

# INHUMAN SENTENCING OF CHILDREN IN PAKISTAN

## Summary

People may be lawfully 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 2014<sup>1</sup> and all capital cases in March 2015,<sup>2</sup> it has returned to carrying out the death penalty for child offenders.

This report was initially prepared for CRIN in 2011, but was updated in March 2017. For more information about CRIN's inhuman sentencing campaign, visit: [www.crin.org/home/campaigns/inhuman-sentencing](http://www.crin.org/home/campaigns/inhuman-sentencing) or contact us at [info@crin.org](mailto:info@crin.org).



## Introduction

Juvenile justice is primarily governed by the Juvenile Justice System Ordinance (JJSO) promulgated in 2000 but still not fully implemented throughout the country. This Ordinance was initially applicable only to the four provinces - Sindh, Punjab, Balochistan and the North West Frontier Province (now known as Khyber Pakhtunkhwa). Implementation rules were laid down for the Ordinance in these provinces and in Islamabad Capital Territory by 2002. The Ordinance has since been extended to the Federally Administered Tribal Areas (FATA), the Provincially Administered Tribal Areas (PATA) and the Northern Areas (now known as Gilgit-Baltistan) by way of notification, but as of August 2009, no implementation rules seem to have been laid down.<sup>3</sup> In Khyber Pakhtunkhwa, the JJSO provisions are incorporated in the Child Protection and Welfare Act 2010. The JJSO applies to Azad Jammu and Kashmir under the Juvenile Justice System Act 2003 (amended 2005).

The JJSO did not repeal other laws on juvenile justice, but applies in addition to them.<sup>4</sup> Where there is a conflict, the JJSO overrides other laws except in relation to hadd offences and cases in special courts dealing with drug and terrorism offences. In FATA, the Frontier Crimes Regulation 1901 applies to all persons regardless of age. Certain areas of Khyber Pakhtunkhwa are governed by Sharia law under the Nizam-e-Adl Regulation 2009, which overrides all other laws.<sup>5</sup>

<sup>1</sup> 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>.

<sup>2</sup> Dawn, "Death penalty moratorium lifted completely in Pakistan: Officials" 10 March 2015. Available at: <http://www.dawn.com/news/1168652>.

<sup>3</sup> CRC/C/PAK/Q/3-4/Add.1, 1 September 2009, Written replies by the Government of Pakistan to the list of issues (CRC/C/PAK/3-4) 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/3-4), para. 69. Rules have possibly been laid down in FATA – see Khoso, A. (2010), Pakistan: Frontier Crimes Regulation – Infringing Human and Child Rights, section obtained from the Asian Human Rights Commission,

<sup>4</sup> The Juvenile Justice System Ordinance, Section 14. Available at: <http://sparcpk.org/pdf/Juvenile%20Justice%20System%20Ordinance%202000.pdf>.

<sup>5</sup> Nizam-e-Adl Regulation Section 18. Available at: <http://archives.dailytimes.com.pk/national/15-Apr-2009/text-of-the-nizam-e-adl-regulation-2009>.

In 2004, the Lahore High Court struck down the JJSO with effect for the whole country.<sup>6</sup> On 11 February 2005, following appeals by the Federal Government and the Society for the Protection of the Rights of the Child, the Supreme Court made an order to restore the JJSO pending its decision.<sup>7</sup> As of the time of writing, it appears that a full hearing has not taken place.

Other legislation relevant to the sentencing of child offenders includes, 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.

Under the Penal Code, no one can be held criminally responsible for an offence carried out while under the age of seven.<sup>8</sup> Children older than seven and younger than twelve can only be punished under the Penal Code where they have “attained sufficient maturity of understanding to judge the nature and consequences of [his or her] conduct on that occasion”.<sup>9</sup> However; under the Hudood Ordinances, children are liable for punishments on reaching puberty.<sup>10</sup> Other laws do not specify a minimum age.<sup>11</sup> The Juvenile Justice System Ordinance defines a child as a person under 18 at the time of committing an offence.<sup>12</sup>

## Legality of inhuman sentencing

### Death penalty

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...”<sup>13</sup> The prohibition applies to persons under 18 at the time of commission of an offence.<sup>14</sup> However, the provisions of the JJSO are “in addition to and not in

derogation of, any other law for the time in force”,<sup>15</sup> 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.<sup>16</sup> 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,<sup>17</sup> but we have no further information.

