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Rights of the Child in Pakistan

*Report on the implementation of the
Convention on the Rights of the Child
by Pakistan*

Report prepared for the Committee on the Rights of the Child
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CONTENTS

1. PRELIMINARY OBSERVATIONS	3
1.1. Participation to Convention on the Rights of the Child and other international treaties	3
1.2. Recent history	3
2. GENERAL OBSERVATIONS ON THE SITUATION OF CHILDREN IN THE ISLAMIC REPUBLIC OF PAKISTAN	5
2.1. Children and armed conflict	5
2.1.1. Child soldiers.....	5
2.1.2. Refugee children	6
2.2. Discrimination	7
2.2.1. Discrimination against girls	7
2.2.2. Discrimination against religious minorities	9
2.3. Federalism and Rights of the Child.....	10
3. DEFINITION OF THE CHILD	11
4. PROTECTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENTS.....	12
4.1. Legal framework	12
4.2. Cases of torture.....	14
4.3. Training of law enforcement, prison and judicial officials	15
5. PROTECTION AGAINST ALL FORMS OF VIOLENCE	16
5.1. Child sexual abuse and prostitution	16
5.1.1. Legal framework	17
5.1.2. Cases.....	19
5.1.3. Measures against sexual abuse and exploitation	19
5.2. Child trafficking	20
5.2.1. Legal framework	20
5.2.2. Cases.....	21
6. CHILDREN IN CONFLICT WITH THE LAW	21
6.1. Age of criminal responsibility.....	23
6.2. Deprivation of freedom	23
6.2.1. Prompt access to assistance.....	23
6.2.2. Police custody and pre-trial detention	24
6.2.3. Condition of detention: separation of adults and minors	26
6.3. Children's Courts	27
6.4. Death penalty and life imprisonment	28
7. CONCLUSIONS AND RECOMMENDATIONS.....	28

1. PRELIMINARY OBSERVATIONS

The World Organisation Against Torture (hereinafter OMCT) welcomes the comprehensive and well structured progress report that Pakistan submitted to the Committee on the Rights of the child (hereinafter the Committee).

1.1. Participation to Convention on the Rights of the Child and other international treaties

Pakistan ratified the Convention on the Rights of the Child (hereinafter the Convention) on 12 November 1990, making a reservation on interpreting its provisions following the principles of Islamic laws and values. In 1997 Pakistan decided to withdraw its reservation. OMCT warmly welcomes this decision since it marks the intention to unconditionally implement Children's rights in Pakistan.

The State report does not mention Pakistan's signature, in September 2001, of the Optional Protocol to the Convention on the Involvement of Children in Armed Conflict as well as of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography since the report was submitted to the Committee prior to that date. Considering the relevance in the South-Asian region of these issues, OMCT hopes that Pakistan will quickly ratify these two protocols.

Pakistan is a party to three other international instruments aiming at directly or indirectly improving the rights of the child: the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in 1996, the Declaration and Agenda for Action adopted at the issue of the World Congress against Commercial Sexual Exploitation of Children, signed in 1996, and reaffirmed by the Yokohama Global Commitment in 2001, and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour Convention (C182), ratified in 2001.

Regretfully, Pakistan is not yet a party to the Convention Against Torture, and other cruel, Inhuman or Degrading Treatment or Punishment (CAT). On 15 June 2001 the Coalition of Non-Government Organisations Against Torture (CINAT), which includes OMCT, sent to the Pakistani Minister of Foreign Affairs an appeal for the universal ratification of the CAT¹.

1.2. Recent history

The 90s have been marked by Mrs. Benazir Bhutto and Mr. Nawaz Sharif who have alternatively ruled the country until the bloodless military coup led by General Pervez Musharraf that overthrew Nawaz Sharif's elected government in October 1999.

¹ *Appeal for the Universal Ratification of the UN Convention against Torture: Pakistan.* In its letter addressed to Mr Abdus Sattar, Minister of Foreign Affairs, CINAT underlined the importance for Pakistan to urgently sign and ratify the CAT in order to prevent and combat torture.

