

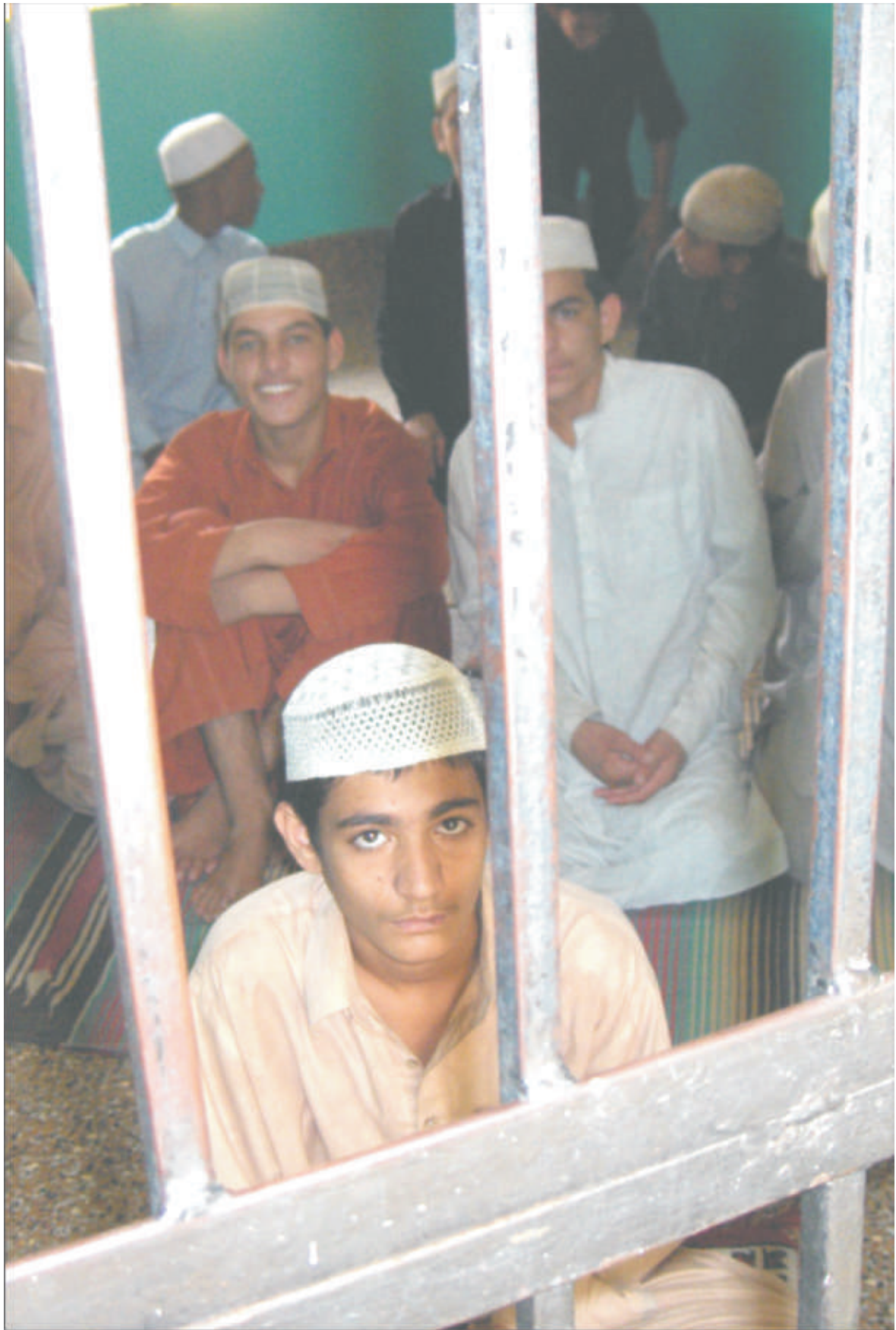
# Juvenile Justice

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Juvenile Justice



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## Introduction

The year 2009 passed without any substantial progress in the implementation of the JJSO. The law failed to protect the rights of children coming into conflict with the law. Many a times, the concerned authorities were not even aware of the law's existences; and resultantly the police, judiciary, prosecution and prison staff treated children not differently than the adults.

Slight improvements experienced in some areas can be attributed to personal initiatives of a few officials.

The year proved to be hard-hitting for some of the children in the Northern and Tribal Areas when they were accused of siding with the terrorists, and thus dragged to the criminal justice system and tortured in the name of war on terror. Ironically, many of the same children, and some others suffered at the hands of Taliban as well when the latter used them as suicide bombers and for other terrorist activities.

A number of suicide attacks were carried out by minor suicide bombers during the year. There is no authentic account about the number of children used as suicide bombers and those remain missing whether because the law enforcement agencies have picked them up or they are at the mercy of the Taliban and presently living with them. The fate of many under-18 in Balochistan who have been accused of working for the Baloch nationalists is similar.<sup>1</sup>

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<sup>1</sup> Tatchell, Peter: 'Balochistan rejects deal and fights on for freedom', December 2009.  
<http://www.opendemocracy.net/openindia/peter-tatchell/balochistan-rejects-deal-and-fights-on-for-freedom>.  
The Asian Human Rights' press release reporting the lists of disappeared persons from Balochistan province included the names of 168 children and 148 women  
[http://hrea.org/lists2/display.php?language\\_id=1&id=16138](http://hrea.org/lists2/display.php?language_id=1&id=16138)



SPARC's appeal against the Lahore High Court's December 6, 2004 verdict declaring the JJSO as unconstitutional and illegal came up before the Supreme Court a couple of times but could not be heard for one reason or the other. The High Court decision shook the faith of the supporters of a separate justice system for children who come into conflict with the law. The Court while revoking the JJSO declared it to be 'unreasonable, unconstitutional and impractical'; and stated Pakistan did not require a child specific law as children in this country mature early than the children in the West. The High Court decision has been stayed by the Supreme Court, and the matter remains pending.

