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PAKISTAN

Denial of basic rights for child prisoners

“State parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.” (Article 40 United Nations Convention on the Rights of the Child.)

1. INTRODUCTION

In July 2000 Pakistan promulgated a Juvenile Justice System Ordinance [JJSO] as part of its efforts to fulfil obligations under the United Nations (UN) Convention on the Rights of the Child (CRC) to protect the rights of children who come into conflict with the law. Amongst other things, the Ordinance defines the age of a child as being less than 18 years of age, prohibits the death penalty for juveniles, sets out clear guidelines for the granting of bail and calls for the creation of more borstal institutions. Amnesty International welcomes the efforts made by the government of Pakistan to enhance the treatment of children by the criminal justice system but believes that despite the promulgation of the JJSO the rights of young people accused of criminal offences continue to be denied.

In April 2003, Pakistan submitted its second periodic report to the Committee on the Rights of Child. In its concluding observations and recommendations issued of 3 October 2003, the Committee expressed concern at the “poor implementation of the [JJSO] and that many of the authorities in charge of its implementation are unaware of its existence.” The Committee further expressed deep concern at the high number of children in prisons who were detained in poor conditions, held with adult offenders and vulnerable to abuse and ill-treatment. It called on Pakistan to ensure that in the case of children it should “[c]onsider deprivation of liberty only as a measure of last resort and for the shortest possible period of time” in line with the provisions of the CRC.

During a recent Amnesty International research mission to Pakistan, delegates found that at each stage of arrest, trial and imprisonment there was wide-scale failure to implement the provisions of the JJSO. Children who were accused of petty crimes were often held for several months without trial, they had no real access to bail and were not provided with the legal representation to which they are entitled. When accused of more serious offences, such

as murder, children may spend several years in prison awaiting the conclusion of their trial. Recent figures indicate that while 75% of the children in detention in Pakistan are under-trials, actual conviction rates are as low as 15-20%. During detention boys and girls are frequently held with adults and transported in chains in violation of domestic legal provisions. Girls are held in women's cells in regular police stations, frequently overnight and interrogated without a woman police officer or a male relative to prevent abuse. The situation in rural areas girl detainees is worse than in the cities with virtually no female staff and no separate detention facilities in police and judicial lock-ups. Lack of knowledge of the law, impunity, corruption and lack of resources all contribute to the failure of the legal system to ensure children's rights.

As the JJSO is not in force across the whole of Pakistan, children who live in the Federally and Provincially Administered Tribal Areas (FATA and PATA respectively) continue to be subject to the death sentence. Amnesty International is also aware of cases of children in other parts of Pakistan who have been sentenced to death as the magistrate or judge hearing their case did not know of the provision in the JJSO prohibiting death sentences for children. Death sentences are often overturned in the higher courts eventually but only after the child has suffered the trauma of being sentenced to death and spending months or even years in prison.

Almost all of the children who are imprisoned in Pakistan come from the poorest sectors of society. Children's organizations report that around half of Pakistan's children live below the poverty line and the families of millions more have sources of income which are so low and vulnerable that an extra expense could lead to the family falling into abject poverty. Such children and their families do not have the education, influence or resources which would enable them to realise or experience their rights. Amnesty International delegates were approached by several families who reported that, following the arrest of their child, the police would continually visit the family home and attempt to extort bribes to release the child. Delegates were also told by several children that their families could not afford to bail them out. Bail is often not permitted by the courts to many children even if they are legally entitled to it but when bail is offered, surety may be set as high as 40,000 to 50,000 rupees even for minor offences. In Pakistan, the average daily earnings of a labourer is around 100 rupees per day. Children who are forced to remain in prison because the bail surety is so high that their relatives are unable to pay, are not in jail because they are at risk or regarded as a danger to themselves or others but simply because they are poor.

In April 2003, Pakistan submitted its second periodic report to the Committee on the Rights of Child.¹ In its concluding observations and recommendations issued on 3 October 2003, the Committee expressed concern at the "poor implementation of the [JJSO] and that many of the authorities in charge of its implementation are unaware of its existence."

¹ The Committee on the Rights of the Child is responsible for monitoring the implementation of the Convention on the Rights of the Child in states which have ratified the Convention.

The Committee further expressed deep concern at the high number of children in prisons who were detained in poor conditions, held with adult offenders and vulnerable to abuse and ill-treatment. It called on Pakistan to ensure that in the case of children it should "Consider deprivation of liberty only as a measure of last resort and for the shortest possible period of time" in line with the provisions of the CRC.

This report examines the commitments made by the Pakistani government through the ratification of the CRC and the promulgation of the JJSO to uphold the rights of children in conflict with the law and describes the continuing neglect of the rights of arrested children by all sectors of the criminal system despite these commitments. It also describes the circumstances in which such neglect takes place and the difficulties faced by young people following their detention. The report concludes with a set of recommendations to the Government of Pakistan and contains an appendix detailing the recommendations to the Pakistani authorities made by the Committee on the Rights of the Child in early October 2003.

Information used in the report was collected between June and July 2003 during a research mission to Pakistan by Amnesty International. The delegates met with a wide range of legal professionals, including judges, magistrates, prosecutors, independent lawyers as well as child rights non-governmental organizations throughout Pakistan. Delegates visited several prisons and interviewed around 45 detained children in the provinces of Sindh, Punjab and the North West Frontier Province (NWFP). Amnesty International is grateful to all those who shared their experiences of working in the judicial system in Pakistan and, particularly, to the dozens of children around Pakistan who shared their stories. Names of some of the children have been changed to protect their identities.

2. INTERNATIONAL OBLIGATIONS

The CRC clearly places the welfare of the child above all other considerations, including for children who have been accused of criminal acts. The spirit of the CRC is clearly set out in the preamble which states that "all children should be afforded the necessary protection and assistance so that [they] can fully assume [their] responsibilities within the community" and that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

Pakistan was one of the initial states to ratify the CRC in 1990 and is therefore legally bound by its provisions. Article 37 deals explicitly with the rights of children who are taken into custody or accused of a criminal offence. It outlaws the death sentence for children, life sentences without remission, torture or other cruel, inhuman or degrading treatment or punishment. Under its provisions "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period

of time.”² Further prohibitions include the holding of children with adults and the facilitation of contact with family members. The CRC further requires that any child deprived of their liberty has the right to appropriate legal assistance and a prompt resolution to any case brought against them. The promulgation of the JJSO by Pakistan in July 2000 was undertaken to fulfil the country’s obligations under the CRC.

As noted above, Pakistan submitted its second periodic report to the Committee on the Rights of the Child. In its subsequent detailed observations and recommendations, the Committee made the following comments:

“The Committee welcomes the promulgation of the Juvenile Justice System Ordinance (JJSO, 2000), but is concerned at the poor implementation of this Ordinance 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 to the Committee. Further, the Committee is deeply concerned about the reports of juvenile offenders sentenced to death and executed, which have also occurred after the promulgation of the Juvenile Justice System Ordinance.”³

3. JUVENILE LAWS

This section considers the provisions of past and present juvenile laws and their applicability in different parts of Pakistan. It begins by describing the most recent juvenile law in the JJSO of July 2000 which is a federal law and applicable to the whole of Pakistan with the exception of the tribal areas (described in section 3.2).

Prior to the JJSO juvenile laws existed in only two of Pakistan’s provinces: Punjab and Sindh. In NWFP and Balochistan there were no earlier laws which protected the rights of the child. The Punjab Youthful Offenders Ordinance and the Sindh Children’s Act are described because they continue to be applied by magistrates in Punjab and Sindh provinces who are not familiar with the JJSO even though the JJSO legally over-rides these provincial juvenile laws.

The Hadood Law (Islamic law) is also examined because it seriously impacts upon the treatment of female child detainees. This section also provides information on the age of criminal responsibility in Pakistan.

² For the full text of the CRC see <http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.html>.

³ For the full text of the observations and recommendations, see CRC/C/15/Add. 217.

3.1 Juvenile Justice System Ordinance

The JJSO was promulgated by General Pervez Musharraf in July 2000 and lays down the criteria and procedures to be followed at all stages of the child's trial and conviction in Punjab, Sindh, Balochistan and North West Frontier Province (NWFP).

The Ordinance defines the age of a child as being less than 18 years of age hence raising it from 15 and 16 years in the provincial laws. It prohibits the sentence of death of anyone below 18 years; protects children against being chained while in custody; calls for the creation of more borstal institutions and sets clear guidelines for the granting of bail.⁴

The JJSO prohibits the joint trial of adults and children. Children can only be tried by a juvenile court which has been especially set up to hear cases involving children. Courts designated as Juvenile courts cannot hear other cases on days when children's cases are fixed for hearings. The child is not required to attend the trial for the case to proceed. The child has the right to free legal representation (Section 3), free medical treatment (Section 6) and appeal against a conviction within a 30 day period. It provides for the protection of children involved in criminal acts and reinforces many of the provisions that existed in provincial laws which it superseded.