The Proclamation of Emergency² accorded to General Musharraf the office of the Chief Executive of the Islamic Republic of Pakistan, and suspended the 1973 Constitution, the Parliament, the national and provincial assemblies. Since the military coup the Provisional Constitution Orders (hereinafter PCOs) have ruled the country in place of the Constitution. OMCT want to express its concern about the discretionary power that was concentrated in the hands of the Chief Executive alone, who, through the promulgation of PCOs, was enabled to amend or repeal the Constitution of Pakistan.

Article 4(3) of the PCO No.1, 1999 states that “the Fundamental Rights conferred by Chapter I of Part II of the Constitution, not in conflict with the Proclamation of Emergency or any Order made thereunder from time to time, shall continue to be in force.” Then, fundamental rights contained in the 1973 Constitution such as the interdiction of hazardous child employment³, the interdiction of using torture⁴, and the principle of non-discrimination⁵, are still in force after October 1999.

Article 5(1) of PCO No.1 (as amended by PCO No. 9 of 1999) provides that all legal instruments other than the Constitution continue to be in force until altered, amended or repealed by the Chief Executive. This provision covers legal texts such as the Pakistan Penal Code, the Penal Procedure Code, the Labour Code, the Family Code containing the majority of laws concerning Children’s rights. Article 2(2) of the PCO No.1 of 1999 guarantees the continuity to all courts existing prior to the coup.

In June 2001, General Musharraf was established as the country’s President while remaining head of the army. After 11 September, President Musharraf’s support to the so-called War on Terrorism caused violent reaction and opposition from national Islamist groups. Meanwhile a state of emergency was declared throughout Pakistan giving the government sweeping powers to fight against terrorism (the Anti-Terrorism Ordinance of 1997 had been amended in August 2001) and maintain law and order. In December the tensions between Pakistan and India on Kashmir culminated in the massing of troops along common border. In April 2002, despite wide criticism on unconstitutionality and procedural irregularity coming from human rights activists and opposition parties, the referendum organised by President Musharraf afforded him with another five years in office. During the summer, President Musharraf amended the Constitution in order to grant himself with new powers including the right to dissolve the parliament. In October the first general election since the military coup took place and in November the new National Assembly elected Mir Zafarullah Khan Jamali as prime minister. Soon after the election, President Musharraf revived the 1973 Constitution as modified by its numerous amendments

During the three years of military rule, human rights have not been a priority for the government. The regional conflict context and interior tensions with opposition parties and religious groups have occupied the forefront of the scene. It seems that the political agenda has been focusing more on promulgating new repressive laws against corruption or terrorism, than on boosting human rights.

² Proclamation of Emergency October 14, 1999

³ Article 11(3).

⁴ Article 14(2).

⁵ Article 25.

2. GENERAL OBSERVATIONS ON THE SITUATION OF CHILDREN IN THE ISLAMIC REPUBLIC OF PAKISTAN

2.1. Children and armed conflict

War in Afghanistan and the conflict of Jammu and Kashmir have strongly affected Pakistani civilians, and among them especially children. Living in a conflict context hinders the survival and development that children have the right to⁶ and hazards some basic and fundamental rights the children have⁷.

2.1.1. Child soldiers

Article 38 of the Convention provides that States parties shall refrain from recruiting children under fifteen years and that among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall give priority to the oldest. The Optional Protocol on children in armed conflict, that Pakistan signed in 2001, further maintains that States parties shall do the possible in order that members of their armed forces who have not attained the age of eighteen years do not take a direct part in hostilities.

The State's report explains that the Pakistan National Service Ordinance of 1970 guarantees that the age of enlistment in the armed forces is eighteen years with the possibility to begin two years earlier for training. In Pakistan there is no compulsory conscription and only persons over the age of eighteen years can take part in the hostilities.

OMCT welcomes the conformity of the Pakistani armed forces recruitment policy with the Convention and the Optional Protocol. The practice of the recruitment policy seems also to respect the rules.

OMCT would nevertheless appreciate some information about the recruitment of children in other armed groups present in the country. Pakistan is a source of recruits for various armed groups involved in neighbouring conflicts or in political national violence⁸. OMCT is particularly interested in knowing the role of the thousands of *madrasas* (Islamic schools) existing in Pakistan⁹. In recent years, some of these schools have emerged as centres sponsored by political parties for indoctrination, training and recruitment of young fighters sent to Afghanistan or to Jammu and Kashmir. The government of Pakistan has been reportedly working on regulating and monitoring *madrasas*, but Islamist groups beyond them have fiercely opposed and stopped the reform.