On the positive side, the judges of the superior court have proposed many positive steps for promoting the juvenile justice system and called for inclusion of these recommendations in the judicial policy.

The Judicial Policy announced after the restoration of the Chief Justice in June, 2009 is basically based on quick disposal of cases but it does not address the issue of juveniles during trial and in prisons.

The Sindh High Court's directions to the Sindh Judicial Academy<sup>2</sup> for educating or training to the judges on JJSO and establishment of the Child Rights Desks (CRD)<sup>3</sup> at the police stations in Sindh for the promotion of the JJSO were also unique developments in the year. But the JJSO on its own remained inadequate to meet the provisions of the UNCRC.

This inadequacy was also noted by the UN Committee on the Rights of the Child in its Concluding Observations on the Third and Fourth Periodic Report submitted by Pakistan, and considered by the Committee in September 2009.

### Juvenile Justice Working Group

A positive development during the year was the setting up of Juvenile Justice Working Group (JJWG) by the Law and Justice Commission of Pakistan (LJC). The first meeting was held in December 2009 under the Chairmanship of Mr Faqir Hussain, Registrar, Supreme Court of Pakistan. The JJWG is a component of the project 'the Juvenile Justice Reform in

<sup>2</sup> Letter No 3843/MIT- C.P.D. – 1862/09/2009 dated 10.11.2009

<sup>3</sup> Circular (No R/CR/4587-92) issued by the office of District Police Office, Sukkur for establishment of CRD in Sukkur; Order (No. QB/1264/2009) was issued by the District Police Office Khairpur; a circular (No SSP/S/PA/08-1998) was issued by the Town Police Office on August 22<sup>nd</sup>, 2009.

Pakistan' which is being implemented by the LJCP and UNICEF and funded by the European Commission.

The JJWG has members from police department, prisons department, the judiciary, legal practitioners, NGOs and INGOs. SPARC is also a member of the JJWG. There are three objectives of the Juvenile Justice Reform project:

- To develop a diversion programme for young offenders;
- Bring Pakistan's legislation and policy in line with UNCRC (legislative reforms) and
- To develop rehabilitation programs for children at risk of offending and re-offending.

In the JJWG meeting, state of the implementation of the JJSO, its shortcomings and the need for separate juvenile courts were also discussed.

The UNICEF representative in its presentation on the Juvenile Justice Reform Project pointed out that under the project, in priority areas/prisons informal educational facilities for the juveniles and children imprisoned with their mothers have been set up. In addition, in Punjab and Khyber Pakhtunkhwa complaint mechanisms have been set up at prisons. Also a study has been conducted on the Access to Informal Justice System. In Khyber Pakhtunkhwa, a Juvenile Justice policy document has been prepared.

In the meeting the following three sub-groups, along with their terms of reference were discussed:

**Sub-group: A –Diversion:** The major responsibility of the sub-groups is to provide oversight to the implementation partners to introduce a pilot diversion programme; family Jirga conferencing as an alternative to criminal prosecution.

**Sub-group: B- Legislative Reforms:** This sub-group is responsible for providing inputs for bringing Pakistan's legislation and policy in line with international standards by conducting reviews of relevant laws.

**Sub-group: C- Rehabilitation of Children at Risk:** This sub-group is in charge of giving technical support for the rehabilitation and re-integration of children in conflict with the law.

Some of the recommendations by the sub-groups were:

- Separate juvenile courts should be established;
- Diversion system to be adopted and promoted under the juvenile justice system;
- The constitutional petition on the JJSO 2000 should be heard and it should be made operational very soon;
- Detention should be made the last resort;
- The model of Youthful Offenders Industrial School should be replicated all over the country;
- Minimum budget should be allocated in the National Budget for the implementation and strengthening of the JJSO;
- The age of criminal responsibility should be brought in line with international standards;
- Female probation officers should be appointed immediately.

#### **SPARC requests protection of privacy of child offenders**

In a letter to the Registrar, High Court of Sindh, SPARC has requested measures against publishing identity of the victim children and children in conflict with the laws. Publishing identity of children victim or offender is prohibited under the section SCA and the JJSO. The Chief Justice Sindh High Court took suo moto action on the letter, converted the letter into petition (CPD-2482) and has summoned all Pakistani newspaper agencies.

### **Juvenile Justice System Ordinance 2000**

The JJSO (Ordinance No XXII) was introduced in the year 2000 by General Musharraf as an Ordinance as the Parliament stood dissolved at the time. By 2002, all provincial governments and Islamabad Capital Territory had notified rules for the implementation of the JJSO. The Azad Jammu and Kashmir assembly passed Juvenile Justice System Act in 2003. By 2004, the Federal Government had extended JJSO to FATA and FANA.





Earlier, there were only provincial laws for dealing with the juvenile offenders. The Sindh Children Act 1955 that had replaced the Bombay Children Act 1924 was the first major legislation on this subject and contained comprehensive measures and procedures for handling the juvenile offenders.

The SCA defined a child to as person below 16 years of age. The JJSO raised the age from 16 to 18 years and prohibited the death penalty for all under-18.

The situation unfortunately has not improved much since the introduction of the JJSO. The juveniles continued to be dealt with in a manner that is disproportionate to their age, and the crimes committed by them.

The standards set by the JJSO continue to be ignored by the relevant authorities, along with other related laws of Pakistan, the UNCRC, the UN Committee on the Rights of the Child's General Comment No. 10 (2007) on "Children's Rights in Juvenile Justice" and UN Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules) and other related international guidelines for the administration of juvenile justice system.

Instead of diverting children away from the judicial system to community support services whenever possible and releasing them on probation, the children continue to be subjected to the ordeal and stigma of criminal justice proceedings.