Amnesty International research indicates that at each stage of arrest, trial and imprisonment there is wide-scale failure to implement the provisions of the JJSO. Children who are accused of petty crimes are often held for several months without trial, have no real access to bail and are not provided with the legal representation to which they are entitled. When accused of more serious offences, such as murder, children may spend several years in prison awaiting the conclusion of their trial.

In its concluding observations in October 2003 the CRC expressed concern at the low level of awareness of the JJSO at the provincial level and its poor implementation by the authorities. The Committee recommended that Pakistan "Ensure the full and effective implementation of juvenile justice standards..."⁵

⁴ Borstal institutions are defined in the JJO as a "place where child offenders may be detained and given education and training for their mental, moral and psychological development."

⁵ CRC/C/15/Add.217, paragraph 81.

3.2 The JJSO and the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA)

The JJSO does not apply to the Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA) of Pakistan.⁶ Article 247 (3) of the Constitution of Pakistan states that no act of Parliament shall apply to any FATA unless it is directed as such by the President of Pakistan. To date, the President has not declared the JJSO to be applicable to the FATA and PATA.

In March 2003, the Society for the Protection of the Rights of the Child (SPARC)⁷ reported in their monthly newsletter that, “normal courts try juvenile offenders in PATA, while in FATA, where there are no normal courts and the superior courts have no jurisdiction, political agents and assistants act as administrative as well as judicial officers.”⁸

In a conference named Violence Against Children in Pakistan organised by SPARC and the Human Rights Studies Centre of the University of Peshawar on 20 January 2003, the Governor of NWFP said that “he hoped that the fate of children involved in litigation will improve with the enforcement of the Juvenile Justice Ordinance 2000 in NWFP, which will ensure speedy trial and rehabilitation of hundreds of children languishing in jails.”⁹

Amnesty International is concerned that since the JJSO is not in force in FATA and PATA children continue to be sentenced to death in these areas. In addition, children in FATA are being tried by political agents who, when sentencing, do not distinguish between

⁶ Federally Administered Tribal Areas (FATA) are governed by the Federal government from Islamabad, the capital of Pakistan. There are seven tribal agencies within FATA: The Khurram Agency, Bajaur Agency, Orakzai Agency, Mohamand Agency, Khyber Agency, North Waziristan Agency and South Waziristan Agency. FATA also includes the tribal areas adjoining the Peshawar district, Kohat district, Bannur district and the Dera Ismail Khan district. Political agents are the heads of these seven agencies. Assistant political agents work under the political agents within each of the agencies. Some of the PATA fall within the geographic boundaries of the NWFP while others fall within the geographical boundaries of Balochistan Province. The areas within the NWFP are governed by the Governor of the NWFP. The ones within the Balochistan province are governed by the Governor of Balochistan. These areas include Swat, Upper Dir, Lower Dir, Chitral, Bunar, Shangla and the Malakand Agency.

⁷ SPARC is a non-governmental organization based in Islamabad.

⁸ SPARC Quarterly, issue number 34, March 2003, page 16.

⁹ SPARC Newsletter, March 2003.

an adult and a child.¹⁰ The extension of the JJSO to FATA and PATA is necessary as children are tried under various laws in these areas and are not provided the necessary safeguards to protect their basic rights. In most instances children in FATA and PATA are tried under the Control of Narcotic Substances Act, 1997.¹¹

The Committee on the Rights of the Child has recommended in October 2003 that existing legislative measures should extend to all parts of Pakistan so that children living in all areas are able to benefit from the provisions of the Convention. "The Committee recommends that all appropriate measures are taken in order to ensure that the provisions and principles of the Convention are also recognized and enjoyed by children living in the Northern Tribal Territories..."¹²

3.3 The Punjab Youthful Offenders Ordinance 1983

This Ordinance was legally superseded by the JJSO in July 2000 but continues to be applied by the judiciary in Punjab. It defined a child as anyone aged 15 and below at the time of the commission of the offence, prohibited the joint trial of adults and children (section 7) and empowered a police officer to release a child arrested on charge of a non-bailable offences provided that releasing the child would not place him/her in any danger or bring him in contact with adult criminals (section 41).

3.4 The Sindh Children's Act of 1955

The Sindh Children's Act of 1955 remained un-enforced until it was made applicable to the Hyderabad and Sukkur divisions in October 1974. It was applicable to the Province of Sindh only and replaced the Bombay Children's Act of 1924. The purpose of the Act was to consolidate and amend the law for the custody, protection, treatment and rehabilitation of child offenders in the Sindh province. It was superseded by the JJSO in July 2000 but continues to be applied by judges who lack awareness of the JJSO.

¹⁰ Political agents are representatives of the government and have administrative as well as judicial powers in the tribal areas.

¹¹ The Control of Narcotic Substances Act, 1997, extends to the whole of Pakistan and came into force on 11 July 1997. Under the Act the punishment for transporting narcotics within Pakistan is "death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to a fine which may be up to one million rupees, if the quantity of narcotic drug, psychotropic substance or controlled substance exceeds the limits specified in clause (b): Provided that if the quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life." (section 8)

¹² CRC/C/15/Add.217, paragraph 10.

Similarly to the Bombay Children's Act of 1924, the Sindh Children's Act also delegates powers of a juvenile court to a District Magistrate, a Sub-divisional Magistrate and a Magistrate of the First Class.¹³ If there were no juvenile courts in the areas, under this Act the above-mentioned magistrates were empowered to try juvenile cases. The Act also provided that a youthful offender, defined as a person below 16 years of age at the time of commission of the offence, may not be sentenced to death, transportation or imprisonment (section 68); only a juvenile court had the power to try cases of children in the area. If a juvenile court did not exist, other courts were given the power to try a case of a child (section 10). A child could not be tried together with an adult suspect (section 10). The Act also empowered a police officer to release a child arrested on charge of a non-bailable offence provided that releasing the child would not place him/her in any danger or bring him in contact with adult criminals (section 64).

3.5 The Hadood Laws of 1979

Other legislation in Pakistan which is applied to children in conflict with the law is the Hadood Laws of 1979. The policy of former President Zia-ul-Haq to islamize Pakistani law introduced a further layer of concepts and judicial structures. Under this policy, sections of the Pakistani Penal Code (PPC) were substituted by Islamic provisions, a parallel Islamic court structure was set up, and a constitutional amendment was introduced stipulating that all laws in Pakistan have to conform to Islamic injunctions. The JJSO does not override the Hadood Laws.

The Hadood laws of 1979 relate to the offences of armed robbery, theft, rape, fornication, false accusation of fornication, drinking and drug-taking, and replace corresponding sections of the Penal Code. The Hadood laws provide that *hadd* or fixed punishments for specific offences provided certain strict evidentiary requirements are fulfilled. Punishments given as *hadd* include stoning to death for fornication, judicial amputation for theft and armed robbery and flogging for consumption of intoxicants.

The Hadood laws are applicable to defendants irrespective of age, but the laws provide that the *hadd* punishments may not be imposed on individuals convicted of crimes as children. However, the definition of a child in the Hadood laws differs from that of other laws

¹³ A District Magistrate has jurisdiction over the entire district and is appointed by the provincial government. When a Magistrate is transferred from one district to another he loses jurisdiction to try the case in the former district. Sub Divisional Magistrates are appointed by the provincial government. They are Magistrates of the First or Second Class and have jurisdiction over the sub division in the district. There are five classes of criminal courts in Pakistan. The Court of Session being the highest and a Court of a Magistrate of the Third Class being the lowest. The Court of a Magistrate of the First Class has the power to pass sentences not exceeding the term of three years whereas a Court of a Magistrate of the Third Class is not authorized to pass a sentence of imprisonment and is only authorized to set a fine not exceeding one thousand rupees. (Code of Criminal Procedure)

in Pakistan: a child is a person who has not attained puberty. The Hadood law relating to fornication differentiates between the genders of the offenders: a male is adult at the age of 18 while a female is considered adult for the purposes of the law at the age of 16 or at attainment of puberty. Thus a girl of 12 years who has attained puberty is legally adult and could be sentenced to the *hadd* punishments outlined above. To Amnesty International's knowledge, no child has been sentenced to stoning to death or judicial amputation or to public flogging but the organization is concerned that girls particularly can be subjected to cruel, inhuman and degrading punishments under these laws.

