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**Remarks by OMCT/SOS-Torture in response to the Report of the  
Government of Pakistan**

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**Committee on the Rights of the Child**

**Consideration of Reports Submitted by States  
Under Article 44 of the Convention**

**January 1994**

1. General remarks on the report

Pakistan ratified the Convention on the Rights of the Child on 12 November 1990, all the while maintaining a reservation whereby the provisions of the Convention were to be interpreted in the light of Islamic laws and values. Following its accession to the convention, the government of Pakistan enacted a series of legislation to give effect to the provisions contained therein. One

such law was the Employment of Children which was enacted on 6 April 1991.

The World Organisation Against Torture (OMCT/SOS-Torture) welcomes the thorough and comprehensive report that has been submitted by Pakistan. The report gives a full description of the administrative structure of Pakistan which is important for an understanding of the regional variations in the implementation of the laws and indeed of the Convention.

The report goes into considerable detail about the social and welfare provisions for children as well as the system of education, health etc.

The report also gives demographic data relating to Pakistan, for example, children under the age of 5 years account for +/- 15% of the population while children under the age of 15 account for 44.5% of the population. If one takes into account children under the age of eighteen, it becomes clear that they account for close to 50% of the total population of the country.

Thus, with such a high proportion of children, the government seems committed to ensuring the protection of children. This commitment emerges from the report in the detailed descriptions of the national legal and constitutional measures implemented by the government, particularly the Enactment of the Employment of Children Act, all of which tend in the general direction of the Convention on the Rights of the Child.

However, the World Organisation Against Torture (OMCT/SOS-Torture) is nevertheless concerned by the apparent contradictions that are contained in the report of the government and by the fact that at times the report only touches briefly on some of the main challenges facing the government and some of the main violations affecting children's rights which go against the spirit of the Convention.

## 2. Contradictions inherent in the report.

Article 1 of the Convention on the Rights of the Child defines a "child" as *"...every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier"*. This is fairly clear.

Paragraph 19 of the report of Pakistan, however, states: *"Most of the local laws regard a person below the age of 18 years as a child except in cases such as employment ..."*. This paragraph gives rise to an ambiguous interpretation of the definition of the "child". In the first place, given that the legal minimum age for the employment of children in Pakistan is 14, this could be interpreted to mean that a child below the age of eighteen in formal employment is technically no longer considered as such. This point requires clarification. In addition to this, paragraph 24 states that *"Few laws define a female child to be below the age of 16 years as opposed to a male child who is stated as being below 18 years of age"*. Again, we feel that this requires clarification. This same paragraph further states that *"Some codified Islamic laws have even lowered this age of the female child by stipulating that it is either 16 years or upon attaining puberty."* Who is to determine the point at which puberty has been reached? Given that some female children attain puberty as early as 12 or 13 years of age, these laws are clearly open to an interpretation which goes against the spirit of the Convention on the Rights of the Child. We feel therefore that in order to fully respect the Convention, the government of Pakistan should amend its laws and rationalize them at the national level to accord with Article 1 of the Convention - that a child has not reached majority until 18.

Another fundamental contradiction contained in the report which leaves the Convention open to a fairly loose interpretation relates to the employment of children. The World Organisation Against Torture (OMCT/SOS-Torture) has noted with satisfaction that the Employment of Children Act was enacted in 1991 to give effect to the relevant Articles of the Convention on the Rights of the Child. Article 31 of the Convention states:

*"1. States Parties recognize the rights of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."*

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provision of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article".

OMCT/SOS-Torture recognises that the enactment of the 1991 Employment of Children Act is a great step in this direction. Paragraph 39 of the government report states that: *"The Act clearly states that no child below the age of 14 years shall be engaged in any factory or mine or any hazardous employment"*. Paragraph 41 further states that: *"Under the provisions of the said Act, the employment of a child below the age of 14 years is a cognisable offence and is punishable with imprisonment for a term which may extend to one year or with a fine which may extend to Rs. 20,000 or with both"*. That notwithstanding, however, we are nevertheless concerned by certain aspects of Pakistani society and legislation which contravene the Convention. While the above mentioned provisions clearly accord with Article 31 of the Convention on the Rights of the Child, social reality in Pakistan is in fact far different. Indeed, an independent report estimates that there are some 10 million children under the minimum age who are working in Pakistan Report of the ICFTU-APRO Sub-Regional Seminars on Child Labour. In addition, paragraph 30 of the report of the government states that: *"Among the poor, some 12 per cent of children (10 -14 years) work - many in unhealthy trades for pitiful wages"*. While we welcome the admission by the government of Pakistan of this painful reality, we nevertheless believe that the report should provide greater detail as to how Paragraph 41 of the Employment of Children Act is implemented to palliate this problem.

These, therefore, are the main contradictions which emerge from the actual report of the government of Pakistan. There are, however, as mentioned above certain other aspects of the social reality of Pakistan which give rise to serious concern in the context of the implementation of the Convention on the Rights of the Child by the government. Furthermore, as noted earlier, the report has touched only superficially on some of the main violations affecting children.