The concept of Reformatory Schools, Certified Schools and Borstal Institutions still remains on paper. Only four such facilities currently exist in the country: Youthful Offenders Industrial Schools in Karachi and Hyderabad, and Borstal Institution and Juvenile Jails in Faisalabad and Bahawalpur. All these facilities are only for male juveniles. Female juvenile offenders are still being kept with adult women prisoners and there is no provision in any prison in Pakistan to keep them separately.

These facilities are not managed according to the provisions of the Sindh Borstal Schools Act 1955, SCA or the Punjab Borstal Act 1926.

Despite the above limitations, there is a gradual decrease in the number of children ending up in prisons which is perhaps the only positive indicator in the entire juvenile justice system in Pakistan. As of December 2009, there were 1,357 juvenile prisoners in jails all over Pakistan as compared to 4,979 in 2002. However, it would not be right to presume that the number of children ending up in criminal justice system has declined.

**Juvenile Population in Pakistan Prisons from 2002 to 2009**

Year	Under-trial	Convicted	Total
2002	4513	936	4979
2003	3049	537	3060
2004	2689	439	2539
2005	2682	363	2368
2006	2677	231	2266
2007	2316	205	2018
2008	2043	153	1788
2009	1225	132	1357

Source: Population Statements from IG Prisons Pakistan

The decline in the number of juvenile offenders in prisons can partly be attributed to the promulgation of the JJSO, and partly to the lobbying and campaign efforts of the civil society. However, an estimated 9,000 to 10,000 children are still facing criminal litigation and appearing in courts.

The country continues to lack a policy to prevent juveniles falling into the criminal justice system. There is still no concept of a restorative justice system. However, under the New Judicial Policy enforced by June 2009, cases of the juveniles are expected to be given a preference.



About 98 percent of the total detained children belong to the low economic strata of the society. Access to justice for these poor children and their families remains a mere illusion. Most of these children continue to be denied their basic rights, such as proper education, shelter, basic health facilities and protection from abuse.

#### **SHC takes suo moto action on SPARC's request**

On 20<sup>th</sup> November SPARC received a letter from the Sindh Judicial Academy requesting assistance in organizing workshops on the JJSO to educate/train judicial officers. The letter was in reference to a constitutional petition (D-1862) by SPARC against the violation of the rights of fourteen year old Arbelo Kalhor. SPARC had written to the Chief Justice Sindh High Court requesting an inquiry against the arrest and torture of Arbelo and his detention with adult prisoners at the sub-jail Nushero feroz.

Arbelo was arrested along with his father and brother following a complaint lodged by a rival group as a result of minor dispute. Arbelo was accused for injuring 27 people during the fight. Following SPARC's petition, Arbelo was produced before the SHC where he was released on the personal bond submitted by a representative of SPARC. The judge in the Arbelo case observed that not only the police officers but also judges of the lower courts are not aware about the juvenile justice system and ordered the Sindh Judicial Academy to train and educate judges and police officers.

#### **Minimum Age of Criminal Responsibility**

Section 82 of the Pakistan Penal Code says that "nothing is an offence which is done by a child under seven years of age." Section 83 of the same law says that "nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion".

As opposed to the PPC, the minimum age of criminal responsibility is linked to attaining puberty under the Hudood Ordinances.

In response to Pakistan's Third and Fourth Periodic Report on the implementation of the UNCRC, the UN Committee in its Concluding Observations released in October 2009, stated that the minimum age of

criminal responsibility is low, and directed the country to raise it to “an internationally acceptable level and ensure that children below the age of 18 years are accorded protection of juvenile justice provisions and are not treated like adults”.

It is one of the major functions of the NCCWD to implement recommendations of the UN Committee and to prevent child abuse and exploitation. Accordingly, it drafted the Protection of Children (Criminal Laws Amendment) Bill with the active cooperation of SPARC. The Bill was welcomed by almost all the ministries, except the Ministry of Interior which advised the NCCWD to also consult the provincial governments and the Law and Justice Commission of Pakistan. The Ministry of Interior objected to raising the minimum age of criminal responsibility to 12 years from 7 years.



In order to comply with this direction, a meeting with representatives of the Provincial Home Departments, FANA, FATA, the AJK, the LJCP and Ministry of Interior was convened on April, 7, 2009. Subsequently, the modified draft was sent to the Cabinet Division which recommended it to be sent to the Law and Justice Division for vetting after getting written approval from the Religious Affairs, Interior Affairs, Law & Justice Divisions and

the LJCP at the Federal level and all Home Departments at the provincial level.

In a meeting held on June 11, 2009, it was decided to raise the minimum age to 10 years instead of the proposed 12 years. It was further decided to keep section 83 of the PPC and to raise the age bracket from its original 7- 12 years to 10-14 years.

It is pertinent to note that the participants came on this conclusion after looking at the fact that minimum age of criminal responsibility has been raised to 12 in Afghanistan, 9 in Bangladesh, 10 in Nepal and Bhutan and in many other countries around the globe. It was also shared with participants that at that time all of the 123 convicted juveniles in Pakistan were over 12 years of age.

The final draft is currently pending with the Law and Justice Division. The name of the draft Bill has been changed to *The Child Protection (Criminal Law) Amendment Bill, 2009*.

In addition to the above change, the proposed law provides for insertion of new sections 292A, 292B and 292C to the PPC to criminalize exposing children to seducing material, outlaw child pornography and provide punishment for these offences.

It further provides for insertion of new sections 328A, 369A, 377A and 377B to the PPC to penalize cruelty to children, trafficking of human beings within Pakistan and sexual abuse with punishments. Finally, necessary amendments have also been proposed in the Schedule II of the CrPC.

### **FIR against 3 year old minor**

In December 2009, the Additional District and Sessions Judge, Karachi West, Naseem Mansoor, issued a show-cause notice to the investigation officer for registering an First Information Report (FIR) against a minor, 3 years old, Saifullah along with his uncle Sanaullah. They were allegedly involved in beating and manhandling of middle aged man. The judged was surprised to learn about the case and by using his discretionary powers removed the child's name from the case and summoned the investigating officer to appear before the court.