In October 2003, the Committee on the Rights of the Child raised concern that the Hadood Laws are in conflict with the provisions of the CRC primarily because of the inconsistency concerning the definition of a child under the Hadood laws in comparison to the JJSO.

4. AGE OF CRIMINAL RESPONSIBILITY

The CRC is applicable to all persons below the age of 18, unless "under the law applicable to the child, majority is reached earlier." The minimum age of criminal responsibility - that is the age below which children are deemed too young to be legally responsible for their actions and to face criminal charges - is seven in Pakistan.

International human rights standards state that children need to be treated differently to adults coming into contact with the law because of their lack of understanding and maturity. International standards do not prescribe a particular age, but require governments to take account of children's physical and mental maturity and their needs for special care in establishing a minimum age.

Article (40) (3) (a) of the CRC requires:

"the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law."

The UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as the "Beijing Rules" state in rule 4:¹⁴

"In those legal systems recognizing 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."

Under Section 82 of the Penal Code:

"nothing is an offence which is done by a child under seven years of age"

¹⁴ "The Beijing Rules" were adopted by the General Assembly resolution 40/33 of 29 November 1985.

Under section 83 of the Penal Code:

"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."

These references to the attainment of maturity imply that a child between seven and twelve can be considered by a judge to be sufficiently mature at the time of committing the offence and dealt with as an adult.

Although guidelines on the establishment of age are provided to judges in Pakistan, there are no guidelines on the establishment of "maturity" thus a child's right to be treated as a child depends on the arbitrary decision of a judge. The case of A [name withheld], described below, clearly illustrates the problem of the establishment of maturity in cases of children as young as seven who are in detention for being involved in, or being alleged of being involved in, serious criminal activities in Pakistan:

A [name withheld] from Punjab province is nine years of age. He was convicted in May 2003 of killing two children by pushing them down a well in his home city of Attock. A stated that he pushed the children on the orders of an adult neighbour. At the time of the commission of the offence A was only seven years of age and should not have been considered sufficiently mature enough to understand the consequences of his actions. The judge still sentenced him to five years imprisonment. His adult neighbour who had encouraged him to push the children down the well was sentenced to death. To Amnesty International's knowledge, the case is currently under appeal at the High Court.

Amnesty International is aware of several similar cases of very young male children who have been convicted or are under-trial for serious criminal offences.

The Committee on the Rights of the Child has observed that in Pakistan "...the age of criminal responsibility is much too low (7 years)..."¹⁵ It has recommended that the government should raise the age of criminal responsibility to an internationally acceptable level.

5. THE DEATH PENALTY AND THREATS OF EXECUTION

In Pakistan, the death penalty can be imposed for a number of offences. These include murder, *dacoity* [robbery], *zina* (sexual intercourse between partners not married to each other) and rape. The death penalty is most frequently imposed for murder and the real number of death sentences and executions may be much higher than that reported in the media. The total number of persons sentenced to death in Pakistan at present is not known to Amnesty International.

¹⁵ CRC/C/15/Add.217, 3 October 2003, paragraph 27.

Possibilities and channels of appeal against death sentences vary according to the offence for which the death sentence is imposed. Following a death sentence for offences not tried under the Haddoo laws, an appeal to the appropriate provincial High Court is automatic, although the backlog of cases pending appeal can mean that prisoners wait for several years before their appeal is heard. If the sentence is confirmed by the high court, the prisoner can appeal to the Supreme Court. This further appeal possibility is discretionary; however, as the Supreme Court may not accept a case for appeal. Prisoners who have been sentenced to death under the Haddoo laws must appeal to the Federal Shariat Court, and not to the provincial high court. The final venue of appeal in such cases is to the Shariat Appellate Bench of the Supreme Court. The time prisoners spend in death cells, awaiting appeal and execution may be very long.

The introduction of elements of Islamic law into the Penal Code has severely limited the possibility of prisoners sentenced to death having their sentences commuted to life imprisonment, as relevant provisions in the Penal Code and in the Code of Criminal Procedure were declared void. The president is empowered under article 45 of the Constitution "to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority." However, the higher judiciary has interpreted these powers to be restricted to specific kinds of sentences. Death sentences imposed as hadd punishments cannot be commuted by the federal or provincial government or the President as provided for in the Code of Criminal Procedure in relation to other judgements.

During a meeting with Amnesty International's Secretary General Irene Khan in December 2001 Pakistan's President Pervez Musharraf announced that he would commute the death sentences imposed on all child offenders before the JJSO entered into force. It was subsequently reported that President Musharraf had commuted the death sentences of 125 inmates convicted of crimes when they were children. Amnesty International welcomed President Musharraf's announcement of the commutation of the death sentences of these children. However, an unknown number of child offenders remain under sentence of death because the ages of the children have been contested by aggrieved parties who argue that the children were above the age of 18 years at the time of the commission of the offence and therefore should not benefit from the commutation.

Sentencing people to death for crimes committed when they were under 18 is prohibited under the CRC.¹⁶ Yet despite Pakistan's obligations under the CRC, in March 1999 the Peshawar High Court confirmed the death sentence handed down to 17-or-18 year old Sher Ali, convicted of the abduction and murder of a girl in 1993. At the time of the alleged offence Sher Ali would have been 12 or 13 years old. The High Court is reported to have concluded that it was evident that Sher Ali was capable of differentiating right from

¹⁶ Article 37 (a) CRC

wrong and exercised no leniency because of the brutal manner in which the girl was killed. He was hanged in November 2001. To Amnesty International's knowledge, Sher Ali is the last known child offender to have been hanged in Pakistan.

Amnesty International is aware of cases of children who have been sentenced to death even after the JJSO was enforced because the magistrate or judge hearing their case did not know of the provision in the JJSO prohibiting death sentences for children. Death sentences are often overturned in the higher courts eventually but only after the child has suffered the trauma of being sentenced to death and spending months or even years in prison. Over two years after the JJSO came into force Mohammad Zaman was sentenced to death by an additional district and sessions judge in Mardan, NWFP on 12 November 2002 for the murder of his uncle and cousin in March 1995. In an appeal hearing at the Peshawar High Court, Mohammad Zaman's lawyer argued that under the JJSO he could not be sentenced to death as he was 17 years old at the time of the commission of the offence. On 4 June 2003, the Peshawar High Court converted the death sentence to five-year imprisonment.

Amnesty International opposes the death penalty unconditionally as the ultimate cruel, inhumane and degrading punishment and a violation to the right to life as proclaimed by Articles 3 and 5 of the Universal Declaration of Human Rights. Article 3 states that "Everyone has the right to life, liberty and security of person" and Article 5 provides "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". However the organization does not argue that child offenders [people who have committed crimes under the age of 18] or others who have committed violent crimes should not be held criminally liable or subjected to severe penalties where appropriate. International standards and treaties forbidding the imposition of the death penalty on child offenders were developed in recognition of the fact that the death penalty – which denies any possibility of rehabilitation or reform – is a wholly inappropriate penalty for individuals who have not attained full physical, intellectual or emotional maturity at the time of their actions.¹⁷

On 3 October 2003, the Committee on the Rights of the Child stated that it is "deeply concerned about reports of juvenile offenders sentenced to death and executed, which have also occurred after the promulgation of the Juvenile Justice Ordinance." The Committee has recommended that the government of Pakistan "take immediate steps to ensure that the prohibition of death penalty as foreseen under the Juvenile Justice Ordinance is guaranteed for all children below the age of 18 years, in light of article 37 (a) and 6 of the Convention, and that death sentences imposed before the promulgation of this Ordinance are not executed."¹⁸

¹⁷ Article 37 (a) CRC

¹⁸ CRC/C/15/Add.217, paragraph 81.

6. ARREST AND DETENTION

The first point of contact between a child and the criminal justice system is when the child is arrested for committing, or for being accused of committing, a criminal offence.¹⁹ International human rights standards state that children need to be treated differently to adults coming into contact with the law because of their lack of understanding and maturity.

Under section 10 (1) (a) of the JJSO when a child is arrested, the parent or the guardian of the child must be immediately informed of the arrest, time, date and name of the juvenile court in which the child is due to appear. However, Amnesty International found that in clear violation of the JJSO, children are held in illegal detention at police stations for many days before their parents or guardians even know that they have been arrested. It has been reported that it is during this period of illegal detention that children are beaten to extract confessions.

Children are reportedly routinely detained with adults while they are waiting to be brought before the court because there are no separate lock-ups for children within police stations in Pakistan.²⁰ When children are kept in lock-ups for adults they are exposed to further ill-treatment by fellow adult inmates. In addition, children are transported to the courts in the same police vehicle with adults. While the child is waiting to be brought before the magistrate he/she is held in the adult judicial lock-up within the court complex. Amnesty International is concerned that children waiting for their court hearing are exposed to hardened adult criminals and can be subjected to criminal assault.

