

Inhuman sentencing of children in Pakistan

Briefing for the Committee on the Rights of the Child's 72nd Pre-Sessional Working Group in October 2015. Submitted by the Child Rights International Network (CRIN) (www.crin.org), June 2015.

CRIN's campaign on inhuman sentencing of children

With partners, CRIN is campaigning to end the death penalty, life imprisonment and corporal punishment of children around the world. CRIN has developed detailed country reports on States which still authorise the inhuman sentencing of children and is making submissions about these countries to relevant UN human rights mechanisms. We hope the Committee on the Rights of the Child will consider the information provided below during its review of these States.

Inhuman sentencing of children in Pakistan

1. Child offenders may lawfully be sentenced to corporal punishment, life imprisonment and the death penalty.

2. Juvenile justice is primarily governed by the Juvenile Justice System Ordinance (JJSO), promulgated in 2000 but still not fully implemented throughout the country.¹ The JJSO does not repeal other laws but is in addition to them.² Where there is conflict, the JJSO overrides other laws except in relation to *hadd* offences and cases in special courts dealing with drug and terrorism offences.

3. Other laws relevant to sentencing of child offenders include *inter alia* the Pakistan Penal Code 1860, the Criminal Procedure Code 1898, the Abolition of the Punishment of Whipping Act 1996, the Anti-Terrorism Act 1997, the Control of Narcotic Substances Act 1997 and the Hudood Ordinances 1979.

4. The minimum age of criminal responsibility is seven under the Penal Code.³ Under the Hudood Ordinances, children are liable for punishments on reaching puberty.⁴ Other laws do not specify a minimum age.⁵ The JJSO defines a child as a person under 18 at the time of committing an offence.⁶

Legality of inhuman sentencing

¹ *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/3-4/Add.1, 1 September 2009, para. 69

² Section 14 JJSO

³ Section 82

⁴ 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)

⁵ For example, the Frontier Crimes Regulation 1901

⁶ Section 2(b) JJSO

Death penalty

5. The Juvenile Justice System Ordinance states in section 12 that “Notwithstanding anything to the contrary contained in any law for the time being in force no child shall be (a) awarded punishment of death...” The prohibition applies to persons under 18 at the time of commission of offence.⁷ However, the provisions in the JJSO are “in addition to and not in derogation of, any other law for the time in force”,⁸ and children are liable to the death penalty under other laws.

6. Child offenders may be tried in special courts under the Anti-Terrorism Act and the Control of Narcotic Substances Act, both of which provide for the death penalty.⁹ 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 narcotics cases,¹⁰ but we have no further information.

7. Child offenders may be sentenced to death for *hadd* offences, including for the offences of *zina* (unlawful sexual intercourse)¹¹ and *haraabah* (threatening or hurting another person to obtain property) which results in murder.¹²

Life imprisonment

8. The JJSO does not prohibit life imprisonment.¹³ The Penal Code punishes a number of crimes with life imprisonment,¹⁴ which is considered equal to 25 years’ imprisonment when calculating fractions of sentences.¹⁵ The sentence may be commuted to imprisonment for a term up to 14 years.¹⁶ Children may also be sentenced to life imprisonment under the Control of Narcotic Substances Act,¹⁷ the Prohibition (Enforcement of Hadd) Order,¹⁸ the Offences Against Property (Enforcement of Hudood) Ordinance¹⁹ and the Anti-Terrorism Act.²⁰

Corporal punishment

9. The JJSO states that no child may be given 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.²¹

⁷ Section 2(b) JJSO

⁸ Section 14 JJSO

⁹ Section 7(1)(a) and section 9(c) respectively

¹⁰ Amnesty International (2010), *Amnesty International Report 2010: The state of the world’s human rights*, London: Amnesty International

¹¹ Section 5(2)

¹² Section 17(4)

¹³ 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

¹⁴ 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

¹⁵ Section 57

¹⁶ Section 55

¹⁷ Section 9(c)

¹⁸ Sections 2 and 20

¹⁹ Section 9(c)

²⁰ Section 7(a), 7(e), 7(f)

²¹ 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*

Inhuman sentencing in practice

10. We have been unable to obtain comprehensive statistical information relating to the sentencing of people to death, life imprisonment or corporal punishment for offences committed while under the age of 18.