The following Table is a comparative statement about the existing provisions in PPC and the provisions as they would read after the proposed amendments

<b>The Protection of Children (Criminal Laws Amendment) Bill 2009</b>			
<b>S. No</b>	<b>Section</b>	<b>Text of the original section</b>	<b>Text after proposed amendments</b>
1	82 PPC	Act of a child under seven years of age: Nothing is an offence, which is done by a child under seven years of age.	Act of a child under twelve years of age: Nothing is an offence, which is done by a child under ten years of age.
2	83 PPC	Act of a child above seven and under twelve of immature understanding: Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.	Act of a child above seven and under twelve of immature understanding: Nothing is an offence which is done by a child above ten years of age and under fourteen, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

### **The Khyber Pakhtunkhwa Child Protection & Welfare Bill 2009**

The Khyber Pakhtunkhwa Government finalized the Khyber Pakhtunkhwa Child Protection and Welfare Bill 2009 which was prepared by the provincial Social Welfare Department with the assistance of UNICEF.

In the Bill, a child-at risk is defined as "a child who is working or living on the street as well as a child in conflict with the law."

The proposed law also proposes formation of the Child Welfare and Protection Commission at the provincial level which will be responsible for the implementation of policies relating to children at risk. The Commission is also expected to work on reforms, monitor and ensure the safety of children in residential care and juvenile detention facilities.

The Bill also talks about revising the minimum age of criminal responsibility to an internationally recognizable standard, and about the appointment of a child protection officer who should follow up a child for at least a period of six months after his release from prison.

### **Frontier Crimes Regulation 1901**

By the end of December 2009, 14 children were detained under the Frontier Crimes Regulation 1901. In March 2008, the Prime Minister, Yousaf Raza Gilani, in his first speech to the National Assembly had promised to repeal the FCR. This repeal was one of the components of the reform package for Khyber Pakhtunkhwa but there is no sign of the FCR getting repealed in the near future. Currently, the military action in the tribal areas is the lame excuse for not repealing it as the government apprehends that it may disturb the status quo.

The FCR is a set of special laws introduced by the British colonialists in the tribal areas to stem the crimes in the tribal belt, but in fact there was a hidden agenda to restrict the social, political and economic life of the tribal people by bringing them under tight control. Despite the fact that most of the sections of the FCR clash with the basic principles of justice, fundamental, and constitutional rights of the tribal people and international laws, the oppressive regulation continues to remain in force. Under section 40 of the FCR, for instance, even a minor can be given three years imprisonment. The authorities can arrest the whole family, including children regardless of age, under the collective punishment provision of this law.

All over the world governments are responsible for the safety of their citizens, but in FATA the inhabitants are responsible for the safety of the government. The Supreme Court, including the Federal Shariat Court has made categorical judgments against the FCR and has recommended its repeal. But the bureaucracy/administration and group of so called tribal representatives had been claiming that the situation was not ripe for reforms in FATA. The insiders of these areas wanted to repeal the law whereas the outsiders the (political administration and the local maliks) were totally against it for their vested interests.





## Police and Arrest

Section 10 of the JJSO provides guidelines to police officials for treating a child below 18 years of age who comes into conflict with the law.

One of the major explanations for the improper implementation of the JJSO is that police officials are not given proper attention by the provincial governments. A police official is the first officer who can ensure the diversion of child from the formal criminal justice system.

SPARC through its interaction with police has learnt that a majority of the police officials were not aware about the rights of a child who comes into conflict with the law nor do they have knowledge about the role of probation officers who can help them and the courts in securing the reformation of the child. Many police officers lack information about the JJSO, and the SCA in Sindh and the 2004 Act in the Punjab.

A police official is empowered under section 10 of the JJSO to grant bail to an accused child in a bailable offence. If he cannot grant bail, he can at least follow the procedure outlined in the JJSO and the relevant child related provincial laws.

In the juvenile justice system, police is the gatekeeper which has legal power to divert a juvenile from the criminal justice system to an informal system where he can be rehabilitated.

Ironically, these very gatekeepers of the criminal justice system violate the rights of children when they come to the police stations. Children are routinely handcuffed, detained, tortured, abused and put into lock ups with adults.



### Case of police torture

MZ's case is an example of how police brutality and extortion can lead a child accused of petty crimes to become a habitual criminal. When he was 14 years old, MZ was arrested for theft and from then on he has been a frequent victim of police harassment at different police stations. In January 2008, he was arrested again for motorcycle and mobile phone snatching. He was taken to a police station where he was allegedly tortured and sexually abused and the entire incident was video taped. The video was then used to blackmail his family. According to MZ's family, the police have since then extorted thousands of rupees from them. On the request of the family, the District and Sessions Judge Malir court had ordered the registration of an FIR against the police authorities involved in this case but the order was later recalled for unknown reasons. Currently, there are at least six cases against MZ and until late 2009 he was confined in the Youthful Offenders Industrial School Karachi. Although his bail request was approved but the family, for fear of further police harassment, preferred to let him remain confined. In late 2009, MZ turned 18 years old and was transferred to an adult prison in District Jail Malir Karachi.

### Juvenile Courts

Currently, at least 90% of children in detention are under trial prisoners and in many cases their trials have either yet to begin or have been going on for a very long time. There are also cases where juveniles have been awarded rigorous imprisonment by trial and anti-terrorism courts.

A major reason for the above is that there are no exclusive juvenile courts that can hear cases and decide on the basis of the standards set under the JJSO. Exclusive juvenile courts can ensure that juveniles receive the protection granted under the JJSO and can contribute substantially to reduction in juvenile prisoners population.

For the time being, sessions courts and senior judges have been conferred the powers of juvenile courts. According to the JJSO, the courts must decide juvenile cases within four months, and juveniles cannot be awarded any corporal punishment. The JJSO also forbids the use of fetters and handcuffs on juveniles.