7. PRODUCTION BEFORE THE COURTS WITHIN A PERIOD OF 24 HOURS

The Constitution of Pakistan guarantees that:

“Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest...and no such person shall be detained in custody beyond the said period without the authority of the magistrate.”²¹

The JJSO also includes a provision for arrested children to be brought before a court within a period of 24 hours of arrest. Section 10 (3) of the JJSO states that:

¹⁹ Arrest is defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment as an act of “apprehending a person for the alleged commission of an offence.”

²⁰ Any deprivation of liberty, except as the result of a conviction for an offence.

²¹ Section 10 (2), Constitution of Pakistan.

“A child arrested for a bailable offence should be released by the juvenile court on bail, with or without surety. The release may be refused if it would place the child in any danger. In this case the child could be placed under the custody of the probation officer, or a suitable person. The child, however, should not under any circumstances be kept in a police station.”

When the person is brought before the courts, the police must state why the individual has been arrested and request an extension of the detention period for further investigation, if so required. The maximum number of days that an individual (child or adult) can be detained in police custody for interrogation is a period of 14 days.²²

The Code of Criminal Procedure sets the guidelines for the police and judiciary for effective implementation of the laws and binds those involved in the administration of justice to follow strict procedures to eliminate illegal detention. Section 81 of the Code of Criminal Procedure states that:

“the police officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the court which he is required by law to produce such person.”

Section 61 states that:

“No police officer shall detain in custody a person arrested without warrant for a longer period that under all the circumstances of the case is reasonable and such period shall not, in the absence of a special magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s court.”

7.1 Torture and ill-treatment

Article 37 (a) of the CRC states that:

“No child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment...”

The provision of being brought before the court within 24 hours with or without charge is a welcome safeguard in Pakistani law. Its purpose is to eliminate the unlawful detention of individuals by the police. It is often during this period of unlawful detention that individuals are often subjected to torture, including beatings, to extract false confessions. Amnesty International found that children as well as adults have been detained for several days without being brought before the courts. When a child is finally brought before the courts, the date and time of arrest are often falsified on relevant documents to show that the

²² The 1997 Anti terrorism Act allows for the detention of individuals for one year without charge or trial. Amnesty International is not aware of any cases of children who have been detained under this Act.

child was brought before the courts within 24 hours of arrest. Sajid's case below illustrates this misuse.

Fourteen-year-old Sajid was on his way to the mosque to offer evening prayers when he was arrested by the police. He was accused of theft. Sajid states that on the first day of detention he was severely beaten and interrogated at the police station in order to extract a confession. He was brought before the court after two days where the police requested for an extension for further questioning. He remained in police custody for another ten days. During the ten days Sajid was continuously beaten by the police at the police station. He claims he did not tell anyone but kept silent because of fear of reprisals from the police. Sajid sustained injuries all over his body but since he did not receive medical treatment there is no record of the beatings in his case file. Neither Sajid nor his family reported the beating to the magistrate. They say they did not do so because police beatings are routine in police stations in Pakistan. After the ten days he was brought before the courts again. The court sent Sajid to a remand centre for thirteen days. His bail amount was set at 40,000 rupees. His elder brother borrowed money from his employers as the family could not afford to pay the bail.²³

Sajid's case is not unique. Children from poor families often report find that they are beaten to extract false confessions, especially if they fail to pay a bribe to please the arresting officer. Young children who have never come into contact with law enforcement authorities are not familiar with the environment prevailing in police stations; an adult guardian is not present during questioning and they are reportedly treated like hardened adult criminals by police officers who have not been trained on how to treat children. Fear normally keeps the children from highlighting the abuse.

8. DETERMINING THE AGE OF THE CHILD

Under the JJSO, it is the responsibility of the arresting officer to determine whether the person who has been arrested is a child or an adult. Amnesty International was informed by a senior police representative that in practice this is implemented as follows: when a child is brought to the police station, the police officer initially asks the child their age. If he is unable to ascertain the age from the child then the parent or guardian of the child is asked to declare the age of the child. If the investigating officer fails to determine the age of the child from the parent or guardian then he "observes the child to estimate his/her age" meaning it is at the discretion of the arresting officer to determine the age of the child from his/her physical appearance. This creates a problem for children who look older than their age. When this method of age determination is used, some children are penalised merely for physically looking older than they are. In cases where the police have not been able to sufficiently determine the age of the child the advice of a medical officer is sought. The case is forwarded to a medical officer to determine the age through ossification tests.²⁴

²³ The Amnesty International team conducted a separate interview with Sajid's brother.

²⁴ Ossification tests are used to determine the maturity of the bones through x-rays.

Amnesty International is concerned to learn that the physical strength of boys is regularly used by police to determine age. The example of a 14-year-old boy accused of murder illustrates this. This boy in appearance seems approximately seventeen years of age. According to the police, since he looked physically older than his age, he is assumed to have the physical strength to commit murder. Thus the stage of puberty that a child has reached can be a significant factor determining how police handles an investigation involving a child.

8.1 Registration of births

Article 7 of the CRC states that:

*“The child shall be registered immediately after birth...”*²⁵

Amnesty International was informed that in the settled areas of Pakistan births should be registered at the local Union Council.²⁶ According to the government of Pakistan, each provincial government is responsible for legislation on birth registration, which is a residuary subject under the Constitution.²⁷ The Federal government is only responsible for legislation for the Islamabad Capital Territory.²⁸

It is mandatory under the Births, Deaths and Marriages Registration Act, 1886, to register the birth of each child within a period of 15 days.²⁹ However, in practice families fail

²⁵ The Human Rights Committee in its General Comments notes: “the main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale or trafficking children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant”. (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, pp. 133 and 134). In the case of Yemen, the Committee noted that “...the Committee wishes to call the attention of the State Party to the serious implications of the absence of a birth certificate, which can result in the sentencing of a child to the death penalty or preclude his or her access to health services.” (Yemen 2RCO, Add. 102, para.20).

²⁶ The settled areas in Pakistan are the provinces of Sindh, Punjab, Balochistan and the North West Frontier.

²⁷ According to the government of Pakistan, provinces are responsible for legislation on births. Comprehensive laws on birth registration exist covering the four provinces. For example, the Births, Deaths and Marriages Registration Act 1886 provides for birth registration in each province of the country. Parliament legislates for the Islamabad Territory alone.

²⁸ CRC/C/65/Add.21.

²⁹ In its second periodic report to the CRC the government of Pakistan stated that “The Births, Deaths and Marriages Registration Act 1886, the Cantonments Act 1924 and the National Registration Act 1973 provide for birth registration, in each province and region of the country...” CRC/C/65/Add.21.

to register the births adding to the problem of age determination. The situation in the tribal areas, where the JJSO is not enforced, is even more alarming. There very few births and marriages are registered.

The Committee on the Rights of the Child has raised concern about the government's lack of efforts to promote the timely registration of births and that a very significant number of births are not registered especially in rural areas. The Committee has recommended that Pakistan should increase and strengthen measures for the timely registration of all births.

8.2 Death penalty and the issue of determining age

Due to the problem of determination of the age of the child, an unknown number of child offenders remain under sentence of death throughout Pakistan. In the Punjab Province alone in 2002, there were 350 cases of children facing execution despite the announcement by President Pervez Musharraf in December 2001 that those children facing execution would have their sentences commuted or turned into life imprisonment.³⁰

Amnesty International is aware of several cases where judges have failed to examine the issue of age and have generally accepted the age recorded by the police even when the child clearly looks younger than the recorded age. Amnesty International was informed by a High Court registrar that in some cases courts also overrule medical evidence if they believe that the child looked older than the recorded age. It is the duty of the judge to raise the issue of age. The case of Mohammad Ameen clearly illustrates the importance of accurate age determination at the early stages of the case.

Mohammad Ameen was sentenced to death by an Anti Terrorism Court on 31 January 2001 in Rawalpindi. He was found guilty of being involved in a robbery and a killing in Rawalpindi in February 1998. Mohammad Ameen's two co-accused were both aged around 30 years. Mohammad Ameen's age was recorded as being 17 or 18 years. One of Mohammad Ameen's co-defendants was acquitted while the other was sentenced to seven years' imprisonment.