### **3. Child labour.**

*"No child under the age of 14 years can be employed in any formal sector"*. (paragraph 20, CRC/C/3/Add. 13).

Although the Convention on the Rights of the Child contains strict provisions for the protection of children from exploitation as does the legislation of Pakistan, as already made clear above, social reality in Pakistan is far different and the report of the government (CRC/C/3/Add. 13) only touches on this briefly.

As mentioned above, it is estimated that there are some 10 million children under the age of 14 currently in employment in Pakistan, and this is thought to be a conservative estimate. They are employed in hazardous industries such as match and firework factories, carpet-making factories, agricultural industries under the authority of land-owners and in conditions of near slavery. The conditions of employment are poor, with long working hours, under-nourishment and frequent reports of ill-treatment. Many children therefore suffer from malnutrition, skin and eye diseases, some are maimed for life and some even die on the job.

Children are very often forced into a situation of bonded labour by poverty. Some of them are abandoned to the street and therefore left to fend for themselves, others are forced into employment to supplement the family income, others, and this is frequent, are sold into labour by their parents for a derisory fee and yet others are used by their parents' employers to reimburse debts incurred by their parents with their employers. High interest rates demanded by employers and miserable wages mean that the children are very often employed for

excessively long periods if not for life.

While OMCT/SOS-Torture is conscious that the government is indeed aware of this situation, indeed in its own report (CRC/C/3/Add.13) the government acknowledges this fact: (paragraph 30), "In order to offset low per capita incomes, the poor are constrained to use their large family size to increase their participation in the labour force - the additional work effort coming from women and children. ... there are at least 8 million working children who remain away from school", and that it is a situation caused by structural problems inherent to a developing country, we are nevertheless concerned that the issue only merits a brief mention in the report. Furthermore, we feel that far more emphasis is required in the report to the solutions that could be promulgated to alleviate the problem (viz. paragraph 45, CRC/C/3/Add. 13). Specifically, the World Organisation Against Torture (OMCT/SOS--Torture) believes that the report should be more explicit about what social and judicial procedures have been put in place to monitor and protect children in bonded labour, to monitor the working conditions and hours, and to assist children in bonded labour or working in difficult circumstances.

#### **4. Criminal responsibility.**

Paragraph 3a of Article 40 of the Convention on the Rights of the Child on the subject of the administration of juvenile justice states:

*"3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular.  
(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;"*

The report by the government of Pakistan (CRC/C/3/Add. 13) states in paragraph 21 that: *"Under the Pakistan Penal Code, no act is considered as an offence which is committed by a child under 7 years of age. Under the same code no act is regarded as an offence if done by a child above 7, ears of age and under 12 years, who has not attained sufficient maturity to judge the nature and consequences of his conduct on that occasion"*. This therefore fixes the age of criminal responsibility in Pakistan at 7 years and between 7 and 12 years depending on the individual situation of the child. It appears to us therefore, that the fixing of the minimum age for criminal responsibility is highly arbitrary. We believe that this is likely to prejudice children, particularly those existing in abject poverty, or abandoned or street children and therefore believe that the report should define the criteria used for judging the individual situation of the child more clearly.

In addition, fixing the age of criminal responsibility at 7 years is, in our opinion, not in the spirit of "The Beijing Rules" article 4.1 of which states:

*"4.1 In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity"*.

The Commentary that goes with this article clarifies this by saying:

*"The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility,- that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social fights and responsibilities (such as marital status, civil majority, etc.)."*

Determining the age of criminal responsibility at 7 years strikes us, therefore, as being too young. Furthermore, it would appear that in reality, even the 12 year age limit is not always adhered to. Indeed, a case currently before the Courts illustrates this. (See document: Case

PAK 030893, attached).

**Rehmat MASIH, Manzoor MASIH and Salamat MASIH**, who is aged 11 years, were accused of throwing scrolls around in a mosque and writing blasphemous inscriptions on the walls of the mosque in Ratta Dhotran on 9 May 1993. As a result, all three have been charged under Section 295-C of the Pakistan Penal Code which stipulates that *"Use of derogatory remarks, etc. in respect of the Holy Prophet: Whoever by words, either spoken or written, or by visible representations, or by any imputation, innuendo, or insinuation, directly or in-directly, defiles the sacred name of the Holy Prophet (peace be on Him), shall be punished with death, or imprisonment for life and shall also be liable to fine"*. In October 1990, the Federal Shariat Court ruled that for the offence described above, the only punishment prescribed by Islam was death, a change that came into effect on 1 May 1991. Interestingly enough, **Salamat MASIH** is illiterate and therefore one fails to see under the circumstances how he could write blasphemous inscriptions and, given his illiteracy, how he could be considered to have *"... attained sufficient maturity to judge the nature and consequences of his conduct on that occasion"*. This case is not isolated and therefore calls into question the implementation and respect by the government of Pakistan of the provisions contained in Article 40 of the Convention on the Rights of the Child.