Death penalty

11. At least two juvenile offenders have been executed since the lifting of the unofficial death penalty moratorium for all types of offences in March 2015.²² A man convicted of terrorism-related offences allegedly committed when he was 16 was hanged on 17 March 2015.²³ 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.²⁴ Another man convicted of murder allegedly committed when he was 15 was hanged on 10 June 2015 after spending 22 years on death row.²⁵ 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 a confession.²⁶

12. Death penalty appeals by child offenders have been dismissed by the Supreme Court of Pakistan when age was not recorded at the time of original trial. In one of these cases, four execution warrants and subsequent stays of execution have been issued concerning a man who was sentenced to death at the age of 14 after nine days of police torture.²⁷ The case has drawn international pressure to halt the execution and to fully investigate the young man's age and conviction.²⁸ On 10 June 2015, the Supreme Court refused to hear an appeal in the case²⁹ and the young man faces imminent execution.

report for Pakistan, February 2015. Available at: <http://www.oecs.org/publications/projects/family-law-and-domestic-violence-reform/332-child-justice-bill/file>

²² Pakistan Today, *Death penalty moratorium lifted completely*, 10 March 2015. Available at: <http://www.pakistantoday.com.pk/2015/03/10/national/death-penalty-moratorium-lifted-completely/>

²³ Amnesty International, *Juveniles amongst 12 prisoners executed overnight in Pakistan*, 17 March 2015. Available at:

<https://www.amnesty.org/en/articles/news/2015/03/12-prisoners-hanged-in-pakistan/>

²⁴ CRIN, *Children in Court CRINmail*, 23 March 2015. Available at:

<https://www.crin.org/en/home/what-we-do/crinmail/children-court-crinmail-46#D>

²⁵ 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/>

²⁶ 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>

²⁷ BBC, *Pakistani man Shafqat Hussain given death row reprieve*, 9 June 2015. Available at:

<http://www.bbc.co.uk/news/world-asia-33057237>; See Justice Project Pakistan Press Release, 22 March 2015. available at:

<http://us3.campaign-archive1.com/?u=4d452280bc016abdd37a94bc6&id=bc0369c620>

²⁸ OHCHR website, 'UN experts urge Pakistan not to execute juveniles', 20 March 2015. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15729&LangID=E>;

Reprieve, *Government investigators hide death-row man's records*, 14 April 2015. Available at:

<http://www.reprieve.org.uk/press/government-investigators-hide-death-row-mans-records/>

²⁹ Reprieve, *Pakistan Supreme Court refuses to hear Shafqat Hussein appeal*, 10 June 2015. Available at:

<http://www.reprieve.org.uk/press/pakistan-supreme-court-refuses-to-hear-shafqat-hussain-appeal/>

13. Many more juveniles continue to be at risk of imminent execution and it is estimated that there may be as many as 800 people convicted of crimes committed when they were children currently on death row in Pakistan.³⁰

Life imprisonment and corporal punishment

14. 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.³¹ There have also been repeated government announcements that death sentences for juveniles would be commuted to life sentences.³² Children are also kept in solitary confinement.³³

Pakistan’s review by the Committee on the Rights of the Child

15. 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 UN 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,³⁴ 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 that no one serves a life sentence for an offence committed while a child;
- Raise the minimum age of criminal responsibility;
- 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.

³⁰ 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

³¹ Correspondence with Society for the Protection of the Rights of the Child (SPARC) and Defence for Children International (DCI) in 2011

³² 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>

³³ Correspondence with Society for the Protection of the Rights of the Child (SPARC) and Defence for Children International (DCI) in 2011

³⁴ 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