In September 2001, Mohammad Ameen's family appealed against the death sentence at the Rawalpindi branch of the Lahore High Court on the grounds that his age at the time of the commission of the offence was incorrectly recorded. The appeal judge confused a medical report of one of the co-accused and understood that Mohammad Ameen was 30 years old at the time of the commission of the offence. The appeal was rejected and a further appeal to the Supreme Court in March 2002 was over-ruled on the grounds that Mohammad Ameen's legal representative did not raise the issue of age before the trial court. In its decision, the High Court mistakenly reported that the Anti-Terrorism Court in Rawalpindi had

³⁰ State of Human Rights 2002, Human Rights Commission of Pakistan, page 146

recorded Mohammad Ameen's age as 30. A review petition questioning this was dismissed by the Supreme Court on 20 June 2003.

Mohammad Ameen's school leaving certificate states that he was born on 5 June 1981.³¹ This corresponds with Mohammad Ameen's birth certificate, which was issued by the Municipal Corporation of Peshawar, NWFP. According to these documents Mohammad Ameen was 16 years old at the time of the commission of the offence. According to the JJSO, no one under 18 years of age at the time of the commission of the offence can be sentenced to death. Since Mohammad Ameen was accused of having committed a murder before the implementation of the Ordinance came into force, he could not benefit from this provision. Furthermore, he also failed to benefit from the order issued by President Musharraf in December 2001 stating that all children sentenced to death prior to the ordinance would have their sentences commuted as his case was going through the appeals process.

The only hope of clemency for Mohammad Ameen lies in a mercy petition to President Musharraf. Such a petition was filed by Mohammad Ameen's family on 28 August 2003.³²

9. FACTORS CAUSING PROLONGED DETENTION

International human rights standards state that children should only be deprived of their liberty "...as a measure of last resort and for the shortest appropriate period of time."³³

In Pakistan, lengthy under-trial detention is caused by a number of factors. They include the following: the arresting police officers do not appear for court hearings, legal counsel or witnesses do not appear for hearings, case files are incomplete, access to bail is denied, the age of the child is contested, free legal representation is denied, the child's family has refused to pay a bribe to the arresting officers, magistrates are overloaded with cases on that particular day or simply the prison authorities have not provided the child with transportation to attend the court hearing.³⁴

³¹ DAWN newspaper, 8 July 2002.

³² See Amnesty International's Urgent Action Appeal: Pakistan: "Fear of Imminent execution/unfair trial, Mohammad Ameen" of 27 August 2003. AI Index: ASA 33/009/2003

³³ Article 37 of the CRC.

³⁴ On the Day of General Discussion on the Administration of Juvenile Justice on 13 November 1995, the Committee on the Rights of the Child stated that, "...deprivation of liberty, in particular pre-trial detention, should never be unlawful or arbitrary and should only be used once all other alternative solutions would have proved to be inadequate. When deprived of liberty every child should have the right to prompt legal or other appropriate assistance, and the right to challenge the deprivation of liberty before a court or other impartial and independent body."

This part of the report considers these various contributing factors which lead to prolonged detention for child detainees in Pakistan.

9.1 Delays related to under-trial detention

Rule 13(1) of the “Beijing Rules” states that:

“Detention pending trial shall be used only as a measure of last resort and for the shortest period of time.”

Under-trial children are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners.³⁵ Amnesty International is aware of cases of children around Pakistan who have been under-trial for two years and above.

Lengthy delays in trials means children are held in so-called “under-trial” detention for months or sometimes even years in defiance of international human rights law.³⁶ Section 4 (6) the JJSO tried to address this key issue. It states that trials involving children should be decided within a period of four months. In reality, over three quarters of the children in detention in Pakistan are on under-trial remand.

Delays in the conclusion of trials of children occur primarily because of a lack of awareness of juvenile laws and ignorance on part of the police and judiciary to understand the importance of expediting such vulnerable cases.

Izzat Khan from Mingora Swat, NWFP was 13 years old in April 1999 when he was charged with using false currency, the amount of which was not specified in the First Information Report (FIR).³⁷ A decision was not reached on his case apparently because his

³⁵ Under-trial detention is the period between trial and conviction. At this stage an individual has not been convicted of a criminal offence and is remanded in custody waiting for the outcome of the criminal charges brought against him.

³⁶ Article 40 (1) of the CRC states that, “State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society. 2. (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.”

³⁷ A First Information Report (FIR) is the police complaint which sets in motion the investigation process.

file was missing and the police officers responsible had no knowledge of its whereabouts. Izzat Khan was languishing in prison until the Dost Foundation, a child rights' NGO in Peshawar, requested that his file be located.

Izzat Khan was formally released in March 2003 without a trial. He spent four years of his childhood behind bars due to the incompetence of the authorities.

Most of the detained children interviewed by Amnesty International had not been convicted of an offence; they were on remand awaiting trial.

B [name withheld] remained under-trial for two and a half years at Bahawalpur Borstal. He was accused of rape. B was moved to Faisalabad Borstal in 2001 since it was closer to his home.

According to retired Chief Justice Nasir Aslam Zahid, "Delays in the conclusion of trials are nothing new. Such delays are not just restricted to civil cases but are inherent in criminal trials, involving issues of life, liberty and freedom of the individual. Condemned prisoners and convicts have to languish in dingy and cramp prison cells for years, awaiting the outcome of their appeals."³⁸

The non-governmental Human Rights Commission of Pakistan states that in 2002 there were 4,500 children in detention throughout the country. Out of these over 3,000 were under-trial of whom at least 40 were girls.³⁹

According to the Inspector General of Prisons in NWFP, in July 2003 there were 245 children in under-trial detention and only 65 were convicted in the whole of the province. From the 245 children under-trial, 56 were accused of murder, 43 of violence against the human body, 37 for narcotics trafficking, 37 for theft, 15 for "unnatural offences", 20 for dacoity, 11 for illicit arms, 7 under the *zina* ordinance and 19 for other offences. From the 65 convicted, 6 were convicted of murder, one for violence against the human body, 18 for narcotics and 2 for theft, 2 for dacoity, 2 for illicit arms, 4 for unnatural offences and 30 under other laws.

9.2 Missing Charge Sheets

Amnesty International was informed that in many instances the police failed to submit the *challan* (charge sheet) within the time prescribed under law thereby adding to unnecessary prolonged detention. This is illustrated in Javed's case below:

³⁸ "Women's access to judicial redress." Nasir Aslam Zahid. Volume 6, Number 2. July-December, 2001. page 97.

³⁹ State of Human Rights 2002. Human Rights Commission of Pakistan. page 146.

Javed, an Afghan national (living in Peshawar, NWFP), was approximately 10 years old when he was charged under sections 678 and 679 of the 1997 Control of Narcotics Act. He was accused of carrying six kilograms of hashish. He has been in detention since November 2000 but his *challan* is missing and his case has not been resolved.

Dost Foundation moved a petition in May 2003 before the Sessions Judge in Peshawar to submit a complete *challan* before the court concerned. The Sessions Judge ordered the Station House Officer (SHO) to submit the *challan* within three days.⁴⁰ The SHO responded by saying that he had sent the *challan* papers to the public prosecutors office in Peshawar in May 2002 and produced a receipt before the court dated November 2002. There was no record at the public prosecutors office that the *challan* papers had been sent there; the file was missing without which the case could not be decided.

Since it was the responsibility of the SHO to produce the *challan* papers, the Sessions Judge summoned the concerned police officer to court within a three day period. In May 2003, he appeared in court without record of the case and asked for further time. To Amnesty International's knowledge the case remains pending.

9.3 Access to bail

Article 37 (b) of the CRC states that:

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

Amnesty International research indicates that the vast majority of children in custody are eligible for release on bail. Many children remain in under-trial detention for unnecessarily prolonged periods of time because judges set the bail amount at a very high level (as illustrated in Falak Sher's case below) and well beyond the means of most families in Pakistan. Police officers and magistrates are required by law to set bail amounts compatible with the offence but in many instances fail to do so because of their lack of knowledge of the relevant laws.⁴¹ On average bail is set between 40,000-50,000 rupees (equivalent to US\$ 666-833) and has even been set at 100,000 rupees. In Pakistan the average wage of a daily

⁴⁰ The Station House officer (SHO) is in charge of a police station.

⁴¹ Section 498 of the Code of Criminal Procedure states that “The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that bail required by a police-officer or Magistrate be reduced.”

wage labourer is 100 rupees per day and the average government servant is not paid more than 7,000 rupees per month.

Falak Sher was 15 years old when he was charged under section 11 of the Hadood Law. Falak Sher was accused of kidnapping a girl named Sugra with intent to commit *zina* (sexual intercourse outside marriage) and forcing her to marry him. Prior to his arrest Falak Sher was living with his uncle since his mother had died and father was too elderly. Falak Sher married Sugra in 2002. (Sugra is in detention at the womens' jail in Karachi and has also been charged under *zina*). When she was brought before the court she stated that she was not forced to marry him and that she married him of her own free will. Falak's bail amount was set at 50,000 rupees. An application was filed for his acquittal on the grounds that he was innocent. With the financial assistance of a distant relative Falak Sher was eventually bailed out for 50,000 rupees.