Another question posed by this case is that of capital punishment or the death sentence. Article 37a of the Convention states:

*"(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age;"*

At the same time, however, paragraph 158 of the government's report explains that *"Section 45 (1) of the Punjab Youthful Offenders Ordinance, 1983 (and in similar laws in other provinces) no offender below the age of 15 years shall be sentenced to death or transportation or any imprisonment. However, a young person even below the age of 15 years who has reached puberty can be given the punishment prescribed by the hudood laws"*. By basing such punishment on the attainment of puberty (we have already mentioned the difficulties associated with this above), the law effectively negates article 37a of the Convention. In the case of the young **Salamat MASIH**, it becomes clear that both national legislation and the Convention are not being respected.

This provision raises two further problems. In the first place, the Punjab Youthful Offenders Ordinance is a regional law. We fail to comprehend therefore, why children in different parts of the country should be subjected to differing legislation and feel that the report should address this question more specifically. In addition, the government should clarify in its report exactly what punishments are foreseen by the "Hudood Laws".

## **5. Children in detention.**

The issue of criminal responsibility begs another thorny issue, that of children in detention. Paragraph 21 of the Report CRC/C/3/Add. 13 states: *"If a child under 18 years is convicted by a court for an offence punishable by transportation or imprisonment, the court may either order him to be sent to a certified school or to the juvenile section of a jail"*. It becomes clear therefore that "certified schools" and "juvenile sections" of prisons exist in Pakistan. Thus, while both the Convention and national legislation contain strict provisions relating to the care of children in detention, in reality, thousands of children are held in detention centres and prisons in Pakistan in appalling conditions. Very young children are held with adults, thereby exposing them to violence and sexual assault from their older fellow prisoners and also exposing them to hardened criminals therefore hardly constituting an appropriate "re-education" structure. Furthermore, such practices clearly contravene Article 37c of the Convention on the Rights of the Child which stipulates:

*"(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best*

*interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".*

Although national legislation provides that children under the age of 15 be released into the custody of parents or guardians in the event of a bailable offence, or into a juvenile remand centre in the event of a non-bailable offence in reality this rarely happens. Very young children have been known to languish in detention centres and prisons for months if not years. Although part of the explanation for this phenomenon lies in lack of resources and infrastructure, it is nevertheless alarming in its incidence.

We feel that certain elements are sorely lacking from the report as far as the situation of children in detention is concerned. In the first place the report should be more explicit on the possibilities and procedures which exist for filing appeals against the deprivation of freedom and the time-frames within which children should be presented before a judge. In addition, the report should outline what measures are taken to protect children from ill-treatment both at the hands of their fellow prisoners and at the hands of prison wardens or police officers. More details are required as to what punishment, if any, is meted out to those responsible for the ill-treatment of children in detention. Finally, we feel that the report should give an indication of, on the one hand, the type of reparations, if any, that are made to children who have been the victims of ill-treatment while in detention and, on the other, what rehabilitation facilities - medical, social, educational - are offered to children and juvenile delinquents.

Upon ratification of the Convention, Pakistan made a reservation according to which the provisions of the Convention would be interpreted in the light of the principles of Islamic laws and values. Given this reservation, we feel that the report by the government should clarify if, when and how the principles of the Convention conflict with Islamic law and should be more specific about which principles - those enshrined in the Convention or those in Islamic Law - take precedence in the event of such a conflict.

## **6. Sale and traffic of children.**

Article 35 of the Convention on the Rights of the Child states:

*"States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form"*

Similarly, Pakistan has laws legislating against the abduction, sale or traffic of children which are enshrined in Article 11 (2) of the Constitution. While we welcome the adherence of Pakistan to this in principle, nevertheless the traffic of children, at times very young, has reached alarming proportions. Indeed, in 1992 it was estimated that some 20,000 children, some as young as 5 years old, were sent to the Gulf region to be used as jockeys in camel racing. Not only does this contravene both the Convention and national legislation, but in addition it is an extremely cruel practice and causes disabilities and death, not to mention severe psychological suffering for the children concerned. Some of these children are sold, others are abducted.

Thus, a concerted effort is required to put an end to this particularly heinous activity. The government should include in its report what measures, if any, it is taking to investigate this particularly heinous trade and what actions it intends to undertake with a view to preventing or at least palliating this problem.

## **7. Conclusions**

The World Organisation Against Torture (OMCT/SOS-Torture) welcomes the report by the government of Pakistan, and particularly the admission on the part of the government that such violations of children's rights do occur. It also greets favourably the obvious intentions of the government to eradicate such practices and to fulfil its obligations as a signatory to the Convention on the Rights of the Child.

Finally, we are also only too conscious of the fact that many of these problems can be imputed to poverty and other problems inherent to a developing country - lack of resources, lack of infrastructure to provide proper education facilities and juvenile detention centres etc.

However, we nevertheless feel, as pointed out above, that there are certain reconcilable contradictions that emerge from the report and that some national legislation that has been promulgated since ratification of the Convention is contrary to the spirit of the same Convention.

While we are aware that many of the structural causes of the violations of children's rights require economic and social change at a structural level, we nevertheless feel that a better administration of justice in the country would enable a considerable improvement in the lot of children.

We have taken note of the government's own admission that collaboration is required among itself, international donor agencies and nongovernmental organisations and can only encourage this.

Geneva, 14 January 1994

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