Within Pakistan, the Mohajir Quami Movement (MQM) is reported to recruit minors for violent actions against the Sindhi community. Sectarian religious groups are also believed to use child soldiers coming from sponsored *madrasas* or from amongst returning veterans of conflicts in neighbouring countries¹⁰.

⁶ Article 6 of the Convention.

⁷ Articles 19 and 38.

⁸ Pakistan report of the Coalition to Stop the Use of Child Soldiers (CSUCS), December 2001.

⁹ Estimations vary from 15.000 to 25.000 indicates the CSUCS report.

¹⁰ Pakistan report of the CSUCS, December 2001.

Article 4(1) of the Optional Protocol states that “armed groups that are distinct from the State’s armed forces should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years”. Article 4(2) further urges states to “take all feasible measures to prevent such recruitment and use, including the adoption of legal measures to prohibit and criminalize such practices”. Since Pakistan is in the process of ratifying the protocol, OMCT believes that it should do its utmost to respect its provisions.

2.1.2. Refugee children

The official report of Pakistan states that the Government has one of the most open and generous policy towards refugees and has done much more than should be expected of a country with limited resources¹¹. OMCT acknowledges the huge burden that has weighted on Pakistani Government and population since the massive arrivals of refugees, especially Afghans, during the last decades. OMCT also agrees with the Government when it says that Pakistan cannot be expected to carry the responsibility of assistance and protection of the refugees on its own¹². Nevertheless, OMCT regretfully remarks that in recent years Pakistani policy towards refugee has not been so open and generous.

According to human rights organizations, in end-2000 Pakistani refugee policy became increasingly hostile to refugees. Pakistani authorities deported several thousands Afghans, prevented the international community from properly assisting newly arriving Afghan refugees, officially closed the border to asylum seekers, and pressured some long-term camp refugees to repatriate. In August 2001 Pakistan agreed on a full screening-programme (the so-called August 2 Agreement) which would have made its refugee policy more respectful of international standards, but September 11 abruptly interrupted the project.

The new war in Afghanistan made the international community’s attention revert to Pakistan and to Afghan refugees. International support started to flow in Pakistan, but the authorities continued to have a closed attitude towards refugees: Pakistan’s border closure to prevent terrorists to enter obliged thousands of civilians to camp along the border or force their way in. As for the refugees’ situation inside Pakistan, the majority of them continued to be unregistered therefore without any guaranteed rights and any possibility to obtain assistance¹³.

The Pakistani refugee policy has directly affected Children’s rights, considering the high rate of children presents in the Afghan refugee population (around 50%). Human Rights Watch affirms that very few refugee children have been given the opportunity to go to school, in fact many were sent to work in order to supplement the family’s income¹⁴. The Women’s Commission for Refugee Women and Children reported that the refugee children, particularly those living in urban refugee communities, were placed in harsh employments (carpet weavers, “street children” engaged in garbage picking, beggars, brick makers, house servants and drug sellers), exposing them to physical and psychological sufferings¹⁵. Finally, the lack of legal

¹¹ “Progress Report on the implementation of the Convention on the Rights of the Child”, Government of Pakistan, p. 98.

¹² Ibid. p.99.

¹³ “Closed door policy: Afghan Refugees in Pakistan and Iran”, HRW, February 2002, pp. 24-26.

¹⁴ “Closed door policy: Afghan Refugees in Pakistan and Iran”, HRW, February 2002, p. 32.

¹⁵ “Fending for themselves: Afghan Refugee Children and Adolescents Working in Urban Pakistan”, Women’s Commission for Refugee Women and Children, January 2002.

status for Afghan refugees in Pakistan has left them without any protection from harassment, extortion, and imprisonment by the Pakistani police¹⁶.

