

Inhuman sentencing of children in Pakistan

Briefing submitted by the Child Rights International Rights Network ahead of the 118th Session of the Human Rights Committee for the adoption of the list of issues for Pakistan. July 2016.

CRIN's campaign on inhuman sentencing of children

With partners, CRIN is campaigning for the end of the death penalty, life imprisonment and corporal punishment of children around the world. CRIN has developed detailed country reports on States that still authorise this sentencing of children and is making submissions about these countries to the relevant UN human rights mechanisms to encourage scrutiny of these practices. We hope the Human Rights Committee will consider the information below when determining the list of issues for the review of Pakistan.

Inhuman sentencing of children in Pakistan

In Pakistan, people may lawfully be sentenced to corporal punishment, life imprisonment and the death penalty for offences committed while under the age of 18. Law reform has gone some way to eliminating corporal punishment, but since Pakistan lifted its unofficial moratorium in relation to terrorism cases in December 2015¹ and all capital cases in March 2015,² it has resumed carrying out the death penalty for child offenders.

Juvenile justice is primarily governed by the Juvenile Justice System Ordinance (JJSO), promulgated in 2000, but still not fully implemented throughout the country.³ The JJSO does not repeal other laws, but is in addition to them.⁴ Where there is a conflict between legislation, the JJSO overrides other laws, except in relation to *hadd* offences and cases in special courts dealing with drug and terrorism offences.

The Penal Code sets the minimum age of criminal responsibility at seven years.⁵ Under Hudood Ordinances, children are liable to punishments upon reaching puberty.⁶ In March 2016, the Senate passed the Criminal Law (Amendment) Bill 2015, including a provision to

¹ Al Jazeera, "Pakistan lifts death penalty moratorium", 17 December 2014. Available at: <http://www.aljazeera.com/news/asia/2014/12/pakistan-lifts-death-penalty-moratorium-2014121710537499387.html>.

² Dawn, "Death penalty moratorium lifted completely in Pakistan: Officials" 10 March 2015. Available at: <http://www.dawn.com/news/1168652>.

³ Written replies by the Government of Pakistan to the list of issues prepared by the Committee on the Rights of the Child in connection with the consideration of the third and fourth periodic reports of Pakistan, CRC/C/PAK/Q/34/Add.1, 1 September 2009, para. 69.

⁴ Section 82.

⁵ Penal Code, Section 82.

⁶ Offence of Zina (Enforcement of Hudood) Ordinance 1979, section 2(a); Offence of Qazf (Enforcement of Hadd) Ordinance 1979, section 2(a); Prohibition (Enforcement of Hadd) Order 1979, section 2(a); Offences Against Property (Enforcement of Hudood) Ordinance 1979, section 2(a). The Supreme Court has ruled that for a female puberty is the onset of menstruation (*Farrukj Ikram v The State*, PLD 1987 SC 5), for a male when he starts secreting semen (*Abdul Jabbar v The State*, PLD 1991 SC 172).

raise the minimum age of criminal responsibility from seven to 10 years.⁷ At the time of writing, we were unable to confirm whether this legislation had entered into force.

Legality of inhuman sentencing

Death penalty

The Juvenile Justice System Ordinance states that “[n]otwithstanding anything to the contrary contained in any law for the time being in force, no child shall be (a) awarded punishment of death...”⁸ The prohibition applies to persons under 18 at the time of commission of an offence.⁹ However, the provisions of the JJSO are “in addition to and not in derogation of, any other law for the time in force”,¹⁰ and children are liable to be sentenced to death under other legislation.

Child offenders may be tried under the Anti-Terrorism Act and the Control of Narcotic Substances Act, both of which provide for the death penalty.¹¹ In August 2009, the Supreme Court reportedly suspended an order passed by the Lahore High Court under which death sentences would not be imposed on women and juveniles in narcotic cases,¹² but we have no further information.

Child offenders may be sentenced to death for *hadd* offences. The Offence of Zina (Enforcement of Hudood) Ordinance punishes *zina* (unlawful sexual intercourse) with stoning to death for males and females.¹³ The provision which stated that the Ordinance overrides all other laws was repealed by the Protection of Women (Criminal Laws Amendment) Act 2006,¹⁴ but on 21 December 2010, the Federal Shariat Court declared this repeal unconstitutional.¹⁵ The Offences Against Property (Enforcement of Hudood) Ordinance 1979 was not amended in 2006, and explicitly overrides other laws.¹⁶ This Act provides for capital punishment for the offence of *haraabah* (threatening or hurting another

⁷ Pakistan Today, “Senate passes bill designed to protect children from cruel treatment”, 12 March 2016. Available at:

<http://www.pakistantoday.com.pk/2016/03/12/national/senate-passes-bill-designed-to-protect-children-from-cruel-treatment/>. Bill as introduced to the National Assembly available at:

http://www.na.gov.pk/uploads/documents/1429632152_291.pdf.

