

Inhuman sentencing of children in Pakistan

Briefing for the 28th Session of the Universal Periodic Review in October 2017. Submitted by the Child Rights International Network - CRIN (www.crin.org), March 2017.

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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 2014¹ 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 applies in addition to them.⁴ Where there is a conflict between legislation, the JJSO overrides other laws, except in relation to *hadd* offences (offences with penalties fixed under *Shariah*) and cases in special courts dealing with drug and terrorism offences.

In March 2016, the Senate passed the Criminal Law (Amendment) Bill 2015, including a provision to raise the minimum age of criminal responsibility from seven to 10 years.⁵ Under Hudood Ordinances, children are liable to be sentenced to punishments upon reaching puberty.⁶

Legality of inhuman sentencing

Death penalty

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. Followed-up in *Concluding Observations on the fifth periodic report of Pakistan*, CRC/C/PAK/CO/5, 11 July 2016, para 79.

4 Juvenile Justice System Ordinance, Section 14.

5 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.

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).

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...”⁷ The prohibition applies to persons under 18 at the time of commission of an offence.⁸ However, the provisions of the JJSO are “in addition to and not in derogation of, any other law for the time in force”,⁹ 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.¹⁰ 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,¹¹ but we have no further information on the case.

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.¹² The provision which stated that the Ordinance overrides all other laws was repealed by the Protection of Women (Criminal Laws Amendment) Act 2006,¹³ but on 21 December 2010, the Federal Shariat Court declared this repeal unconstitutional.¹⁴ The Offences Against Property (Enforcement of Hudood) Ordinance 1979 was not amended in 2006, and explicitly overrides other laws.¹⁵ This Act provides for capital punishment for the offence of *haraabah* (threatening or hurting another person to obtain property) which results in murder.¹⁶ The Penal Code prohibits the sentence of death as *qisa* (retribution) for minors.¹⁷

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

Life imprisonment

The JJSO does not prohibit life imprisonment.¹⁸ The Penal Code punishes a number of crimes with life imprisonment;¹⁹ which is considered equal to 25 years’ imprisonment when

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

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

9 Juvenile Justice System Ordinance, Section 14.

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

11 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>

12 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.

13 The Protection of Women (Criminal Laws Amendment) Act 2006, Section 1(1). Available at: <http://www.pakistani.org/pakistan/legislation/2006/wpb.html>.

14 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>

15 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>.

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

17 The Penal Code, Section 306.

18 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

calculating fractions of sentences.²⁰ The sentence may be commuted to imprisonment for a term up to 14 years.²¹ Children may also be sentenced to life imprisonment under the Control of Narcotic Substances Act,²² the Prohibition (Enforcement of Hadd) Order,²³ the Offences Against Property (Enforcement of Hudood) Ordinance²⁴ and the Anti-Terrorism Act.²⁵

Corporal punishment

The Juvenile Justice System Ordinance 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.²⁶ Corporal punishment has been prohibited as a criminal sentence in certain regions of Pakistan:

- The Prohibition of Corporal Punishment Act 2017 prohibits corporal punishment and humiliating and degrading treatment of children in the juvenile justice system²⁷ (as defined under the JJSO) in the Islamabad Capital Territory.
- In January 2017, the Sindh regional assembly passed the Prohibition of Corporal Punishment Act, which banned corporal punishment in the juvenile justice system.²⁸
- Gilgit-Baltistan enacted the Prohibition of Corporal Punishment Act in August 2016.²⁹

Inhuman sentencing in practice

At least six people have been executed for offences committed while they were children since Pakistan lifted its official moratorium in December 2014.³⁰

- Muhammad Afzal was convicted of terrorism offences he allegedly committed when he was 16 and was hanged on 17 March 2015.³¹ He was sentenced to death in 1999

19 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

20 Section 57

21 Section 55

22 Section 9(c)

23 Sections 2 and 20

24 Section 9(c)

25 Section 7(a), 7(e), 7(f)

26 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 2017, available at:

<http://www.endcorporalpunishment.org/progress/country-reports/pakistan.html/>

27 Available at: http://www.senate.gov.pk/uploads/documents/1487828446_749.pdf.

28 Sindh Prohibition of Corporal Punishment Act 2016, Section 3(2). Available at:

<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.VII%20of%202017.pdf>.

29 For analysis of the impact of the legislation, see Global Initiative to End All Corporal Punishment of Children, *Country report for Pakistan*. Available at:

<http://www.endcorporalpunishment.org/progress/country-reports/pakistan.html>.

30 Justice Project Pakistan, *Death Row's Children: Pakistan's Unlawful Executions of Juvenile Offenders*, February 2017. Available at: <http://www.jpp.org.pk/wp-content/uploads/2017/02/JPP-Final-Edited.pdf>.

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.³²

- Muhammad Amin was executed on 31 March having been convicted of murdering a man during a botched burglary in 1998, a crime committed when he was 17.
- Aftab Bahadur was convicted of murder allegedly committed when he was 15 was hanged on 10 June 2015 after spending 22 years on death row.³³ 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.³⁴
- 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.³⁵
- 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.³⁶
- Muhammad Sarfaraz was executed on 10 May 2016 after 22 years on death row.³⁷

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.³⁸

Life imprisonment and corporal punishment

CRIN has 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

31 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/>.

32 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>.

33 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/>.

34 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>.

35 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>.

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

37 Justice Project Pakistan, *Death Row's Children: Pakistan's Unlawful Executions of Juvenile Offenders*, 2017, p. 34.

38 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.

its prohibition in the JJSO.³⁹ There have also been repeated government announcements that death sentences for juveniles would be commuted to life sentences.⁴⁰ Children are also kept in solitary confinement.⁴¹

Pakistan's review by the Human Rights Council

In light of the clear international human rights consensus against the imposition of the death penalty, life imprisonment and corporal punishment on child offenders and specific recommendations made to Pakistan by the Committee on the Rights of the Child⁴² we urge members of the Human Rights Council to recommend that Pakistan:

- Immediately halt executions where it is claimed that the sentenced person was under the age of 18 at the time of the offence and review all cases where the age of the sentenced person at the time of the offence is in doubt;
- Explicitly prohibit sentences of death, corporal punishment and life imprisonment of offences committed by children in Pakistan under all systems of justice and without exception to ensure full compliance with international standards;
- Raise the minimum age of criminal responsibility.

For more information, see CRIN's full report on Pakistan, available at: www.crin.org/node/23982.

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

40 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>

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

42 Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of Pakistan, CRC/C/PAK/CO/5, 11 July 2016, paras. 24, 25, 79 and 80.