It has been observed that the regular trial courts do not follow the procedures laid down in the law while dealing with the cases of juveniles. SPARC estimates that in Sindh alone there are 2500 to 3000 children in

criminal litigation- most of them on bail grants and attending their trials for long periods of time. It has also been observed that juveniles are often brought handcuffed into courtrooms.

More alarming is that a large number of children have been awarded rigorous imprisonment. According to the detailed data population sheets received from the IG Prisons offices, in Punjab and three districts of Sindh, there are about 80 juveniles whose sentences include rigorous imprisonment.

### Human Rights Cells in Sindh

On October 27, 2009, SPARC representatives had a meeting with IG Police Salahuddin Khattak and Deputy IG Abdul Khaliq Sheikh for establishing integrated human rights cells in the province. In December 2009, the Sindh Police issued a standing order 235/09 for establishing human rights cells in each district of Sindh and at the Zone level in Karachi. The HRCs aim to monitor human, child and women rights violations and develop data base of those cases. The HRCs also aim to promote the juvenile justice system.

### Determination of Age of children

The JJSO defines child as a person who at the time of commission of an offence has not attained the age of eighteen years. In cases where there are doubts and the juvenile is close to the age of eighteen years and appears to be an adult, the JJSO asks the court for issuing orders for the constitution of medical board for assessing the age of a person on scientific grounds.

More often than not, the issue of age is not raised in courts due to lack of awareness and nor are medical boards constituted for the ossification (age determination) of the juveniles soon after their production in the court. SPARC through meetings with the lawyers and prison staff has found that the judicial officers avoid constituting medical boards because the court would have to then provide legal guarantees to the accused children.

### The Probation System

A strong and effective probation system can have a positive effect in terms of reducing prison population and rehabilitation of offenders. In



case of juveniles, as first time offenders or accused of petty offences, it is especially important to protect them from the criminalizing influence of prisons and detention centres.

There has been an increase in the overall number of juveniles on probation. By end of 2009, there were 341 juveniles on probation compared to 197 in 2008.

<b>Juveniles on Probation: 2008 and 2009</b>			
<b>Province</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
Punjab	54	224	278
Khyber Pakhtunkhwa	79	61	61
Sindh	64	54	100
Balochistan	00	02	02
<b>Total</b>	<b>197</b>	<b>341</b>	<b>538</b>
<b>Source: Data sheets from Department of Probation and Reclamation</b>			

In 2009 a significant development regarding strengthening of the probation system was the appointment of seven female probation officers in Khyber Pakhtunkhwa. With these new female appointments, the number of probation officers in the province is now 20, including 13 male officers, for its 27 districts.

There is a need to increase the number of probation officers in other provinces as well. Currently, in Punjab there are 47 probation officers including three female officers. There are also ten parole officers who also do probation work. In Sindh there are just three probation officers and no female officer. In Balochistan, in 2009, the number of probation officers was increased from two to six. However according to the director of the Reclamation and Probation Department, three officers have joined other departments and currently there are three probation officers who are also looking for transfer or deputation to other departments. The reason quoted for this is that lack of resources and facilities is making it difficult for these officers to do their duties, which include reaching children in the far- flung districts.

With the introduction of New Judicial Policy in 2009, there has been some progress in the probation system with increasing pressure on the provinces. After the announcement of the new policy, district and session judges started visiting juveniles and finalized their issues on priority.

In Punjab it was announced that the number of probation officers would be increased from 47 to 67 and a summary for the appointment of 20



new probation officers has been approved by the Secretary Home Department.

Female offenders have little chance to benefit from the system. In practice, currently, male probation officers are nominated to girl and women offenders, a violation of the Probation of Offenders Rules, 1961 that prohibit placing female offenders under the supervision of male probation officers.

### **Legal Aid and Panels of Lawyers**

In 2009, the promulgation of the Public Defender and Legal Aid Office Ordinance 2009 was a positive step. The ordinance provides for the setting up of the Public Defender and Legal Aid Office, consisting of the chief Public Defender, Additional Chief Public Defenders, and District Public Defenders and the Public Defenders. The ordinance calls for making provisions for free legal assistance to indigent persons. In case of persons under the age of 18 who are unable to file an application for free legal aid, any other person interested in their welfare can submit an application on their behalf.<sup>4</sup>

According to the JJSO 2000, all children accused of any offence have the right of legal assistance at the expense of the state. For this, the provincial governments with support from the High Courts have to appoint panels of lawyers. By the end of 2009, a total of 27 panels of lawyers had been constituted; 11 in Khyber Pakhtunkhwa, 11 in Punjab, and five in Sindh. There are none in Balochistan. However none of these panels are active because the government has not allocated funds for them nor are any juvenile cases being referred to them.

SPARC is consistently lobbying with the High Courts and District Judges for constitution of these panels of lawyers in every district and also for their activation. In the meantime, SPARC is providing free legal aid to juveniles throughout the country and in 2009 alone more than 384 juvenile prisoners were provided free legal. In addition SPARC is advocating with Bar Associations in different districts for providing pro bono legal services for juveniles.

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<sup>4</sup> [http://www.app.com.pk/en\\_/index.php?option=com\\_content&task=view&id=86938&Itemid=2](http://www.app.com.pk/en_/index.php?option=com_content&task=view&id=86938&Itemid=2)

Number of juveniles in Rehabilitation Centres: December 2009			
Rehabilitation Centres	Under trial	Convicted	Total
YOIS Karachi	184	9	193
YOIS Hyderabad	44	3	47
BI & JJ Faisalabad	61	49	110
BI & JJ Bahawalpur	36	17	53
Total	325	78	403
Source: Inspectorate General Prisons Department			

### State of Juvenile Prisoners

In December 2009, there were a total of 1,357 juvenile prisoners in various detention centres in Pakistan. Out of these 1,225 were under trial and 132 were convicted. In addition to these there were 14 children detained under the collective responsibility clause of the FCR. There are also at least 155 babies, 41 in Khyber Pakhtunkhwa, 28 in Sindh and 86 in Punjab that were living with their convicted or under-trial mothers in various prisons. The figures for Punjab are mainly from two women jails: Women Jail Multan and Central (Kot Lakhpat) Jail Lahore.