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.<sup>18</sup> The provision which stated that the Ordinance overrides all other laws was repealed by the Protection of Women (Criminal Laws Amendment) Act 2006,<sup>19</sup> but on 21 December 2010, the Federal Shariat Court declared this repeal unconstitutional.<sup>20</sup> The Offences Against Property (Enforcement of Hudood) Ordinance 1979 was not amended in 2006, and explicitly overrides other laws.<sup>21</sup> This Act provides for capital punishment for the offence of haraabah (threatening or hurting another person to obtain property) which results in murder.<sup>22</sup> The Penal Code prohibits the sentence of death as qisa (retribution) for minors.<sup>23</sup>

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

6 Farooq Ahmed v. Federation of Pakistan, PLD 2005, Lahore 15 [2004]

7 Amnesty International, Pakistan: Amnesty International’s comments on the Lahore High Court judgment of December 2004 revoking the Juvenile Justice System Ordinance, AI Index 22/026/2005. Available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/PK/AI\\_PAK\\_UPR\\_S2\\_2008anx\\_asa330262005.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/PK/AI_PAK_UPR_S2_2008anx_asa330262005.pdf).

8 Penal Code, Section 82. Available at: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

9 Penal Code, Section 83.

10 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).

11 For example, the Frontier Crimes Regulation 1901.

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

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

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

15 Juvenile Justice System Ordinance, Section 14.

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

17 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>

18 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](http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html).

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

20 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>

21 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>.

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

23 The Penal Code, Section 306.

## Corporal punishment<sup>24</sup>

The Juvenile Justice System Ordinance states that no child may be subject to corporal punishment while in custody; whether this applies to all court ordered whipping is unclear, though it is reportedly interpreted as prohibiting corporal punishment as a sentence of the courts.<sup>25</sup>

Whipping is prohibited under the Abolition of Whipping Act 1996, though this legislation does not apply to the Federally Administered Tribal Areas. Until 2011, children in the FATA could be sentenced to whipping under the Frontier Crimes Regulation 1901, but these provisions were removed by the Frontier Crimes (Amendment) Regulation 2011.

Whipping is permitted under the Offence of Qazf (Enforcement of Hadd) Ordinance 1979,<sup>26</sup> the Prohibition (Enforcement of Hadd) Ordinance 1979,<sup>27</sup> the Offence of Zina (Enforcement of Hudood) Ordinance 1979<sup>28</sup> and the Offence Against Property (Enforcement of Hudood) Ordinance 1979.<sup>29</sup>

A medical officer must examine any person sentenced to whipping before the sentence is carried out “so as to ensure that the execution of the punishment will not cause the death of the convict”<sup>30</sup> and where the sentenced person is judged “too old or too weak” the number of lashes must be applied in such a manner that the punishment will not cause death.<sup>31</sup> A male must be whipped while standing and a female while sitting.<sup>32</sup> A medical officer must be present during the whipping and where he or she is of the opinion that “there is apprehension of the death of the convict” the whipping

must be postponed until the medical officer certifies that the sentenced person is fit to undergo the remainder of the punishment.<sup>33</sup>

Amputation is a lawful penalty for theft under the Offences Against Property (Enforcement of Hudood) Ordinance.<sup>34</sup> Amputation must be carried out by an authorised medical officer if he or she is of the opinion that the amputation would not cause the death of the person sentenced.<sup>35</sup>

The Penal Code and the Code of Criminal Procedure permit the penalty of qisas - causing similar hurt to the same part of the body of a convicted person as caused to the victim. Such a penalty may not be ordered for a male under the age of 18,<sup>36</sup> but this leaves the possibility that such penalties may be applied to girls.

Corporal punishment has been explicitly 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 system<sup>37</sup> (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<sup>38</sup> and Gilgit-Baltistan enacted the Prohibition of Corporal Punishment Act in August 2016.<sup>39</sup>

## Life imprisonment

The Juvenile Justice System Ordinance (JJSO) does not prohibit life imprisonment. The Ordinance allows for a child to be sent to a borstal institution until the age of 18 or for a period of imprisonment to be reduced.<sup>40</sup> The Penal Code punishes a number of offences with life imprisonment.<sup>41</sup> The sentence may be commuted to imprisonment for a term of up to 14 years.<sup>42</sup> Children may also be sentenced to life

24 For further information on the legality of corporal punishment in Pakistan, see The Global Initiative to End All Corporal Punishment of Children, Country Report for Pakistan. Available at: <http://www.endcorporalpunishment.org/progress/country-reports/pakistan.html>.