⁸ Juvenile Justice System Ordinance, Section 12(a).

⁹ Juvenile Justice System Ordinance, Section 2(b).

¹⁰ Juvenile Justice System Ordinance, Section 14.

¹¹ Anti Terrorism Act, Section 7(1)(a) and the Control of Narcotic Substances Act, 9(c).

¹² Amnesty International, *Amnesty International Report 2010: The state of the world's human rights*, 2010. Available at:

<http://reliefweb.int/report/world/amnesty-international-report-2010-state-worlds-human-rights>

¹³ The Offence of Zina (Enforcement of Hudood) Ordinance 1979, Section 5(2). Available at:

http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html.

¹⁴ The Protection of Women (Criminal Laws Amendment) Act 2006, Section 1(1). Available at:

<http://www.pakistani.org/pakistan/legislation/2006/wpb.html>.

¹⁵ Dawn, “Shariat Court knocks out 3 sections of women’s protection act” 23 December 2010. Available at: <http://www.dawn.com/news/592999/shariat-court-knocks-out-3-sections-of-women-s-protection-act>

¹⁶ The Offences Against Property (Enforcement of Hudood) Ordinance 1979, Section 3. Available at: <http://punjabpolice.gov.pk/system/files/offences-against-property-ordinance-1979.pdf>.

person to obtain property) which results in murder.¹⁷ The Penal Code prohibits the sentence of death as *qisa* (retribution) for minors.¹⁸

The Frontier Crimes Regulation in force in FATA does not provide for capital punishment.

Life imprisonment

The JJSO does not prohibit life imprisonment.¹⁹ The Penal Code punishes a number of crimes with life imprisonment;²⁰ which is considered equal to 25 years' imprisonment when calculating fractions of sentences.²¹ The sentence may be commuted to imprisonment for a term up to 14 years.²² Children may also be sentenced to life imprisonment under the Control of Narcotic Substances Act,²³ the Prohibition (Enforcement of Hadd) Order,²⁴ the Offences Against Property (Enforcement of Hudood) Ordinance²⁵ and the Anti-Terrorism Act.²⁶

Corporal punishment

The JJSO states that no child may be subject to corporal punishment while in custody, but child offenders may be sentenced to corporal punishment for *hadd* offences as these are not clearly overridden by the JJSO.²⁷

Inhuman sentencing in practice

Death penalty

At least four child offenders have been executed since Pakistan lifted its unofficial moratorium in December 2014. A man convicted of terrorism offences allegedly committed when he was 16 was hanged on 17 March 2015.²⁸ He was sentenced to death in 1999 by an anti-terrorism court for allegedly killing a man during a robbery. The court did not consider the issue of juvenility at any stage of the proceedings.²⁹ Another man convicted of murder allegedly committed when he was 15 was hanged on 10 June 2015 after spending 22 years

¹⁷ The Offences Against Property (Enforcement of Hudood) Ordinance 1979, Section 17(4).

¹⁸ The Penal Code, Section 306.

¹⁹ UNICEF (2006), *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, NY: UNICEF Regional Office for South Asia, p. 97

²⁰ Sections 53, 120, 121, 122, 124, 125, 128, 130, 131, 132, 194, 195, 211, 212, 213, 214, 216, 221, 222, 225, 232, 238, 255, 295, 302, 327, 354, 364, 365, 371, 377, 388, 389, 394, 395, 396, 400, 402, 409, 412, 413, 436, 438, 449, 450, 459, 460, 467, 472, 474, 477, 489, 506 and 511

²¹ Section 57

²² Section 55

²³ Section 9(c)

²⁴ Sections 2 and 20

²⁵ Section 9(c)

²⁶ Section 7(a), 7(e), 7(f)

²⁷ Sections 3, 4, 5(2), 7(1), 8, 9, 11, 12, 17, 21, 25 JJSO; For further details on corporal punishment in Pakistan, see: Global Initiative to End all Corporal Punishment of Children, Country report for Pakistan, February 2015.

²⁸ Amnesty International, *Juveniles amongst 12 prisoners executed overnight in Pakistan*, 17 March 2015. Available at: <https://www.amnesty.org/en/latest/news/2015/03/12-prisoners-hanged-in-pakistan/>.