Refugee children have been refused their basic rights to protection and education (provided by the Convention) and put in situation of hard labour and exploitation (in violation of the Worst Form of Child Labour Convention ratified in 2001). Now, the context has completely changed, a new regime has been established in Afghanistan and massive repatriation of refugees has started in 2002. OMCT wishes to know what is the position of the Government on the repatriation of child refugees and what are the measures adopted to assure child's protection and child's best interest during this phase. OMCT hopes that in the eventuality of a new afflux of refugees, Pakistan will do its utmost to respect its international obligations towards the rights of the child.

2.2. Discrimination

The official report reminds non-discrimination as a general principle fundamental to the implementation of the Convention, and states further that the Constitution of Pakistan and laws in general recognise the principle of non-discrimination not only for children, but for all persons. Article 25(1) of the Pakistani Constitution states that "all citizens are equal before law and entitled to equal protection of law".

Pakistani authorities affirm that there is no discrimination against children with disabilities, against children belonging to different provincial, linguistic, religious or economic backgrounds and against refugee children, nevertheless "a few odd cases crop up now and then"¹⁷. OMCT regrets that the report doesn't give any further detail on these "few odd cases" and recommends to the Committee to ask information in order to evaluate their nature and extent.

OMCT is deeply concerned about discrimination, since it is one of the root causes of torture. Major concerns in Pakistan are discrimination against girls and discrimination against religious minorities.

2.2.1. Discrimination against girls

Article 25(2) of the Constitution states that "there shall be no discrimination on the basis of sex alone". OMCT notes that the presence of "alone" at the end of the sentence weakens the efficiency of the provision, since it permits discrimination based on other factors than sex, and even discrimination against women in case of multiple discriminatory belonging (refugee woman, Christian woman, *Mohajiri* woman, etc.). The official report quotes article 25(2) but "alone" is omitted. OMCT wishes to know more about the meaning of "alone" and recommends the adoption of a more encompassing definition of discrimination as provided by article 2 of the Convention.

In its concluding observations to the first Pakistan report, the Committee expressed its deep concern at the situation of female children, as regards the effect of legislation in place, the

¹⁶ "Closed door policy: Afghan Refugees in Pakistan and Iran", HRW, February 2002, p.27.

¹⁷ "Progress Report on the implementation of the Convention on the Rights of the Child", Government of Pakistan, p. ix.

measures adopted and the practices and customs which serve to discriminate against girls, such as early marriage, and insufficient attention accorded to their schooling¹⁸.

If, for the last few years, Government has officially been more concerned about girls' schooling, education in Pakistan is still built on a discriminatory basis: despite the global increase in enrolment rate (31,7 % in 1990, 36,1% in 1995¹⁹), literacy rate for women is much inferior than literacy rate for men (in 1995 48,7% of the male population was literate against only 22,5 % of the female population²⁰). In a report of July 2000, the Asian Development Bank affirms that the gender gap in the literacy rate in Pakistan is even widening²¹.

Gender bias in education is only one symptom of a gender-organised social order rooted in societal and religious attitudes, where violence is used by family, society, and state to silence "voices of resistance"²². The OMCT delegate for Asia, Khalida Salimi²³, says that gender discrimination is seen as a socio-cultural norm assigning women and girls primarily reproductive, domestic and dependent roles.

Pakistan's legal framework is contradictory concerning the protection of girls and women from discrimination. If the Constitution formally forbids discrimination on the basis of sex, other laws have been promulgated that promote and legitimise such practice, especially Islamic laws. OMCT is particularly concerned by the *Zina* (Enforcement of *Hadd*²⁴) Ordinance of 1979 promulgated by General Zia in an attempt to islamise the society. This law covers quranic offences like fornication, adultery, rape and provides punishments like stoning to death or whipping. Absolutely incompatible with fundamental human rights, this law is also intrinsically discriminatory. Girls are liable for punishments from the age of 16 or on attaining puberty which can be as early as 11 or 12 years, while for males the age is 18 or puberty.

The *Zina* Ordinance gravely discriminates women and girls by putting them under the continuous threat of arbitrary sentences for adultery. This law is in conflict with the Pakistani Constitution as well as with the international treaties that Pakistan ratified (the Convention on the Rights of the Child and the CEDAW). By withdrawing its reservation on interpreting the Convention following the principles of Islamic laws and values, Pakistan clearly engaged toward an unconditional implementation of Children's rights that is incompatible with provisions such as the *Zina* Ordinance.