25 The Child Offenders Bill 1995, clearly stated in Section 11: “(1) Notwithstanding anything contained in any law for the time being in force, no child shall be awarded punishment of death, whipping, amputation or ordered to labour during the time spent in any borstal or such other institution. (2) Notwithstanding anything contained in any other law for the time being in force, no child shall be handcuffed, put in fetters or given any corporal punishment at any time while in custody.” But as enacted, the Juvenile Justice Ordinance 2000 refers to corporal punishment only in relation to custody and makes no explicit reference to amputation, stating 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, or ordered to labour during the time spent in any borstal or such other institution; and (b) handcuffed, put in fetters or given any corporal punishment at any time which is custody; Provided that where there is reasonable apprehension of the escape of the child from custody, he may be handcuffed.” (emphasis added). According to Abdullah Khoso, in correspondence with CRIN 1 April 2011, Section 12 is interpreted as prohibiting corporal punishment as a sentence of the courts.

26 Offence of Qazf (Enforcement of Hadd) Ordinance 1979, Section 7. Available at: [http://www.pakistani.org/pakistan/legislation/zia\\_po\\_1979/ord8\\_1979.html](http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord8_1979.html).

27 Prohibition (Enforcement of Hadd) Ordinance 1979, Sections 3, 4, 8, 11 and 25.

28 Offence of Zina (Enforcement of Hudood) Ordinance, Section 5.

29 Offence Against Property (Enforcement of Hudood) Ordinance 1979, Sections 17 and 21.

30 Execution of the Punishment of Whipping Ordinance 1979, Section 5(a). Available at: <http://legaladvicepk.com/execution-of-the-punishment-of-whipping-ordinance-1979-1285.html#5-The-conditions-and-mode-of-execution-of-punishment-of-whipping>

31 Execution of the Punishment of Whipping Ordinance 1979, Section 5(b).

32 Execution of the Punishment of Whipping Ordinance 1979, Section 5(l).

33 Execution of the Punishment of Whipping Ordinance 1979, Section 5(m).

34 Offence Against Property (Enforcement of Hudood) Ordinance, Section 9. Available at: <http://www.refworld.org/docid/4dd101512.html>.

35 Offence Against Property (Enforcement of Hudood) Ordinance, Section 9(6) and (7).

36 Penal Code Section 337-M, prohibits qisas for an offence committed by a “minor”, but a minor is defined as a male under the age of 18 by Section 299 of the Penal Code.

37 Available at: [http://www.senate.gov.pk/uploads/documents/1487828446\\_749.pdf](http://www.senate.gov.pk/uploads/documents/1487828446_749.pdf).

38 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>.

39 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.endcorporal-punishment.org/progress/country-reports/pakistan.html>.

40 Juvenile Justice System Ordinance, Section 11.

41 Penal Code, 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.

42 Penal Code, Section 55.

imprisonment under the Control of Narcotic Substances Act<sup>43</sup> and, presumably, the Anti-Terrorism Act.

In Sindh province, the Sindh Children Act states that child offenders (those under the age of 16) should not be sentenced to imprisonment, but also states that the Court may in certain circumstances “order the offender to be kept in safe custody in such place or manner as it thinks fit”.<sup>44</sup> The federal Reformatory Schools Act 1897 provides for boys aged under 15 at the time of conviction for an offence punishable with life imprisonment to be sent to reformatory schools for between three and seven years, but the Act has not been implemented.<sup>45</sup>

The penalty of life imprisonment was removed from the Offence of Zina (Enforcement of Hudood) Ordinance and the Offence of Qazf (Enforcement of Hadd) Ordinance in 2006.<sup>46</sup> However, a person who has reached puberty may be sentenced to life imprisonment under the Prohibition (Enforcement of Hadd) Order<sup>47</sup> and the Offences Against Property (Enforcement of Hudood) Ordinance.<sup>48</sup>

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

## Inhuman sentencing in practice

### Death penalty

At least six people have been executed for offences committed while they were children since Pakistan lifted its official moratorium in December 2014.<sup>49</sup>

- Muhammad Afzal was convicted of terrorism offences he allegedly committed when he was 16 and was hanged on 17 March 2015.<sup>50</sup> He was sentenced to death in 1999 by an anti-terrorism court for allegedly killing a man during a robbery. The court did not consider the issue of juvenility at any stage of the proceedings.<sup>51</sup>