There are also juveniles of other nationalities in Pakistani prisons. As of December 2009, there were 8 (including 2 Indian nationals) convicted and 23 under trial prisoner juveniles at YOIS in Karachi and Hyderabad. There are no mechanisms or database through which it could be learnt that how many children had been arrested and convicted in a year. In December 2009, the SPARC representative during a visit to the juvenile ward in Sukkar found that about 45 Afghani juveniles were detained in the ward.

Out of the total juvenile population of over 1,357 approximately 400 children are detained at four facilities for juveniles in Sindh and Punjab, the Youthful Offenders Industrial Schools in Karachi and Hyderabad, and Borstal Institutions in Faisalabad and Bahawalpur. There are no facilities for juveniles in either Khyber Pakhtunkhwa or Balochistan. The rest are kept mostly in separate juvenile cells in regular prisons. There are also cases where juveniles are sent to adult prisons. In such cases, prison authorities may shift them to juvenile centres, a process that may take a few days or weeks. Until then these children are confined along with adult prisoners.



Jails in the country are in pathetic conditions. The physical and social environment is least conducive to reformation of detainees. In fact, the end result is further criminalization especially of younger inmates. Children detained at any other juvenile wards in Pakistan are deprived of technical, vocational or any formal education or any arrangement through which they can continue their studies. In some cases teachers come but classes are seldom held. There is no coordination between the education departments and prison administration for ensuring the right to education of juveniles during their detention. However, all children in prisons are offered religious and Quranic education. Such informal religious education is offered almost at every facility in Pakistan not by the state but by local religious groups with support from the prison administration.



The physical and hygiene conditions are abysmal, clean water and other essentials such as soap are usually not available. Living quarters become suffocating in the summer heat and extremely cold during winters.

Physical abuse and punishment over small matters is common in jails across the country. Then there are activities such as drug abuse and sexual abuse, the scale of which is difficult to estimate, and which pose serious risks for HIV/AIDS, hepatitis and other diseases. According to a recent report by a non-governmental organization, in Punjab alone there are 197 prisoners suffering from HIV and AIDS. The Punjab Home Department had conducted medical tests in 29 prisons across the province the results of which show that in addition to 197 AIDS affected prisoners, another 384 suffered from tuberculosis and over 4,000 from Hepatitis C and B. The report also said that there were 55 HIV/AIDS patients in prisons across Sindh.<sup>5</sup>

<sup>5</sup> Yasir, Aamir. 197 AIDS patients in Punjab prisons. [http://www.dailytimes.com.pk/default.asp?page=2009%5C11%5C24%5Cstory\\_24\\_11](http://www.dailytimes.com.pk/default.asp?page=2009%5C11%5C24%5Cstory_24_11)



The psychological impact can be equally grim. Often children do not know when their term in prison will be over. With prolonged trials, with judges at times not appearing, or adjournments, these juveniles have no way of knowing how long their prison terms will be or when they will be released. In some cases, juveniles have completed their prison terms but are not released because they cannot pay the fines, which are part of their sentence or because of procedural delays. There are also juveniles who have no contact with their families, either because the families are not aware of the whereabouts of their children, do not have the means to visit them on a regular basis or just avoid visiting them. This has a profound emotional impact on the detained children.

#### **SPARC receives letters from two minors tortured by Larkana police officials**

On 13<sup>th</sup> November 2009, during Larkana jail visit, SPARC representative received letters from two minors, SM (16) and MG (15).

SM wrote that he was arrested by officials at a Larkana police station, illegally detained at the police station for 20 days, during which he was tortured and his family had no idea of his whereabouts. He further wrote that the case against him is not true.

MG wrote that he was confined and tortured in the police lockup for 25 days for the purpose of extorting money.

Both minors requested SPARC for helping them get justice. SPARC sent their letters to the IG Police and Ombudsman Sindh Office along with a cover letter about specific violations of the rights of these minors. By the end of December no action had been taken by the police authorities.

#### **Khyber Pakhtunkhwa**

There are 22 prisons in Khyber Pakhtunkhwa, but no exclusive detention facilities for juveniles. In December 2009, there were a total of 191 juvenile prisoners, out of these 171 were under-trial and 20 were convicted. There were an additional 14 children detained under the Frontier Crimes Regulations.

The government in Khyber Pakhtunkhwa has constructed a Borstal Institution in Bannu and is currently working on introducing a Borstal law.

in the province to govern the new borstal institution. The draft Khyber Pakhtunkhwa Borstal Law is in circulation and various stakeholders, including SPARC, are part of the consultations on this issue. Another facility for young prisoners is the Adolescents Training Centre within the Central Prison Haripur, but this is also being operated according to the Pakistan Prison Rules.

**Juvenile Population in Khyber Pakhtunkhwa Prisons  
2002 to 2009**

Year	Under-trial	Convicted	Total
2002	446	81	527
2003	419	58	477
2004	201	55	256
2005	275	66	341
2006	281	37	318
2007	207	36	243
2008	228	41	269
2009	171	20	191

### Police trainings Hazara region

A formal memorandum of understanding has been signed between the General Police Khyber Pakhtunkhwa Office and SPARC for organizing training workshops for police officials in the province. Following this, in November and December, SPARC organized 15 one -day trainings on child protection issues and laws in Hazara in which, 27 female and 333 male police officials participated from all the districts of the region. These trainings aim to sensitize police officers in the region in order to become more child -friendly and treat children humanely and according to the laws of Pakistan and international. The trainings comprised of three sessions, the UNCRC and the Juvenile Justice System, Juvenile Justice System and Police, Alternative to Imprisonments and Age Determination.