OMCT is also very concerned about two common practices that constitute examples of serious violence against girls and women: honour killings and child combined marriages. When the male parents of a woman kill her in order to punish her for dishonouring a man by contravening social and religious norms defining her female status, they are said to commit a "honour killing". Such killings are illegal, but widely common throughout Pakistan. Adultery, pre-marital sex or attempt to divorce are "infringements of honour" which could cost life to a Pakistani woman or girl. In its 2002 report on the situation on women in Pakistan, Amnesty International reported that in Pakistan up to 3 women are thought to be killed every day for honour²⁵.

¹⁸ Concluding observations of the Committee on the Rights of the Child : Pakistan, April 25, 1994.

¹⁹ "Social Development in Pakistan: Annual Review, 1998", Social Policy and Development Centre, p.130.

²⁰ Ibid. p. 130.

²¹ "Country briefing paper – Women in Pakistan", Asian Development Bank, July 2000, p.3.

²² Ibid. p.18.

²³ Director of SACH – Struggle for Change.

²⁴ *Hudood* (sing. *hadd*) are the offences inscribed in the Holy Quran.

²⁵ "Pakistan, insufficient protection of women", Amnesty International, April 2002, p. 26.

In March 2000, 14-year-old Rahima Mugheri was killed by her 28-year-old husband Niazul Mugheri on their wedding night. He emerged from their bridal chamber to announce to family members and neighbours that his wife had confessed to pre-marital sex. The family then decided on the mode of her death: first Niazul's elder brother, then other male relatives, including the husband shot at her till she died. Rahima was buried within hours of her wedding²⁶.

In some parts of Pakistan it is customary that parents or guards organise the marriage of their girl children at a very young age. Such marriages can also be decided by *jirga* (tribal councils). On June 2001, a *jirga* in Thatta district, Sindh Province, handed over two girls to settle a tribal feud arising from a murder. The 11-year-old daughter of the accused was forced to marry the 46-year-old father of the murdered victim and the six-year-old daughter of the other accused was married to the eight-year-old brother of the victim. Although the arrangement was reported in the local media the authorities took no action to rescue the children²⁷.

OMCT acknowledges that Pakistan has shown its commitment in resolving the problem of discrimination against women and girls by setting up in 2000 a Commission on the Status of Women²⁸. This commission has been tasked with examining laws and policies concerning women's rights, making recommendations, and monitoring violence against women. OMCT wishes the Pakistani authorities to explain how the Commission on Women is participating in coping with the issues mentioned above.

2.2.2. Discrimination against religious minorities

Islam is the state religion in Pakistan. Pakistan Constitution provides protection to religious minorities: every citizen has the right to profess and practice his religion²⁹, every religious institution has the right to give religious education to its community³⁰, and every citizen has an equal opportunity to access to employment³¹.

Blasphemy laws have existed since the time of the colonial rulers. When in the 80's General Zia introduced them in the Penal Code, increasing their punishment from two years of imprisonment to death sentence, they became an instrument of religious intolerance. Zia's amendments made the defiling the Holy Quran punishable with life imprisonment³², of the name of the Holy Prophet with the death sentence³³ and of any other personage referred in Islam with three years' imprisonment³⁴. After its introduction in 1985, hundreds of non-Muslims, mostly Christians, have been accused under the blasphemy law. Furthermore, the discriminatory *Qanoon-e-Shahadat* Order 1984 (see also under discrimination against girls) allows to Muslim witnesses more relevance than to non-Muslim ones (the testimonies of 2 non-Muslim men are equivalent to the testimony of 1 Muslim male). The intolerant climate created

²⁶ "Pakistan, insufficient protection of women", Amnesty International, April 2002, p. 30.

²⁷ "Pakistan: Annual Report 2002", Amnesty International, p.189.

²⁸ Ordinance XXVI of 2000.

²⁹ Article 20.

³⁰ Article 22.

³¹ Article 27.

³² Section 295-B.

³³ Section 295-C.