- 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.<sup>52</sup> 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.<sup>53</sup>
- 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.<sup>54</sup>
- 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.<sup>55</sup>
- Muhammad Sarfaraz was executed on 10 May 2016 after 22 years on death row.<sup>56</sup>

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.<sup>57</sup>

## Progress towards prohibition and elimination

### Law reform needed

The death penalty, life imprisonment and corporal punishment should be explicitly prohibited as penalties

43 Control of Narcotic Substances Act, Section 9(2). Available at: <http://www.fmu.gov.pk/docs/laws/Control%20of%20Narcotic%20Substances%20Act.pdf>.

44 Sindh Children Act, Section 68.

45 CRC/C/65/Add.21, 11 April 2003, Second periodic report to the Committee on the Rights of the Child, paras. 50 and 372.

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

47 Prohibition (Enforcement of Hadd) Order, Sections 2 and 20.

48 Offences Against Property (Enforcement of Hudood) Ordinance, Section 9(c).

49 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>.

50 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/>.

51 CRIN, Children in Court CRINmail, 23 March 2015. Available at: <https://www.crin.org/en/home/whatwedo/crinmail/childrencourtcrinmail46#D>.

52 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/>.

53 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>.

54 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>.

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

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

57 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](http://www.reprieve.org.uk/wp-content/uploads/2015/03/2015_03_17_PUB-Juveniles-on-Pakistans-Death-Row.pdf).

for offences committed while under the age of 18 in all areas of Pakistan, under all systems of justice and without exception. This could be achieved through strengthening the restrictions on sentencing under the JJSO and clarifying that the Ordinance overrides all laws to the contrary and applies to all cases involving child offenders. Laws contrary to the prohibition should be repealed or amended, including the Hudood Ordinances, the Anti-Terrorism Act, the Control of Narcotic Substances Act and the Frontier Crimes Regulation. A moratorium should be reinstated while these reforms take place.

### Law reforms underway

In 2008, the Government informed the Human Rights Council during the Universal Periodic Review that a review of all questions related to capital punishment had been initiated.<sup>58</sup> The State also defended the death penalty but reported that the Government was working on a proposal to commute it to life imprisonment.<sup>59</sup> However, in March 2015, the Government lifted its moratorium on the death penalty in all capital cases and restarted executions.<sup>60</sup> At the time of publishing the State had made no indication that it intended to reverse this decision.

### National and regional campaigns

The Society for the Protection of the Rights of the Child (SPARC) ([www.sparcpk.org](http://www.sparcpk.org)) currently campaigns on juvenile justice and violence against children in Pakistan, including with regards to inhuman sentencing.

Since Pakistan ended its unofficial moratorium in March 2015, national and international organisations have been increasingly working together to combat the imposition and carrying out of the death penalty for offences committed by children. The Justice Project Pakistan ([www.jpp.org/pk](http://www.jpp.org/pk)) represents people facing the death penalty for offences committed while a child and has been working in conjunction with international organisations such as Reprieve ([www.reprieve.org.uk](http://www.reprieve.org.uk)).

The South Asia Initiative to End Violence Against Children (<http://www.saievac.org/cp/>) and the Society for the Protection of the Rights of the Child (<http://www.sparcpk.org/>) are also advocating law reform on corporal punishment of children.

In April 2012, CRIN submitted a report as part of the Universal Periodic Review of Pakistan highlighting the forms of inhuman sentencing in Pakistan,<sup>61</sup> in June 2015 made a submission ahead of Pakistan's review before the UN Committee on the Rights of the Child<sup>62</sup> and in August 2016 made a submission to the UN Human Rights Committee.<sup>63</sup> CRIN has also worked on joint advocacy with a number of national and international NGOs on cases of individual children facing the death penalty in Pakistan.

When launching the original campaign reports, CRIN contacted the government of Pakistan for their response to the information contained in the report. The State did not respond.

## National and international law conflicting with inhuman sentencing

### The Constitution

A number of provisions of Pakistan's Constitution (1973) protect the physical integrity of all persons and provide for protection of the child.

**Section 4:** the right of individuals to be dealt with according to law

“(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every person for the time being within Pakistan.

(2) In particular:

no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law...”

**Section 8:** Laws inconsistent with or in derogation of fundamental rights to be void

“(1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void...”