### Punjab

In Pakistan the largest number of juvenile prisoners is in Punjab's 32 jails. In December 2009, there were 820 juvenile offenders, including 2 females. Out of these 740 were under trial and 80 were convicted. The number of juvenile prisoners has come down significantly since 2002 when there were 3,760 juvenile prisoners including 48 females in Punjab.

Juvenile Population in Punjab Prisons 2002 to 2009			
Year	Under-trial	Convicted	Total
2002	3073	687	3760
2003	1520	353	1873
2004	1248	253	1501
2005	1007	188	1195
2006	1003	161	1164
2007	1017	147	1164
2008	920	79	999
2009	740	80	820

There are 86 children living with their accused or convicted mothers. The vast majority are living in Women's Jail Multan and Central (Kot Lakhpat) Jail Lahore.

The Borstal Institutes in Faisalabad and Bahawalpur currently house 110 and 52 juveniles. The province has the Punjab Borstal Act, 1926 for managing the places which house juvenile offenders. However, the two institutions continue to be managed under the Pakistan Prison Rules.

### Sindh

In December 2009 there were 292 juvenile offenders held at different prisons in Sindh out of which 275 were under-trial and 17 were convicted children. The majority of these children were kept at the Youthful Offenders Industrial Schools in Karachi and Hyderabad and at the juvenile ward in Central Prison-I Sukkar. However, apart from Karachi and Hyderabad, children who had come in conflict with the laws were kept with adults in detention centres in their respective districts. Besides Pakistani juvenile prisoners, there are also a number of foreign national juveniles from Afghanistan, Bangladesh and India in the provincial jails for illegally entering Pakistan or for violating the country's sea limits.

Recent developments regarding juvenile prisoners include a summary by the prison authorities in Sindh to the provincial chief minister for separating children from the adult prisoners in Sukkar. In July 2009, a circular (NO.JB-1/8301/05) was issued by the IG prisons to the superintendents of prisons in Khairpur, Larkana, Shikarpur, Jacobabad and Sukkur for transferring all the juveniles to the juvenile ward in central prison in Sukkur.



**Juvenile Population in Sindh Prisons  
2002 to 2009**

<b>Year</b>	<b>Under-trial</b>	<b>Convicted</b>	<b>Total</b>
2002	470	65	535
2003	526	33	559
2004	589	88	677
2005	677	87	764
2006	642	21	663
2007	506	18	527
2008	408	16	424
2009	275	17	292

In another development, which turned out to be rather unfortunate, Justice Amir Muslim Hani of the Sindh High Court, following a visit to the central prison Sukkur, had ordered prison authorities to send all juveniles back to prisons in the districts from where they were arrested. Upon returning to their original prisons, in Larkana, Jacobabad and Shikarpur, these prisoners found that the juvenile wards had been abolished. Since then these juveniles are being housed along with adult prisoners.

**Petition for Indian Juveniles by SPARC**

On November 25, 2009, SPARC wrote a letter to the Chief Justice Sindh High Court, requesting him to take measures against the extra-judicial confinement of nine Indian fisher juveniles who had completed their sentence at the Youthful Offenders Industrial School, Karachi. The Court took notice of the matter, converted the letter into constitutional petition (D-2468) and summoned hearings. On December 22, 2009, SPARC representatives requested Justice Sajjad Ali Shah that juveniles should immediately be released. The Deputy Attorney General, Ashraf Sarwar Khan and Additional Advocate General Sindh were also present on the occasion and informed the judge that the Indian High Commission in Pakistan had not provided details, passports or documents of the Indian juveniles to the Ministry of Interior and therefore these children could not be sent back to their country. The SHC directed the federal law officer to file comments on a petition seeking deportation of nine Indian youngsters. The Deputy Attorney General has asked for time to seek instructions from the ministry. The court while adjourning the matter till January 2010, directed the federal law officer to file comments regarding deportation of the youths on next date of hearing.

### Balochistan

In 2009 there were 44 juvenile prisoners in Balochistan, a number that has come down substantially from 103 in the year 2002. These juveniles are kept in juvenile wards in ten different jails of the province, the conditions of which are quite below minimum acceptable standards. Balochistan neither has Borstal Institute nor Borstal law.

**Juvenile Population in Balochistan Prisons  
2002 to 2009**

Year	Under-trial	Convicted	Total
2002	54	103	157
2003	58	93	151
2004	62	43	105
2005	46	22	68
2006	109	12	121
2007	80	4	84
2008	79	17	96
2009	39	15	54

### CHILD RIGHTS DESKS

In the juvenile justice system, the objectives of 'Detention as a Last Resort' or 'Diversion' can only be attained if a juvenile offender is provided a chance to return to a normal life before entering the formal criminal justice system.

The role of the police thus becomes crucial in assisting with the diversion of children. Interventions at the police level can reduce the chances of a juvenile offender going to prisons for petty offences, reduce the burden on courts and provide the child a chance to reform in a community environment with due supervisions by relevant officials. The Sindh Police has taken the initiative in this regard and has established four Child Rights Desks in Karachi, Sukkur and Khairpur.<sup>6</sup>

The relevant heads of the areas and districts have deputed staff for the CRDs and issued notifications for running of the CRDs to each police station in their jurisdictions. Two senior ASI ranked officers will be appointed by the head of the District or Town Police to run the CRD

<sup>6</sup> This initiative is taken by some likeminded police officials in Sindh Police Department. Their Names are Mr Abdul Khaliq Sheikh (DIG East Karachi), Mr Pir Mohammad Shah (DPO Khairpur), Mr Sharjeel Kareem Kharal (DPO Sukkur), Mr Abdullah Sheikh (TPO Saddar Karachi) and Mr Sultan Ali Khuwaja AIG Police Operations.



**Objectives of the CRD**

The CRD will deal primarily with the cases of juvenile offenders and ensure that their rights as given under the JJSO and other relevant laws are protected.

The CRD shall help divert a child accused of a minor offence from the formal criminal justice system to an informal system of rehabilitation and reintegration. It shall also deal with children who become victims of offences like sexual abuse, torture, sale, trafficking, forced begging, forced labour, exploitation etc.