³⁴ Section 298-A.

by the blasphemy law spread out in civil society and many killings of blasphemers by Muslim fanatics have been reported.

Children are also concerned by blasphemy law: in 1995 Salamat Masih, a 14-year-old Christian boy, was sentenced to death for writing derogatory remarks against Prophet Mohammed on the wall of a mosque with two other Christians³⁵. The condemnation was finally repealed on appeal by the Lahore High Court (there were many unclear points, such as the lack of material evidence for the offence or the presumed illiteracy of the child). Demonstrations of civil intolerance demanding the death of the accused Christians, continuously took place during the trial and culminated with the murder of one of them in an attack by Islamists in April 1994.

Since then, no more case concerning minors has been reported, but many people (mostly belonging to religious minorities) continue to be judged and sentenced under the blasphemy law³⁶. In 2000, President Musharraf tried to amend the blasphemy law but the opposition of the Islamic fundamentalists blocked him. Blasphemy law is used as an arbitrary instrument of legal repression and, most important, it contributes to a climate in which religiously motivated violence flourishes. Children are not protected from this violence. OMCT would like the Pakistani delegation to explain itself on the measures that exist to protect children from blasphemy laws and violent religious intolerance.

2.3. Federalism and Rights of the Child

As in every federalist state, in Pakistan the National Assembly as well as the Provincial Assemblies can legislate. Normally federal laws give a general legal provision that is implemented and specified by provincial laws or rules. In certain matters concerning Children's rights, Pakistani provinces seem to have been more active and more progressive than the Federal State. According to Anees Jillani and Zarina Jillani³⁷, the Punjab Children Act, 1952 and the Sindh Children Act, 1955 were among the first child related legislations that attempted to bring child centred concerns into laws³⁸.

While the effort of the provinces to introduce particular legal protections for children has to be warmly welcomed, Children's rights in Pakistan have to be fostered at federal level and therefore inscribed in the federal legal framework. Provinces can certainly play a major role in Children's rights development, but their action has to be monitored and framed by federal legislation and government. By ratifying the Convention, Pakistan committed to improve the rights of all children present on its territory. Leaving to provinces the responsibility to promulgate and implement Children's rights creates discrimination amongst children belonging to different provinces, and weakens the possibility to effectively implement these rights³⁹.

³⁵ Amnesty International, ASA 33/03/95.

³⁶ The suicide in 1998 of Bishop John Joseph in a court-house where a Catholic was sentenced to death on 27 April under the blasphemy law was a tragic representation of the growing opposition to this law., Amnesty International, ASA 33/026/2002.

³⁷ Society for the Protection of the Rights of the Child (SPARC).

³⁸ Anees Jillani, Zarina Jillani, "Child Rights in Pakistan", Society for the Protection of the Rights of the Child, Islamabad, January 2000, p. 58.

³⁹ Anees Jillani and Zarina Jillani affirm that it is a pity that the Punjab Children Act and the Sindh Children Act remained unenforced as they could have brought about a positive change in the state of children if they had been properly implemented (Ibid., p.59).

The distribution of legislative and executive powers between the Federation and the provinces is a key factor to understand how policies are implemented in Pakistan. This distribution of tasks can be a positive factor for the rights of the child, just like a hindering one. Unfortunately, Pakistani federalism seems to have hindered more than helped the application of child centred policies.

Khalida Salimi, OMCT's delegate for Asia, explains that a decentralised policy system has newly been introduced and that Pakistani Government should imperatively consider it as an important tool to effectively implement international instruments (such as the Convention, the CEDAW, etc.) all around the country. Namely, a great effort should be done on raising awareness on these instruments among parliamentarians of national, provincial and district levels.

OMCT believes that the state report should have more specifically addressed the question of the federal and provincial interaction in the national application of the Convention. OMCT wishes the Committee to ask to the Government further clarifications with this respect.

3. DEFINITION OF THE CHILD

The official report admits that despite a general provision given by the Majority Act, 1975 following which a minor is a person who has not attained the age of 18 years, the definition of the child and the fixation of minimum ages for certain activities are problematic in some of the laws in force in Pakistan⁴⁰.