In a report on the Administration of Juvenile Justice, AGHS⁴² state that, "The Ordinance further provides that if a trial of an offence for which the death punishment is prescribed, is not concluded within one year the child is entitled to bail regardless of age. In the case of offences for which life imprisonment is prescribed the entitlement to bail becomes due after 6 months. In all other cases the child becomes entitled to the concession of bail if the trial is not concluded within four months."⁴³ During the six month period under review in the report, the AGHS conclude that 61 per cent of children are being kept in under-trial detention without regard to the relevant provision under the law.

From the statistics provided by jail authorities around Pakistan, Amnesty International found that approximately 80 per cent of the children in detention are under-trial and that most of these children were eligible for bail. This is despite efforts by the judiciary, especially in Punjab and NWFP to reduce the number of children in detention. In the Punjab province, Amnesty International was informed by the Superintendent of Lahore Camp Jail that at the end of every month District and Sessions Judges visit jails in the province and release upon personal sureties all children who are involved in petty cases in order to relieve the overburdened prisons. This is carried out on the direction of the Lahore High Court.

Similar initiatives are evident in other parts of the country as well. While visiting the central jail in Peshawar, Amnesty International noted that magistrates visit the juvenile section of the Peshawar Central Jail once a week to clear the backlog of juvenile cases with the aim of relieving the over-crowded prison.

⁴² Administration of Juvenile Justice, Evaluation report by AGHS Child Rights Cell, November 2002. AGHS is an acronym composed of the first letters of the first names of the four women lawyers who founded it; they include Hina Jilani and her sister Asma Jahangir, the chairperson of the non-governmental Human Rights Commission of Pakistan.

⁴³ Administration of Juvenile Justice, Evaluation Report by AGHS Child Rights Cell, November 2002. page 13.

The JJSO specifically calls for use of the provision of bail for a child offender in order to decrease the amount of time spent in detention. Section 7 of the JJSO states that:

“Notwithstanding anything contained in the Code and except where a juvenile court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail.”

The use of the provision of bail is also consistently emphasised under Pakistani Juvenile laws which existed prior to the introduction of the JJSO. Section 64 of the Sindh Children’s Act for example provides for bail of arrested children.⁴⁴

These measures have, however, not reduced the number of children in detention in Pakistan and children continue to be held in custody in breach of international human rights standards which state that children should only be detained as a matter of last resort and for the shortest possible period.

9.4 Delays related to the JJSO

Misuse of the JJSO by the child’s family as well as aggrieved parties reportedly adds to the delay in some cases.

Under the Ordinance a child is defined as a person aged 18 and below. There has been a reported increase in the use of false documents by families of the children (to prove that the child was below 18 years at the time of the offence). This has caused delays as the court has to order the police to determine the exact age of the accused.

Delays also occur when the aggrieved parties have challenged the issue of age and have argued that the child was indeed an adult (over 18 years of age) at the time of the

⁴⁴ “Where a boy or a girl apparently under the age of 16 years is arrested on a charge of a non-bail-able offence and cannot be brought forthwith before a court, competent under this act to try the case, the officer in charge of the police station to which the boy or girl is brought, may release the child on bail, if sufficient security is forthcoming, but shall not do so where the release of the child shall bring him into association with any reputed criminal or expose him to moral danger where his release would defeat the ends of Justice.” This is an improvement to section 18 of the Bombay Children’s Act which did not empower a police officer to release a child on bail if the charge was one of a serious criminal offence which was punishable with death or transportation. Section 64 does not make a distinction in this regard and thus a child who is accused of an offence punishable with death or imprisonment for life may also be released on bail by an officer of police. In the Sindh Act the police officer is given discretion to release the offender on bail.

commission of the offence. These cases are reportedly not prioritised by judges since the court system is already overburdened, leaving these cases pending for long periods of time.

9.5 Delay related to the provision of legal assistance

Article 37 (d) of the CRC states that:

“Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance...”

Amnesty International research indicates that serious flaws in the provision of legal assistance cause prolonged detention of children.

Under section 3 (1) of the JJSO, all children who come in conflict with the law in Pakistan have the right to seek legal representation at state expenses. It is the duty of the arresting officer to inform children and their parents of their right to free legal representation. However, Amnesty International found that children are generally not informed of this right or the JJSO because awareness of this provision more generally is not widespread amongst the police and the judiciary.

Under section 3 (2) of the JJSO, a lawyer representing a juvenile must have five years court experience. Amnesty International was informed by a number of lawyers in Pakistan that generally lawyers with more than five years experience are not interested in representing cases at state cost because the government does not pay enough. Many Lawyers would be prepared represent children do not have five years experience and often agree to represent the cases of poor children in order to gain In the end children are often represented by inexperienced lawyers or NGOs providing free legal aid.

Child rights NGOs provide legal representation to children who cannot afford it. Amnesty International found that in NWFP, Dost Foundation provides free legal aid services for child offenders while in Karachi the Human Rights Commission of Pakistan in collaboration with Penal Reform International also provide a similar service.

9.6 Delays related to corruption

Corruption is widespread in Pakistan with the large majority of victims being the poor. Amnesty International found that in some cases when children are accused of a criminal act, it becomes very difficult for the child and the child’s family to receive fair treatment by the police because they cannot afford to pay money to have false cases quashed and find that their cases are pending for months or even years:

For example, Amnesty International interviewed Naiku who has been in detention since December 2000. Naiku says that he was falsely implicated in a murder case. His family were asked by the police to pay a bribe of 50,000 rupees to have the case dropped but the family could not afford the bribe. When the case was brought before the Court of Session, the

judge did not grant Naiku bail. At the High Court the bail amount was set at 200,000 rupees but Naiku's family could not afford this amount. After an appeal for the reduction of the bail amount it was decreased to 100,000 rupees. This amount is still beyond the means of Naiku's family.

Another example of this is the case described below:

Sattar is a 13-year-old beggar from NWFP who was accused of stealing a toy mobile telephone from a doctor's house on 31 August 2002. The initial investigation of 1 September 2002 found Sattar not to be responsible. According to the Dost Foundation, under pressure from a well known doctor, the police nevertheless charged Sattar under section 454, 380 and 411 of the Pakistan Penal Code.⁴⁵ Sattar appeared before the court on at least four occasions and spent eight months in Peshawar Central Jail. He was acquitted in April 2003. Sattar should have been released under section 169 of the Code of Criminal Procedure.⁴⁶ Sattar spent eight months in detention for a crime he was found not to have committed during the initial police investigation.

During discussions with various individuals dealing with children's cases, Amnesty International was informed that the main reason for the absence of improved detention facilities for children in Pakistan is due to a lack of financial resources. Nonetheless an innocent child like Sattar, whose case by no means is unique, has been detained for eight months for stealing a toy plastic telephone not worth more than 30 rupees. Amnesty International was informed by jail staff in the Punjab Province that the financial cost of judicial custody in Pakistan for one child per night is approximately 30 rupees.

⁴⁵ Section 380 Pakistan Penal Code states that "Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine". Section 411 of the Pakistan Penal Code states that, "Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both". Section 454 of the Pakistan Penal Code states that, "Whoever commits lurking house-trespass or house-breaking, in order to committing any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of imprisonment may be extended to ten years."

⁴⁶ Section 169 of the Code of Criminal Procedure states that "If upon investigation under this chapter, it appears to the officer in charge of the police station or to the police officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall if such person is in custody, release him..."

Once a child has been charged with a criminal offence, the case can be left pending for a very long time if the family of the child refuses to or cannot afford to a bribe.

10. THE USE OF CHAINS

International human rights standards put very strict restrictions on the use of chains for children as well as adults while in custody.

Rule 33 of the Standard Minimum Rules state that:

“Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints...”

While outside the Judicial Magistrate’s complex in Karachi, the Amnesty International team observed that children were being transported in chains. When the police learnt of the teams’ presence on the court premises they began to tie the children with rope to each other or tied their *kameez* (long shirt) together. When asked why children were being chained the response that was received was to “avoid the children from escaping”. Amnesty International observed that in Karachi children as young as 12 years of age were being transported in this manner.

The JJSO does not allow the use of chains for children even during transportation, but the practice continues throughout Pakistan because of a lack of awareness amongst police officers of this provision under the JJSO. Children may only be handcuffed if there is reasonable apprehension that the child may escape from custody (section 12).

11. PRISON CONDITIONS

Detention conditions impact a child’s mental and social development in many ways.