58 A/HRC/8/42/Add.1, 25 August 2008, Report of the Working Group on the Universal Periodic Review: Pakistan. Addendum: Statement by Ambassador Masood Khan, Permanent Representative of Pakistan, on the outcome report of Universal Periodic Review of Pakistan, at the Human Rights Council

59 A/HRC/8/42, 4 June 2008 Report of the Working Group on the Universal Periodic Review: Pakistan, para. 47

60 Pakistan Today, “Death penalty moratorium lifted completely”, 10 March 2015

61 CRIN, PAKISTAN: UPR submission on inhuman sentencing, April 2012. Available at: [www.crin.org/node/31768](http://www.crin.org/node/31768).

62 CRIN, Inhuman sentencing of children in Pakistan, June 2015. Available at: [www.crin.org/node/41644](http://www.crin.org/node/41644).

63 CRIN, PAKISTAN: Submission to the ICCPR on inhuman sentencing of children in Pakistan, August 2016. Available at: [www.crin.org/node/42873](http://www.crin.org/node/42873).



### **Section 9:** Security of person

“No person shall be deprived of life or liberty save in accordance with law.”

### **Section 14:** inviolability of dignity of man

“(1) The dignity of man and, subject to law, the privacy of the home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence.”

### **Section 25:** equality of citizens

“(1) All citizens are equal before the law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Section shall prevent the State from making any special provision for the protection of women and children.”

### **Section 35:** protection of family

“The State shall protect the marriage, the family, the mother and the child.”

## **International human rights treaties**

Pakistan has ratified or acceded to the following international and regional treaties:

- Convention on the Rights of the Child (in 1990)  
*Reservations:* On ratification the Government made the following reservation: “Provisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values.” The reservation was withdrawn on 23 July 1997.
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (in 2011)
- International Covenant on the Elimination of All forms of Racial Discrimination (in 1966)
- International Covenant on Economic, Social and Cultural Rights (in 2008)
- International Covenant on Civil and Political Rights (in 2010)  
*Reservations and declarations:* Pakistan made a number of reservations on ratification, including the following: “[T]he Islamic Republic of Pakistan declares that the provisions of Sections 3, 6, 7, 18 and 19 shall be applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and Sharia laws.” Pakistan partially withdrew its reservations on 20 September 2011, though it retains the reservation that: “[t]he Government of the Islamic Republic of Pakistan

reserves its right to attach appropriate reservations, make declarations and state its understanding in respect of various provisions of the Covenant at the time of ratification.”

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 2010)  
*Reservations:* Pakistan made a number of reservations on ratification, including the following on sections 4, 6, 12, 13 and 16: “The Government of the Islamic Republic of Pakistan declares that the provisions of these Sections shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws.” Pakistan subsequently partially withdrew its reservations, but retained reservations in relation to Articles 8, 28 and 30.
- Convention on the Elimination of All Forms of Discrimination Against Women (in 1996)  
*Declaration:* “The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.”
- Convention on the Rights of Persons with Disabilities (in 2011)
- SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.

## **Treaty Bodies communications and complaints procedures**

Pakistan has not ratified any international complaints or communications mechanisms.

## **Status of treaties**

Ratified international instruments do not automatically have the force of law in Pakistan, and must be incorporated through implementing legislation. Most commonly, provisions of international treaties, including the CRC, are addressed through national legislation in a piecemeal, subject-by-subject manner.<sup>64</sup>

<sup>64</sup> See CRIN, Access to justice for children: Pakistan, June 2013. Available at: [www.crin.org/node/32228](http://www.crin.org/node/32228).

## Recommendations from human rights treaty monitoring bodies

### UN Committee on the Rights of the Child

**(Concluding observations on the fifth periodic report, 11 July 2016, CRC/C/PAK/CO/5, para. 24, 25, 34, 35, 79 and 80)**

“The Committee is seriously alarmed by reports of the execution of several individuals for offences committed while they were under the age of 18 years, or where the age of the individual was contested following the lifting of the moratorium on the death penalty in December 2014, despite numerous calls from the international community and the United Nations in this regard. It is also seriously concerned that a large number of persons are currently on death row for crimes committed while they were under the age of 18 years and that these persons have limited access to procedures for challenging their sentence on the basis of their age. The Committee highlights the cases of Abdu-ur-Rehman, of Moinuddin and of Muhammad Anwar, among others, who are awaiting imminent execution for crimes committed while they were under the age of 18 years.