As mentioned above, OMCT vividly rejects the discrimination operated by some codified criminal Islamic laws in defining the female majority at 16 years or upon attaining puberty as opposed to the male majority at 18 years or puberty. These laws are clearly open to interpretation and discrimination and therefore clearly against the spirit of the Convention⁴¹.

In criminal terms, section 82 of the Penal Code establishes the minimum age of criminal responsibility at seven years. Section 83 declares that between seven and 12 years a child can only commit an offence when he has "attained sufficient maturity of understanding to judge of the nature and the consequences of his conduct". The Juvenile Justice System Ordinance 2000 further guarantees special protection to all youth offenders, defined as persons under 18 years.

Since sexual intercourse out of wedlock is prohibited in Pakistan, there is no specified legal age of sexual consent. The Child Marriage Restraint Act, 1929 declares that marriage can take place over 18 years of age for a male and over 16 years for a female. Under these ages, marriage is punishable with fine and imprisonment but the law does not invalidate the marriage. Hence, in Pakistan it is common practice that a male parent or guardian contracts the minor child in marriage without her or his consent. Once a girl is promised in marriage and the act is registered, the girl will be regarded as formally married and sexual intercourse can legally happen. Marital rape of a girl over 12 is not criminalised by Pakistani laws⁴².

⁴⁰ "Progress Report on the implementation of the Convention on the Rights of the Child", Government of Pakistan, p. 13.

⁴¹ See for instance Chapter XVI of the Pakistan Penal Code concerning the "offences affecting life", where an adult is defined as "a person who has attained, being a male, the age of 18 years Section 299(a).

⁴² Marital rape is recognised when the girl wife is under 12 years, in which case section 376 of the Penal Code provides imprisonment for maximum 2 years and fine.

The Children (Pledging of Labour) Act, 1933 defines a child as a person under 15 years⁴³ and states that any agreement to pledge the labour of a child shall be void⁴⁴. Article 11(3) of the Constitution of 1973 lower this age limit by prohibiting employment of child below the age of 14 in any hazardous employment. The Employment of Children Act, 1991 follows the definition of the Constitution and attempts to regulate the conditions of work for children under 14 years and to forbid their employment in harsh occupations.

OMCT welcomes the Government's awareness on the complexity and on the arbitrariness of the definition of the child in Pakistani legislation. OMCT therefore asks the Committee to suggest to the Government of Pakistan to amend and rationalize the child definitions in its laws to accord with the Convention.

4. PROTECTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

Article 37(a) of the Convention states that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.

Contrary to what is stated in the official report⁴⁵, OMCT believes that Pakistani laws do not afford a sufficient protection against torture and other ill-treatment. This legislative lack is among the main causes of many cases of torture reported in Pakistan. Children are common victims of these violations.

OMCT is extremely concerned about specific cases of torture, cruel, inhuman and degrading treatment or punishment inflicted on children that have regularly been reported in Pakistan. Pakistani police frequently torture children in order to extract confession, punish or intimidate detainees, or extort payment from them. Children interviewed by Human Rights Watch in 1998 experienced abuse ranging from slaps in the face following arrest to sustained torture over the course of several days, including being hung upside-down, beaten, whipped with rubber belts or leather slippers, or deprived of sleep⁴⁶. Sexual abuse seems also to be a common practice, but difficult to document since the social and cultural factors inhibit children to testimony about such violations.

4.1. Legal framework

The Constitution provides a protection against some forms of torture when it states that “no person shall be subjected to torture for the purpose of extracting evidence”⁴⁷. The Pakistan Penal Code, under its section 337(k) provides punishment for whoever causes hurts for the purpose of extorting confession, restoring any property or satisfying any claim. Further, articles 37, 38 and 39 of the *Qanoon-e-Shahadat* Order, 1984 invalidate any confession made by an accused under force or threat.

⁴³ Article 2.

⁴⁴ Article 3.

⁴⁵ “The Constitution very clearly supports the provision of [art. 37(a) of the] Convention. [...] The constitutional safeguards are fully reflected in the laws of the land, especially in the case of children.”, p.40.

⁴⁶ Prison Bound – the denial of Juvenile Justice, Human Rights Watch, 1999, pp.24-27.

⁴⁷ Article 14(1).