Amnesty International found that prison conditions vary considerably throughout Pakistan. In all the prisons visited, Amnesty International was informed that children are segregated according to age. In general the following categories are used to segregate child inmates at detention facilities: up to 9 years of age, between 9 and 12 years, 12-18 years and 18-21. Amnesty International was informed by prison authorities in all the prisons visited that boys aged between 18 and 21 are also kept in the juvenile barracks because they are considered to be vulnerable prisoners. Prior to the JJSO, Pakistani laws allowed the provision of juvenile wards in order to segregate child prisoners from adults.

The location of juvenile sections within adult prison complexes adds to the vulnerability of child detainees because they are exposed to adult detainees some of whom have been involved in serious criminal offences. Amnesty International was informed that children routinely mix with adult inmates in facilities where juvenile wards are located within

the main prison complex. In the Peshawar Central Prison, older adult inmates also work in the children's barracks; they are used as supervisors to oversee the activities of the children.

In the entire facilities seen by Amnesty International, beds for inmates consisted of cement blocks on the floor with limited bedding available. Amnesty International was informed that sometimes children cannot be allocated even a cement block to sleep on at night because there are none available due to over-crowding. In such instances children sleep on the floor in between the cement blocks where spaces are very tight and congested.

Overcrowding is a problem in all facilities visited by Amnesty International. In July 2003, the District Camp Jail in Lahore had the maximum capacity to hold 1,000 prisoners but was housing 2,771. Similarly the Faisalabad borstal has a problem of overcrowding since it is the only child detention facility in the area and holds under-trial as well as convicted children in the same wings in contravention of Rule 17 of the UN Rules for the Protection of Juveniles Deprived of their Liberty.⁴⁷ According to the superintendent of the Faisalabad borstal all under-trials at the facility are from surrounding areas whereas the convicted children come from all parts of the Punjab province.

Amnesty International found that in all prison facilities visited, children received very basic meals. They were given meat only once a week and for the rest of the week ate lentils and *roti* (bread). The cost, to the government, of housing a child in the facility is approximately 30 rupees per day.

The availability of medical facilities is vital for the well being of the child. Amnesty International found that the Faisalabad borstal had an unusually high number of cases of tuberculosis due to overcrowding. Borstal authorities informed Amnesty International that boys with tuberculosis were kept in isolation within the medical wing of the borstal because they did not have any means of transport to take the children to nearby hospitals. Amnesty International delegates noted that all medical doctors were male.

12. FEMALE CHILD OFFENDERS

As set out above all children can be victims of human rights violations due to a considerable number of fundamental flaws in the juvenile justice system as set out above. However, female child offenders are generally treated more harshly than male child offenders. Girls accused of "major" offences, particularly *zina* (sexual relations outside marriage) find that they are severely penalised as they are considered under Islamic law to be an adult at the age of 16 years.⁴⁸ Under the Haddood law in Pakistan, a girl will be treated as if she were an adult at the age of 16 years or if she reaches puberty before her 16th birthday.⁴⁹

⁴⁷ Rule 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty states, "...Untried detainees should be separated from convicted juveniles."

⁴⁸ The *zina* Ordinance applies to men, women, male children as well as female children.

Women and girls are reportedly held in women's cells in regular police stations, frequently overnight. They are often interrogated without a woman police officer or a male relative present to prevent abuse. The situation in rural areas for women and girl detainees is reportedly worse than in the cities with virtually no female staff and no separate detention facilities in police and judicial lock-ups.

Section 15 of the JJSO prohibits the detention of female juvenile offenders in police lock ups or in women's prisons. There must be separate enclosures for females in borstal institutions. Currently in Pakistan there are two borstal institutions; one in Faisalabad and the other in Bahawalpur, both are located in Punjab Province but were built to house only male child offenders. At the time of writing this report, there were no separate borstals for female child offenders in Pakistan. Girls are not only being detained in women's prison in violation of the JJSO but are reportedly kept in the same cells as adult women. To Amnesty International's knowledge, there are no separate wings in women's prisons to house female child offenders.

In order to bring the province in line with domestic juvenile laws, the government of NWFP issued a notification on 9 May 2002 stating that female child offenders should not be detained in police lock ups or women's prisons.⁵⁰ To Amnesty International's knowledge, the practice of detaining girls in women's prisons continues.

According to Hina Jilani of the Human Rights Commission of Pakistan, female child prisoners are still treated the same as female women prisoners despite the promulgation of the JJSO. Female children under the age of 18 years are not provided with the same facilities as male children under the age of 18 years.⁵¹ According to the JJSO all detained children should be held separately from adults in borstal institutions but girls continue to be detained in jails with women. To Amnesty International's knowledge no separate detention facilities for girls exist and currently there are no plans to construct borstal facilities to house female child offenders in Pakistan.

The Enforcement of Haddood Law of 1979 states that *zina* is committed if a man and woman wilfully have sexual intercourse without being married to each other.

⁴⁹ On the Day of General Discussion on the Girl Child in 1995, the Committee on the Rights of the Child stated that "In the criminal area, some legislation retained the linkage between the age of criminal responsibility and the attainment of puberty. Once again based on a subjective criterion that addresses only the physical aspect of the development of the child, this approach allows boys and girls to be treated differently, often applying to the latter criminal punishments applicable to adults."

⁵⁰ Dawn newspaper, 20 May 2002.

⁵¹ Daily Times newspaper, 11 November 2003.

Many of the girls in detention or serving sentences have been arrested in connection with the offence of *zina*. In its response in January 1994 to the list of issues forwarded by the Committee on the Rights of the Child in connection with its initial report to the CRC, the government stated that “Under the Offence of *Zina* Ordinance 1979, a female child under the age of 16 years and male child under 18 years can be punished due to wilful sexual activity without being validly married to the other person and/or for imputing such activity concerning any person intending to harm that person....The procedure for investigating of such offences in humane manner need to be adopted but the punishment under the law cannot be waived in view of morality, reformation, deterrence and the protection of fundamental and human rights.”⁵²

In its concluding observations in October 2003 on Pakistan’s second periodic report the Committee on the Rights of the Child recommended that existing laws such as the *zina* Ordinance and Hadood laws be reviewed to ensure their compatibility with the Convention.⁵³

Amnesty International is concerned that thirteen years after committing to repeal laws inconsistent with the CRC (which effectively permit imprisonment on the grounds of gender), the government of Pakistan continues to fail to protect female child offenders in conflict with the law.

13. ESTABLISHING THE INSTITUTIONAL FRAMEWORK FOR THE IMPLEMENTATION OF THE JJSO

13.1 The establishment of borstal facilities

According to the JJSO, it is the responsibility of the government to establish (as soon as possible) borstal institutions in at least every district of a province. In such institutions child offenders are to be provided education and training for their mental, moral and psychological development. Child offender have to be sent to borstal institutions on the order of a juvenile court and have to remain there until they attain the age of 18 years or complete their prison term.

At the time of writing this report, there are only two borstal institution in Pakistan, one in Bahawalpur and one in Faisalabad; both in Punjab province. Amnesty International was informed by the Inspector General of Prisons for NWFP that the provincial government of NWFP plans to construct borstal facilities in the province but no date was given.

13.2 Establishment of juvenile courts

Under the JJSO children may only be brought before a juvenile court and provincial governments are required to establish separate juvenile courts. The provincial High Courts

⁵² See CRC/C.5/WP.1 and CRC/C/3/Add.13

⁵³ See CRC/C/15/Add.217, paragraph 9

can confer the powers of a juvenile court on a Court of Sessions, a Judicial Magistrate of the First Class or practicing lawyers who have seven years standing at the bar.⁵⁴ The JJSO also provides that pending the establishment of new courts the current courts must be reorganised to separate juvenile trials from adults.

The Human Rights Commission of Pakistan's Secretary General, Hina Jilani, said that the JJSO is being grossly violated in the Punjab province because the government has failed to meet the mandatory requirement of establishing independent courts for the trial of child offenders.

On 10 May 2002, Dr Attiya Inayatullah, the Minister for Women Development, Social Welfare and Special Education, informed the Special Session of the UN General Assembly on Children that in line with article 40 of the CRC juvenile courts had been set up to deal with children's cases. However, to Amnesty International's knowledge, all provincial governments have not so far established separate courts for the trial of child offenders. Instead special powers have been conferred to Judicial Magistrates and the Court of Sessions. The trials are separate but held in the same courts as the adults, trials are on the same day as adult trials, with the same judge, under the same procedure and in the same adult environment.