The Committee urges the State party to take, as a matter of highest priority, measures to:

- (a) Order a stay on all executions involving minors and launch a review of all cases where the death penalty was handed down to children or individuals who had committed a crime while under the age of 18 years and where there is, or was, any indication that they were juveniles, with a particular emphasis on how the age of the accused was determined and, where necessary, to reopen inquiries in relation thereto, with a view to either releasing the prisoner or commuting his or her sentence to a prison term. This should also apply to cases where the crime was committed before the entry into force of the Juvenile Justice System Ordinance of 2000;
- (b) Establish effective age determination mechanisms in order to ensure that in cases where there is no proof of age, the child is entitled to a proper investigation to establish his or her age and, in the case of conflicting or inconclusive evidence, has the right to the rule of the benefit of the doubt;
- (c) Ensure that all stages of cases involving children, even those concerning terrorism-related crimes or violations of sharia law, including arrest, detention (whether pretrial or post-trial) and trial, are overseen by juvenile courts, in compliance with the Convention and all applicable international standards;
- (d) Provide data on the number of children, and the number of persons alleged to have committed a crime while under the age of 18 years, on death row.”

“The Committee notes the efforts of the State party to eradicate corporal punishment in schools by implementing directives and establishing hotlines. However, it is concerned about the widespread use of such punishment in all settings.

“In the light of its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to eradicate and prohibit all forms of corporal punishment. It also recommends that the State party implement awareness-raising campaigns on the harmful impact of corporal punishment, with a view to changing the prevailing attitude towards this practice and in order to promote positive, non-violent and participatory forms of child-rearing and discipline.”

“The Committee deplores the worsening situation of juvenile justice in the State party and is seriously concerned about:

- (a) The low minimum age of criminal responsibility (10 years);
- (b) Death sentences and lengthy prison terms handed down to children by the judiciary, mostly for terrorism-related crimes or hadood offences under sharia law;
- (c) The inadequate implementation of the Juvenile Justice System Ordinance of 2000, which provides for juvenile courts, and the fact that children are tried as adults in sharia courts and special courts for drug and terrorism-related offences;
- (d) The lack of mechanisms and of any obligation to investigate the age of an accused person in the absence of a birth certificate, leading to situations where many children are tried as adults and sentenced to death;
- (e) The detention of children together with adults, especially in Balochistan and Khyber Pakhtunkhwa, leading to the abuse of children by other prisoners and prison staff;
- (f) The continued functioning of informal courts (jirgas and panchayats), which — although they are banned by law — decide on cases concerning honour killing and bride price, among others.”

“In the light of its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party to:

- (a) Revise, as a matter of the highest priority, its legislation and increase the minimum age of criminal responsibility to an internationally accepted level;
- (b) Review its legislation with a view to prohibiting cruel and inhuman punishments for any persons below the age of 18 years, including death sentences and lengthy prison terms;
- (c) Ensure that the Juvenile Justice System Ordinance of 2000 prevails over all other laws, including sharia law,

paying particular attention to sections 11 and 12 (a) of the Ordinance , which both apply “notwithstanding anything to the contrary contained in any law for the time being in force”;  
(d) Introduce compulsory procedures and mechanisms to establish the age of a child , including a presumption of validity of official records such as birth certificate s and placement of the onus on the State to prove adulthood beyond reasonable doubt;

(e) Promote alternative measures to detention, such as diversion, probation, mediation, counselling or community service, wherever possible and ensure that detention is used as a last resort and for the shortest possible period of time , and that it is reviewed on a regular basis with a view to withdrawing it;

(f) In cases where detention , including pretrial detention , is unavoidable, ensure that children are not detained together with adults and that detention conditions comply with international standards, including with regard to access to education and health services;

(g) Carry out systematic and regular monitoring of detention facilities where children are detained, investigate any reports or allegations of torture or ill-treatment of children and ensure that perpetrators receive punishments commensurate with the gravity of the ir crimes;

(h) Set up , in accordance with the Juvenile Justice System Ordinance of 2000 , specialist juvenile courts staffed by specially trained juvenile judges, prosecutors, probation officers, defence advocates and other relevant personnel , and ensure that all persons below the age of 18 years are tried exclusively by such courts, without exception;

(i) Ensure the provision of free , qualified and independent legal representation to children in conflict with the law , from the outset and at all stages of the legal proceedings;

(j) Prohibit informal courts , such as jirgas and panchayats , and carry out prompt and effective investigations into decisions taken by such courts and , where appropriate , prosecute their members, in particular in cases of honour killing, under the relevant articles of the criminal law.