A main function of the CRD would be ascertaining the correct age of the child and submission of report by police. According to Police Rules it is imperative upon the relevant police officer in cases involving young persons to conclusively decide regarding the age of the juvenile offender and should incorporate it in the report. The police are bound to form its opinion on the basis of some documents which may include hospital birth records, records of educational institution including degrees and certificates with the person's date of birth, NADRA records, marriage (nikah) certificate or medical opinion about the age of the person.

The above mentioned material collected by the police in forming its opinion about the accused person's age would be of great assistance to the magistrate in deciding where to send the case for trial and would also save a lot of time and effort of the court in resolving any controversy raised before it regarding the relevant accused person's age.

**Guidelines for Running the Child Rights Desk**

The following guidelines have been prepared under the light of the existing legal provisions such as the JJSO, the SCA and the Sindh Juvenile Justice Rules 2002.

- The in-charge CRD shall call the guardians of the accused and the probation officer;
- The CRD will investigate all cases reported against or on behalf of children, including cases involving sexual abuse, rape and trafficking of children;
- The CRD will make appropriate inquiry, to determine whether the accused person is a child for the purposes of the JJSO;
- Investigation of all children cases reported in the district will be carried out under a senior ASP level police officer;



- Until investigation is completed, an FIR may not be lodged against the child and in the interim, the police officer should contact the probation officer;
- If it is necessary to lodge an FIR in which child and adult both are involved in an offence, then there should be two separate challans (reports); one against the child and the other against the adult;
- No child shall be hand-cuffed, put into fetters, or given any corporal punishment in custody;
- The CRD will be responsible for the care and protection of child if it becomes necessary to keep the child in the custody and the child shall be produced before a magistrate within 24 hours;
- No female juvenile will be kept at the police station for more than an hour;
- The child shall be released into custody of a parent or guardian or probation officer or other suitable person/institution
- A child under the age of 15 years arrested for an offence punishable with less than ten years should be treated as accused of bailable offence.
- The SHO can grant bail to a child under bailable offence after completing the legal requirements in the presence of parents and probation officer.
- The SHO may ask the child and his/her parents to produce the child once in a month before him.

SPARC has provided technical and infrastructural support for establishing these CRDs as well as trainings to the police officials for carrying out the agenda of the CRD.

The system within police is complicated and personalized. Acceptance of the CRDs has become little bit of a challenge for many police officials who look at the crime from the criminal perspective rather from the restorative justice approach.

Although these desks are still in their initial phases some successes have already been seen. In Khairpur, CRD has handled about nine cases of child offenders and has provided relief to the child. Similarly, CRD at Women Police Station, Shahrah-e-Faisal and CRD in Sukkar have helped a number of children accused of minor offences. The police officials, without putting the children into formal justice system, called their parents and civil society members and released them with undertakings that they will not repeat the offences.

## Conclusion and Recommendations

The juvenile justice system in Pakistan is at a very early stage of development. It needs the support of a wide range of stakeholders including the police, judiciary, lawyers and other relevant government offices. It also needs the continued support of the civil society, which has been largely instrumental in bringing forth the plight of juvenile prisoners in the country.

Some police and judicial officers have come to the realization that implementation of a juvenile justice system is indispensable not only because of mounting international pressure but more importantly because of our obligations to uphold human rights of all people. The year, however, ended with some questions and concerns with regard to government's sincerity about implementation of the juvenile justice system. The government of Pakistan in its fourth report to the UN Committee on the Rights of the Child had promised at four different pages that it will raise the minimum age of criminal responsibility from 7 years to 12 years. It seems to have backtracked and currently it is proposing to raise it to 10 years. Even that is not conclusive as the relevant legal amendments are still pending. The petition against the suspension of the Juvenile Justice Ordinance 2000 by the Lahore High Court has been pending for some years now. Many of the provisions for juvenile offenders given in the law have yet to be realized.

This lack of political will and sincerity on the part of the government is perhaps the biggest challenge facing the juvenile justice system in the country.

- A separate juvenile justice policy and allocation of adequate funds for its implementation
- Increase in the minimum age of criminal responsibility.
- Implementation of JJSO in FATA, PATA and FANA with necessary amendments in relevant laws and provision of infrastructure and mechanisms.
- Immediate release of children currently sentenced or held under the Frontier Crimes Regulations 1901.
- Repeal of Frontier Crimes Regulations 1901
- Establishment of exclusive juvenile courts with adequate allocation of funds.

- Introduction of a system of diversion and restorative justice in JJSO.
- Strengthening of probation system with the provision of all necessary infrastructure and personnel including appointment of exclusive probation officers juveniles.
- The practice of recording the age of an arrested person on the basis physical appearance should be abolished. Age determination should be based on some authentic document as proof of the age and in the absence of such proof, a medical report regarding the age of the arrested person should be sought.
- The judiciary should show leniency in cases where juveniles have been unable to prove that they were juveniles at the time of the alleged offence on account of their parents' failures to register their births or due to failure of the system in ascertaining their age at the time on the basis of evidence.
- All records at the police and courts level should be computerised and desegregated data of juveniles should be maintained. Format of FIR should be revised include a column for recoding age of the victims and the accused. Separate data collection by the National Bureau of Police should be undertaken for crimes by and against children and its dissemination on regular basis.
- Panels of lawyers for providing free legal aid should be set up in all districts and adequate funds should be allocated for payment of fees to the lawyers.
- Borstal Institutions should be set up in all provinces and they should be managed under borstal laws.
- Child protection police officers should be appointed at district levels to deal with and investigate cases involving children.
- The JJSO should be incorporated in the training syllabus of judges, police and prison staff.
- Urgent review should be undertaken of cases where children have been sentenced to rigorous imprisonment.
- The uncertainty regarding the fate of the JJSO and the appeal for its restoration pending in Supreme Court should be resolved through an early decision.