



## **Pakistan: Children excluded from juvenile justice reform**

Press Release

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Excluded from Pakistan juvenile justice reform

The World Organisation Against Torture (OMCT) regularly receives information from local NGOs on the alarming situation of children in conflict with the law in the Provincially Administered Tribal Areas (PATA) and the Federally Administered Tribal Areas (FATA) in the North Western Frontier Province (NWFP) in Pakistan. As highlighted in OMCT's recent report to the Committee on the Rights of the Child (CRC), a new Juvenile Justice System Ordinance (JJSO) was promulgated by the federal authorities in July 2000 to better protect children in conflict with the law. Major innovations have been introduced, including the prohibition of labour during imprisonment, corporal punishment in police custody, arrest under preventive laws, trial procedures, the use of fetters and handcuffs and death penalty for juveniles.

However, these measures have not been efficiently implemented yet throughout Pakistan. Moreover, the JJSO is not applied to tribal areas. Instead, the Frontier Crimes Regulation (FCR), established by the colonial administration in 1901, applies to these areas. They give wide discretionary powers to administrative and political agents, as well as to elders and leaders to administer justice according to Sharia and tribal custom. Arshad Mahmood, Deputy National Coordinator of the Society for the Protection and of the Rights of the Child (SPARC) says: it is now an established fact that the FCR is a black law, which should be abolished, but successive governments have not been touching it due to their vested interests. The following two cases reveal the dramatic situation of children in conflict with the law in the tribal areas.

Sentenced to 45 years of imprisonment at the age of 15

Qismat Khan was arrested together with his brother Milat and their cousin Ali Mohammad on April 20th, 1995, when he was only 15 years old. The arrest had reportedly taken place because of a dispute between the Khan family, local authorities, including members of the political administration and the Peshwar Development Authority (PDA), over ownership of the territory where the Khan family was living. However, the dispute was not settled pacifically and Massoud Scouts reportedly destroyed the houses, looted the family's valuables and arrested all the male family members present (Qismat, Milat and Ali). They were reportedly tortured for 17 days and imprisoned for different prison terms. Qismat was sentenced to 45 years of detention under about a dozen sections of the Penal Code read along with the FCR. All sentences ran consecutively instead of concurrently, against usual practice under federal law, which lead to the excessive length of imprisonment. Qismat launched an appeal to the high court, but it was dismissed on the ground that under the Constitution, the superior courts should not exercise any jurisdiction in tribal areas.

In April 2004, SPARC discovered this case and launched a campaign. As a result, Qismat, Milat and Ali Mohammad were released on May 22nd 2004. Yet, they have not receive any reparation and Qismat was only released conditionally.

Women and children detained for being family members of an alleged criminal.

Under the collective responsibility clause of the FCR, authorities can detain the fellow members of a fugitive's tribe, or blockade the fugitive's village pending his surrender or punishment by his own tribe. Recently, 24 women and children, including some as young as 6 months, were arrested and taken to a tribal area, so that the jurisdiction of ordinary courts could not be extended to their case and the FCR could be applied.

Tribal areas must respect international human rights law

OMCT firmly condemns any application of the FCR contradicting internationally recognized human rights safeguards. Further, OMCT strongly opposes the practice of taking people into tribal areas in order to place them under such jurisdiction and urges the government of Pakistan to undertake all the necessary measures to stop these practices as a matter of urgency.

While recognizing the need to respect autonomy and identity of tribal areas, OMCT does not believe that cultural or religious claims can justify practices in violation of international and national human rights standards.

OMCT is especially concerned about the increasing number of reported cases of grave violations of the rights of children in conflict with the law. The JJSO must be implemented in the whole territory of Pakistan, and extended by the President of Pakistan and the governor of the province to tribal areas, in line with Art. 37 and 40 of the Convention on the Rights of the Child, which was ratified by Pakistan on November 12th 1990.

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