81. To that effect, the Committee recommends that the State party make use of the technical assistance tools developed by the Interagency Panel on Juvenile Justice and its members, including the United Nations Office on Drugs and Crime, UNICEF, the Office of the United Nations High Commissioner for Human Rights and non-governmental organizations, and seek technical assistance in the area of juvenile justice from members of the Panel.”

***(Concluding observations on combined third fourth reports, 15 October 2009, CRC/C/PAK/CO/3-4, paras. 45, 46, 47, 48, 99 and 100)***

“The Committee remains deeply concerned at reports of torture and ill-treatment of children by police officers in detention facilities and other State institutions. The

Committee is concerned at the high percentage of women and girls in jails awaiting trials for adultery-related Hudood offences and at the imposition, by parallel judicial systems, of sentences like whipping, amputation and stoning amounting to torture or cruel, inhuman or degrading treatment. The Committee is also gravely concerned at the persistence of inhumane customs and rituals that prevail in the country and at the impunity enjoyed by perpetrators.

“The Committee recommends that the State party:

a) 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;

b) define torture, cruel, inhuman or degrading treatment in relevant laws, and consider ratifying the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ...

e) ensure that children are not imposed 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....

“The Committee welcomes the State party’s commitment to eradicate corporal punishment in all settings, as demonstrated with the incorporation of the prohibition of corporal punishment in the National Plan of Action for Children and directives issued in all provinces. The Committee is however deeply concerned that corporal punishment is ... still used in the penal system despite its prohibition through the JJSO.

“The Committee recommends that the State party, as a matter of urgency:

a) ... explicitly prohibit all forms of corporal punishment in all settings....

“The Committee is very concerned at the 2004 Lahore High Court judgment revoking the Juvenile Justice System Ordinance (JJSO), 2000, with effect for the whole country. It takes note, however, that the JJSO has been temporarily restored pending a decision by the Supreme Court. In particular, the Committee is deeply concerned that:

a) the minimum age of criminal responsibility continues to remain very low (7 years);

b) juvenile offenders have reportedly been sentenced to death, very long imprisonment, and high fines even after the promulgation of the JJSO;

c) many of the authorities in charge of the JJSO implementation, particularly within provincial governments and tribal areas, are unaware of its existence;

d) the JJSO is poorly implemented in the country and particularly in the FATA where the Frontier Crimes



Regulation of 1901, which does not take into account child rights and allows, inter alia, for collective punishment, continues to apply;

e) the number of children in prisons is high, they are often detained in poor conditions, together with adult offenders and thus increasingly vulnerable to abuse and ill-treatment; and

f) the number of Juvenile Courts, trained lawyers and probation officers is insufficient.

“Taking into account the Committee’s general comment No. 10 on the administration of juvenile justice (CRC/C/GC/10, 2007), the Committee recommends that the State party continue and strengthen its efforts to ensure the full and effective implementation of juvenile justice standards, in particular sections 37, 40 and 39 of the Convention and other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System. In this regard, the Committee recommends that the State party:

- a) support the repeal of the Lahore High Court judgement revoking the JJSO by the Supreme Court;
- b) fully implement the JJSO and make it operational in all areas of the country, including the tribal areas and the Northern Areas;
- c) raise the minimum age of criminal responsibility to an internationally acceptable level and ensure that children below the age of 18 years are accorded the protection of juvenile justice provisions and are not treated as adults;
- d) review all cases of children sentenced to imprisonment in order to ensure that deprivation of liberty is only used as a measure of last resort and for the shortest possible period of time, and ensure that all children benefit from bail and non-custodial provisions of the JJSO; ...
- h) take immediate steps to ensure that the prohibition of the death penalty, as stipulated in the JJSO, is guaranteed for all children below the age of 18 years, in light of sections 37 (a) and 6 of the Convention, and that death sentences imposed before the promulgation of this Ordinance are effectively commuted;
- i) seek technical assistance and other cooperation from the UN Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.”

***(Concluding observations on second report, 27 October 2003, CRC/C/15/Add.217, paras. 42, 43, 80 and 81)***

“... The Committee is further concerned that, despite the 1996 Abolition of the Punishment of Whipping Act, whipping is still used as a sentence for Hadood crimes.

