

Inhuman sentencing of children in Pakistan

Briefing for the 14th session of the Human Rights Council Universal Periodic Review in October 2012, submitted by the Child Rights International Network (www.crin.org), March 2012

Inhuman sentencing of child offenders in Pakistan

Child offenders in Pakistan may lawfully be sentenced to corporal punishment, life imprisonment and the death penalty. Law reform has gone some way to prohibiting corporal and capital punishment for child offenders, but the law is complex and unclear and these sentences remain lawful in certain circumstances.

Juvenile justice is primarily governed by the Juvenile Justice System Ordinance (JJSO), promulgated in 2000 but still not fully implemented throughout the country.

The JJSO does not repeal other laws but is in addition to them.¹ 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.

Other laws relevant to sentencing of child offenders include 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, the Hudood Ordinances 1979, the Sindh Children Act 1955, the Reformatory Schools Act 1897 and the Railways Act 1890.

The minimum age of criminal responsibility is seven under the Penal Code.² Under the Hudood Ordinances, children are liable for punishments on reaching puberty.³ Other laws do not specify a minimum age.⁴ The JJSO defines a child as a person under 18 at the time of committing an offence.⁵

Despite its promulgation, the JJSO is not widely implemented: there are no juvenile courts and children are tried alongside adults with no appropriate juvenile justice protection. As at March 2011, 27 District Panels of Lawyers have been established (11 in Punjab, 11 in Khyber Pakhtunkhwa, 5 in Sindh) but are unable to function due to lack of funds.

The death penalty

The Juvenile Justice System Ordinance states in section 12: “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.⁶ But children are liable to the death penalty under other laws. Child offenders may be tried in special

¹ Section 14

² Section 82

³ 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*).

⁴ For example, the Frontier Crimes Regulation 1901

⁵ Section 2(b)

⁶ Section 2(b)

courts under the Anti-Terrorism Act and the Control of Narcotic Substances Act, both of which provide for the death penalty.⁷

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.⁸ The provision which stated that the Ordinance overrides all other laws was repealed by the Protection of Women (Criminal Laws Amendment) Act 2006,⁹ but on 21 December 2010, the Federal Shariat Court declared this repeal unconstitutional.¹⁰ The Offences Against Property (Enforcement of Hudood) Ordinance was not amended in 2006, and explicitly overrides other laws.¹¹ It provides for capital punishment for the offence of *haraabah* (threatening or hurting another person to obtain property) which results in murder.¹² The Penal Code prohibits the sentence of death as *qisa* (retribution) for minors.¹³

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

Corporal punishment

The Juvenile Justice System Ordinance states that no child may be given corporal punishment while in custody.¹⁴ The Abolition of the Punishment of Whipping Act enacted in 1996 prohibits whipping as a sentence under any law except with regard to *hadd* offences.¹⁵

For example, the Offence of Qazf (Enforcement of Hadd) Ordinance punishes *qazf* (false accusation of *zina*) with 80 “stripes”¹⁶ and the Offence of Zina (Enforcement of Hudood) Ordinance punishes *zina* with whipping, at a public place, of 100 stripes.¹⁷

Children in FATA may be sentenced to whipping under the Frontier Crimes Regulation.¹⁸

Life imprisonment

The Juvenile Justice System Ordinance does not prohibit life imprisonment. It allows for a child to be sent to a borstal institution until the age of 18 or for the period of imprisonment to be reduced,¹⁹ but these are optional alternatives to the penalties specified in the Penal Code and the court may still impose life imprisonment.²⁰ The Penal Code punishes a number of crimes with life imprisonment;²¹ it is reckoned as equivalent to imprisonment for 25 years.²² The sentence may be commuted to

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

⁸ Section 5(2)

⁹ Section 11

¹⁰ *Dawn.com*, 23 December 2010, www.dawn.com/2010/12/23/shariat-court-knocks-out-3-sections-of-women-s-protection-act.html, accessed 16 May 2011

¹¹ Section 3

¹² Section 17(4)

¹³ Section 306

¹⁴ Section 12

¹⁵ Section 3. See also OMCT (2003), *Rights of the Child in Pakistan: Report on the implementation of the Convention on the Rights of the Child by Pakistan*, p.13

¹⁶ Section 7(1)

¹⁷ Section 5(2)

¹⁸ Sections 6 and 12

¹⁹ Section 11

²⁰ 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

²¹ 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

²² Section 57

imprisonment for a term up to 14 years.²³ Children may also be sentenced to life imprisonment under the Control of Narcotic Substances Act²⁴ and, presumably, the Anti-Terrorism Act.

There is no provision for life imprisonment in the Frontier Crimes Regulation in force in FATA.

The Committee on the Rights of the Child's recommendations

In its Concluding observations (CRC/C/PAK/CO/3-4, 15 October 2009), the Committee on the Rights of the Child (CRC) expressed its deep concerns “at reports of torture and ill-treatment of children by police officers in detention facilities and other State institutions” and recommended that Pakistan “take all necessary measures to prevent children from being subjected to torture or any other cruel, inhuman or degrading treatment or punishment in all circumstances” and ensure that sentences that sentences “constituting torture or cruel, inhuman or degrading treatment by parallel judicial systems and that access to an appeal procedure under statutory law is available for all children thorough the country” are not imposed on children.

The CRC also recommended that Pakistan explicitly prohibit all forms of corporal punishment in all settings making the JJSO operational in all areas of the country.

The CRC recommended that Pakistan raise the minimum age of criminal responsibility²⁵.

The Review of Pakistan by the members of the Human Rights Council

In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment on child offenders, and the specific recommendations to Pakistan made by the Committee on the Rights of the Child, we hope that the members of the Human Rights Council will urge the government of Pakistan to:

- Explicitly prohibit sentences of death, corporal punishment and life imprisonment in all areas of Pakistan, under all systems of justice, and without exception to ensure full compliance with international standards.

This could be achieved through strengthening the restrictions on sentencing in the JJSO, and clarifying that this overrides all laws to the contrary and applies to all cases involving child offenders. Laws contrary to the prohibition should be amended or repealed, including the Hudood Ordinances, the Anti-Terrorism Act, the Control of Narcotic Substances Act and the Frontier Crimes Regulation.

- Raise the minimum age of criminal responsibility.

- Provide disaggregated data about sentences handed down to children - including those who have been sentenced to death - by offence committed and date, as well as data about the children in detention, including gender, age, length of time spent in pre-trial detention in each case.

To read CRIN's detailed report on Inhuman Sentencing of Children in Pakistan, visit:

<http://www.crin.org/violence/search/closeup.asp?infoID=23610>

²³ Section 55

²⁴ Section 9(c)

²⁵ CRC/C/PAK/CO/3-4, 15 October 2009, *Concluding observations of the Committee on the Rights of the Child on third/fourth report* and CRC/C/15/Add.217, 27 October 2003, *Concluding observations of the Committee on the Rights of the Child on second report*.