²⁹ CRIN, Children in Court CRINmail, 23 March 2015. Available at: <https://www.crin.org/en/home/whatwedo/crinmail/childrencourtcrinmail46#D>.

on death row.³⁰ He had been convicted in 1992 before the entry into force of the JJSO in 2000 and, according to his lawyers, was tortured by police into providing a confession.³¹

In August 2015, Shafqat Hussein was hanged for an offence allegedly committed while he was 14. He was sentenced in 2004 by an anti-terrorism court for kidnapping and killing a child. The execution took place after four last-minute reprieves and despite a call from the Sindh Human Rights Commission for an inquiry into the case.³²

In September 2015, Ansar Iqbal was executed for an offence he allegedly committed when he was 15. At the time he was sentenced to death in 1996, Ansar did not have a birth certificate, as his birth had not been registered, but school records and other family records indicated that he was a child at the time. A birth certificate subsequently issued by the National Database and Registration Authority confirmed his date of birth was 25 December 1978 making him 15 at the time of the offence.³³

On the 12 December 2015, a warrant was issued for the execution of Muhammed Anwar despite proceedings pending before the Multan Bench of the Lahore High Court. He was allegedly 17 years old when he was sentenced to death in 1998.³⁴

Estimates from NGOs working with child offenders in Pakistan indicate that as many as 800 people convicted of crimes committed while they were under the age of 18 may be currently on death row in Pakistan.³⁵

Life imprisonment and corporal punishment

We have been unable to obtain figures relating to sentences of corporal punishment and life imprisonment, though it seems that courts do not award corporal punishment (whipping) but do sentence children to “rigorous imprisonment”, i.e. imprisonment with hard labour, despite its prohibition in the JJSO.³⁶ There have also been repeated government announcements that death sentences for juveniles would be commuted to life sentences.³⁷ Children are also kept in solitary confinement.³⁸

³⁰ The Express Tribune, *Aftab Bahadur Masih hanged in Lahore*, 10 June 2015. Available at: <http://tribune.com.pk/story/900964/aftab-bahadur-masih-hanged-in-lahore/>.

³¹ The Guardian, *Pakistan executes man who was 15 when convicted of murder*, 10 June 2015. Available at:

<http://www.theguardian.com/world/2015/jun/10/pakistan-executes-aftab-bahadur-sentenced-to-death>.

³² The Guardian, “Pakistan hangs Shafqat Hussein despite claim he was a child at time of crime”, 4 August 2015. Available at:

<http://www.theguardian.com/world/2015/aug/04/pakistan-hangs-shafqat-hussain-claim-child-crime>.

³³ Reprieve, “Pakistan executes man who was a juvenile when arrested”, 29 September 2015

³⁴ Reprieve, “Pakistan Supreme Court to consider case of juvenile facing hanging”, 7 June 2016.

³⁵ Justice Project Pakistan and Reprieve, *Juveniles on Pakistan's Death Row*, March 2015. Available at: http://www.reprieve.org.uk/wp-content/uploads/2015/03/2015_03_17_PUB-Juveniles-on-Pakistans-Death-Row.pdf.

³⁶ Correspondence with Society for the Protection of the Rights of the Child (SPARC) and Defence for Children International (DCI) in 2011

³⁷ CRIN, *Life imprisonment of children in Asia*. Available at: <https://www.crin.org/en/home/campaigns/inhuman-sentencing/problem/life-imprisonment/life-imprisonment-children-asia>

³⁸ Correspondence with Society for the Protection of the Rights of the Child (SPARC) and Defence for Children International (DCI) in 2011

Pakistan's review by the Human Rights Committee

In light of the clear international human rights consensus against the imposition of the death penalty, life imprisonment and corporal punishment of children and the recent report of the Special Rapporteur on torture recognising that life imprisonment and lengthy sentences of children are grossly disproportionate and amount to a form of cruel and inhuman punishment,³⁹ we urge the Committee to recommend that Pakistan:

- Enact and enforce legislation explicitly prohibiting the death penalty, life imprisonment and corporal punishment as a penalty for any offence committed while under the age of 18;
- Immediately halt death penalty proceedings against any person who may have been under the age of 18 at the time they committed the relevant offence and conduct a full, independent and impartial review of all such cases;
- Immediately review the sentence of any person sentenced to life imprisonment for an offence committed while under the age of 18 to ensure no one serves a life sentence for an offence committed while a child;
- Collect and provide disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pretrial detention in each case.

³⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 March 2015, A/HRC/28/68, para. 74. Available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_E.doc