13.3 Training

The Committee on the Rights of the Child has continuously recommended to member states that within their countries all individuals who are involved at all levels of the juvenile justice system receive relevant training in its administration.⁵⁵

⁵⁴ By 2002, all the Provincial Governments had been notified of the JJSO. On 28 April 2001, in the Punjab province and the Islamabad Capital Territory, special powers to hear juvenile cases were conferred to senior civil judges. On 16 April 2002, the Peshawar High Court conferred the powers of Juvenile courts upon the District and Sessions Judges. In Sindh province, Juvenile courts have been established. The courts consist of two Additional District Judges and two Judicial Magistrates for the Karachi division. On 21 August 2001, the Balochistan High Court conferred powers of a Juvenile Court to the District and Sessions Judges as well as the Additional District and Sessions Judges and Judicial Magistrates of the First Class. Amnesty International was informed by a Judicial Magistrate in the Karachi division of Sindh province that juvenile courts had been established there.

⁵⁵ In a General Discussion on "State Violence Against Children" in September 2000 the Committee on the Rights of the Child adopted the following recommendation; "The Committee recommends that States Parties, in partnership with relevant NGOs and seeking international technical assistance where appropriate, ensure training in child rights for all relevant professional groups including, but not limited to, care and social workers, health professionals, lawyers, the judiciary, members of the police and other security forces, staff of penal institutions, etc. Such training should follow interdisciplinary methods promoting collaborative approaches, include relevant human rights standards and non-violent methods of discipline, promote alternatives to institutionalization, and provide information on child development, and on the background, rights and needs of specially vulnerable groups of children (those form minority groups, children with disabilities, etc.)." The

Amnesty International found that no specific compulsory training on juvenile justice is imparted to law enforcement officials, members of the judiciary, lawyers or anyone else who is involved in the administration of juvenile justice. Most lack knowledge of the basic rights of the child in conflict with the law

According to some lawyers, sentencing seems to be largely at the discretion of the judges who do not always apply the relevant laws because of a lack of knowledge. For example no special training is imparted to civil judges who are allocated criminal cases. When a new law is implemented relevant training should be imparted so that the law is not misused.

According to the Government of Pakistan, the National Commission for Child Welfare and Development (NCCWD) prepared a training manual on the juvenile justice system for the judiciary, police and prison staff at the federal judicial academy in Islamabad in July 1999 but there is no evidence of its systematic use.⁵⁶

The Committee on the Rights of the Child stated that although it recognised that the government was undertaking some training of police officers working with children it remained concerned of reports of torture, ill-treatment and sexual abuse by police officers in detention facilities and other institutions and recommended that Pakistan should “assess the scope, nature and causes of violence against children, in particular sexual violence against girls with a view to adopting a comprehensive strategy and effective measures and policies and to change attitudes; (b) Properly investigate cases of violence, through a child-sensitive judicial procedure, notably by giving appropriate weight to children’s views in legal proceedings, and apply sanctions to perpetrators with due regard given guaranteeing the right to the privacy of the child.”⁵⁷ It recommended that Pakistan “develop adequately resourced policies and programmes for a systematic and sustained training process.”⁵⁸

Committee also recommended “that minimum standards be set for the professional qualification and training of individuals working in institutions caring for children, in alternative systems, in the police, and in juvenile penal institutions, including the condition that they should not have a prior record of violence. The professional status, rewards and career incentives for such workers should ensure that appropriate qualifications can be requested for these professional groups.” (Report of the twenty-fifth session, September/October 2000, CRC/C/100, paras. 688.15 and 688.16).

⁵⁶ The National Commission for Child Welfare and Development (NCCWD) is responsible for the coordination of activities with regard to children’s rights in Pakistan. The government has announced that the name of the Commission is due to be changed to the “Pakistan Child Commission.”

⁵⁷ CRC/C/15/Add.217, paragraph 41.

⁵⁸ CRC/C/15/Add.217, paragraph 26.

The continued low level of awareness of the JJSO and the CRC means that the basic rights of children who come into conflict with the law continue to be denied.

14. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

In order to ensure that child offenders are treated in line with provisions in the CRC and other international standards, Amnesty International calls on the Government of Pakistan to implement the recommendations of the Committee on the Rights of the Child as listed in the Appendix to this report as well as Amnesty International recommendations set out below:

Juvenile laws

Ensure that the JJSO is applied by all relevant courts in the provinces of Sindh, Punjab, Balochistan and the North West Frontier.

Translate juvenile laws and the CRC in local languages and disseminate them widely.

Federally Administered (FATA) and Provincially Administered Tribal Areas (PATA)

Protect the basic rights of the children in conflict with the law in the Federally and Provincially Administered Tribal Areas by extending the JJSO to these areas.

Age of criminal responsibility

Ensure that juvenile laws include a realistic age of criminal responsibility which takes into account the maturity of the child.

Arrest and detention

In line with international standards, which state that children should only be detained as a matter of last resort and for the shortest possible time, the Government of Pakistan should develop non-custodial sentences aimed at rehabilitating juvenile offenders.

Ensure that when children are remanded in custody, arrest and detention procedures are followed and that they are given immediate access to relatives, legal counsel and medical care.

Ensure that the police fulfil their duty to immediately inform parents of the arrest of the child.

Ensure that children are held in separate police and judicial lock-ups.

Protect children in custody from torture and ill-treatment, including rape and sexual abuse, whether by officials or other detainees.

Age determination

Ensure that police officials inquire immediately as to the age of any child.

Ensure that there is a systematic registration of all births in all parts of Pakistan including the tribal areas.

Death penalty

Immediately commute any death sentence passed on child offenders and ban the use of the death penalty in all parts of Pakistan including the tribal areas on the basis that it is a violation to the right to life as proclaimed in the Universal Declaration of Human Rights.

Bail

Prioritise examination of all case files of children detained for excessively long periods without charge or trial, and provisionally release those against whom there is little substantiating evidence, or who are detained for minor offences.

Encourage the use of alternative measures to bail such as personal surety for non violent minor offences and ensure its availability to parents of children from poor families.

Legal representation

Ensure that children who are detained are made aware of their rights, including the right to legal assistance and their right to lodge a complaint if their rights are violated and to have their complaints investigated.

Ensure that all judges insist on legal representation for all children.

Sentencing

Courts must ensure that sentencing is proportionate to the crime and takes into consideration the age and best interests of the child.

Develop non-custodial measures aimed at rehabilitating child offenders.

Improve conditions in prisons and detention facilities

Ensure that child detainees are, in accordance with human rights standards, at all times detained separately from adult detainees and in separate facilities.

Encourage greater contact between the child prisoner and their family, and wherever possible locate child detainees in prisons closest to their family homes.

Ensure that all child detainees have the basic material necessary for their physical health and well-being, including mattresses, blankets and adequate clothing.

Increase medical care in places of detention and improve the diet of child detainees.

Increase access for child detainees to education, rehabilitation, skills development and sporting activities.

Female child offenders

Ensure that girls as among the most vulnerable members of society are suitably protected against discriminatory laws and practices by abolishing the *Zina* Ordinance which discriminates against girls (and women) and effectively permits their imprisonment on the grounds of gender.

Training

Ensure long-term training of police, judicial and other relevant officials, in the rights of the child in the criminal justice system. The training should emphasize the practical implementation of international human rights standards and the roles and responsibilities of the various officials.

Encourage the display of the JJSO and the CRC in all police stations so that children and police officers gain increased awareness of the rights of the child.

Undertake the necessary reforms and investment to strengthen the competence, independence and impartiality of the judiciary.

Awareness raising

Promote changes in social perception and increase social awareness by informing, educating and sensitizing all communities about children's rights.

Appendix A: Concluding observations of the Committee on the Rights of the Child: Administration of juvenile justice (extract from CRC/C/15/Add.217 of 3 October 2003)

The Committee welcomes the promulgation of the Juvenile Justice System Ordinance (JJSO, 2000), but is concerned at the poor implementation of this Ordinance 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 to the Committee. Further, the Committee is deeply concerned about the reports of juvenile offenders sentenced to death and executed, which have also occurred after the promulgation of the Juvenile Justice System Ordinance.

The Committee recommends that the State party:

- (a) Ensure the full and effective implementation of juvenile justice standards and 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) and 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, 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;
- (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;
- (d) Guarantee that all children have right to appropriate legal assistance and defence;
- (e) Set up a system of juvenile courts;
- (f) Ensure that children in detention are always separated from adults;
- (g) Ensure that children remain in regular contact with their families while in the juvenile justice system;

(h) Take immediate steps to ensure that the prohibition of death penalty as foreseen under the Juvenile Justice System Ordinance is guaranteed for all children below the age of 18 years, in light of article 37 (a) and 6 of the Convention, and that death sentences imposed before the promulgation of this Ordinance are not executed; and

(i) Seek assistance from, inter alia, OHCHR, the Centre for International Crime Prevention, and UNICEF.