“The Committee recommends that the State party, as a matter of urgency:

- a) ... explicitly prohibit all forms of corporal punishment;
- b) abolish the sentence of whipping, under any circumstance or law....

“The Committee welcomes the promulgation of the Juvenile Justice System Ordinance (2000), but is concerned at its poor implementation and that many of the authorities in charge of its implementation, particularly within provincial governments and tribal areas, are unaware of its existence. The Committee is also deeply concerned at the high number of children in prisons who are detained in poor conditions, often together with adult offenders and thus vulnerable to abuse and ill-treatment. The very low minimum age of criminal responsibility (7 years) is also of concern. Further, the Committee is deeply concerned about reports of juvenile offenders being sentenced to death and executed, which have occurred even after the promulgation of the Ordinance.

“The Committee recommends that the State party:

- a) ensure the full and effective implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention and other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System, and, in the light of the Committee’s 1995 discussion day on the administration of juvenile justice (CRC/C/46);
- b) raise the minimum age of criminal responsibility to an internationally acceptable level and ensure that children below the age of 18 years are accorded the protection of juvenile justice provisions and are not treated as adults;
- c) consider deprivation of liberty only as a measure of last resort and for the shortest possible period of time; ...
- h) take immediate steps to ensure that the prohibition of the death penalty, as stipulated in the Juvenile Justice System Ordinance, is guaranteed for all children below the age of 18 years, in light of articles 37 (a) and 6 of the Convention, and that death sentences imposed before the promulgation of this

Ordinance are not carried out; and

i) seek assistance from, among others, OHCHR, the Centre for International Crime Prevention and UNICEF.

(Concluding observations on initial report, 25 April 1994, CRC/C/15/Add.18, paras. 12, 20, 23, 27 and 31)

“... the Committee notes the non-compatibility of certain areas of national legislation with the provisions and principles of the Convention, including the punishment of flogging and the death penalty and life imprisonment for children below the age of 18.

“The Committee emphasizes that it is very much concerned about the system of administration of juvenile justice and its non-compatibility with the provisions of the Convention, including articles 37, 39 and 40 thereof, and other relevant United Nations standards in this field, namely the ‘Beijing Rules’, the ‘Riyadh Guidelines’ and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

“The hope is ... expressed that ... the State party will take into account the Committee’s concerns, particularly its recommendations with regard to the abolition of flogging and capital punishment for children under the age of 18....”

“... Law enforcement personnel, including police officials and judges, should be aware of the provisions of the Convention, especially relating to the system of the administration of juvenile justice.

“The Committee suggests that the system of the administration of juvenile justice be reviewed to ensure its compatibility with the provisions and principles of the Convention. Technical advice and assistance in this regard could be sought from the advisory services and technical assistance programme of the Centre for Human Rights.”

## Universal Periodic Review

### Third cycle

Pakistan is scheduled to be reviewed at the 28th session of the Universal Periodic Review in October 2017.

### Second Cycle

Pakistan was reviewed during the Session 14 of the Universal Periodic Review in 2012, but no recommendations were made concerning corporal punishment, life imprisonment or the death penalty for offences committed while children.<sup>65</sup>

### First Cycle

Pakistan was examined under the Universal Periodic Review process in May 2008. The issue of the death penalty was raised, though not explicitly in relation to child offenders.<sup>66</sup> The Government stated that a review of all questions related to capital punishment had been initiated.<sup>67</sup> It defended the death penalty but stated that the Government was working on a proposal to commute it to life imprisonment.<sup>68</sup>

65 A/HRC/22/12, 26 December 2012, Report of the Working Group on the Universal Periodic Review: Pakistan. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PK-Session14.aspx>.

66 A/HRC/8/42, 4 June 2008 Report of the Working Group on the Universal Periodic Review: Pakistan, paras. 23, 30, 37, 43, 57 and 88.

67 A/HRC/8/42/Add.1, 25 August 2008, Report of the Working Group on the Universal Periodic Review: Pakistan. Addendum: Statement by Ambassador Masood Khan, Permanent Representative of Pakistan, on the outcome report of Universal Periodic Review of Pakistan, at the Human Rights Council.

68 A/HRC/8/42, 4 June 2008 Report of the Working Group on the Universal Periodic Review: Pakistan, para. 47.

**About CRIN ([www.crin.org](http://www.crin.org))**

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

Our work is based on five core values:

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

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Illustrations by Miriam Sugranyes Coca  
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