors, lawyers, police, prison staff and witnesses outside the prison, by province/AT and by district.
- Number of attacks to judges, lawyers, prison staff and prisoners inside the prison, by province/AT and by prison.
- Number of cases filed in court involving these attacks as against number of convictions, by province/AT and by district.

802 (iii) Women’s Prisons, Open Prisons, Borstal Institutions and Juvenile Training Centers shall be deemed to be Special Prisons under this Rule.