More generally, the Pakistan Penal Code under its section 332 refers to the notion of hurt: “whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.”, section 332(1). Punishment for committing hurt can either be in the form of *qisas* (punishment by causing similar hurt) or *diyat* (compensation)⁴⁸.

If the laws ruling the crime of hurt and its punishment, can be welcomed for extending the protection against certain forms of torture throughout all the society (not only torture done by state agents, but also torture done in private situations), OMCT strongly condemns the kind of punishment that are awarded. *Qisas* punishes any offence against the human body by causing a similar hurt to the offender. OMCT condemns all forms of corporal punishment that are awarded as penal sanctions.

Concerning children, section 337-M of the Penal Code says that no *qisas* can be awarded when the offender is a minor, but sections 299(a) and 299(i) define a minor as “a person, being a male, under the age of eighteen years”. The words “being a male” potentially expose minor women to *qisas* punishments.

Pakistan legislation also allows corporal punishment in case of *hudood* offences. *Hudood* are the offences mentioned in the Quran for which fixed penalties are provided in the *Sharia*. Unlawful sexual intercourse (*zina*), theft (*sariqa*), drinking alcohol (*shrub al-khamr*) and false accusation of unlawful sexual intercourse (*qadhif*) are quranic crimes. As an example, anyone who’s accused of sexual relation outside marriage is awarded with 100 lashes or with death by stoning, and anyone who steal something is to be punished by amputation of the right hand. According to human rights organizations, even if these punishments can legally be imposed, in practice no child has been sentenced to stoning to death, amputation or public flogging⁴⁹. Nevertheless, OMCT would recommend that the amend the law so as to conform it to the Convention requirements. Furthermore, as in the case of *qisas*, OMCT is firmly opposed to the punishments awarded under the *hudood* laws, since they can be themselves considered as torture.

The official report states that the sentence of whipping has been abolished for all types of crimes, by the Abolition of the Punishment of Whipping Act, 1996⁵⁰. Disappointingly, section 3 of this act makes an exception in cases where the punishment of whipping is provided for as *hadd*. In fact whipping is preserved for Islamic crimes such as illicit sexual intercourse, theft and consumption of alcohol.

In its 1997 report on Pakistan, the Special Rapporteur on Torture declared that the provisions of the Pakistan Prisons Act, 1894 and Pakistan Prison Rules were also untouched by the Abolition of Whipping Act. These provide that the superintendent of the jail may award up to 30 lashes (up to 15 lashes for children under 16 year old) for serious prison offences committed by male criminals⁵¹.

⁴⁸Firstly introduced by the *Qisas and Diyat Ordinance of 1991*, *qisas* and *diyat* were definitively promulgated by the Criminal Law Amendment Act of 1997.

⁴⁹ “Pakistan: Juveniles sentenced to death”, Amnesty International, 1999, p. 9.

⁵⁰ “Progress Report on the implementation of the Convention on the Rights of the Child”, Government of Pakistan, 2000, p. 143.

⁵¹ Report of the Special Rapporteur on Torture, Mr. Nigel S. Rodley, submitted to the 53rd session of the Commission on Human Rights, E/CN.4/1997/7/Add.2, October 1996, para. 72.

The Juvenile Justice System Ordinance 2000 in its article 12(b) provides that “no child shall be [...] handcuffed, put in fetters or given any corporal punishment at any time while in custody”. Similarly to the other laws, this ordinance gives a narrow definition of torture. As an example, the psychological aspect of torture is clearly omitted.

If some forms of torture appear to be covered by the legal texts mentioned, a more encompassing and clearer acceptance of torture is vacant, particularly in regards to children. OMCT wishes the Committee to ask to Pakistani authorities to introduce in their legislation a definition of torture which should at least be as the one given by the Convention Against Torture⁵². By inviting Nigel Rodley, the U.N. Special Rapporteur on Torture, to investigate the custodial torture situation in Pakistan (Rodley’s visit took place in 1996), the Government implicitly affirmed its recognition of the international standards on torture.

OMCT is firmly convinced that states parties to the Convention shouldn’t limit themselves to CAT’s article 1, on the contrary they should use it as a base to build a more comprehensive definition deemed to effectively protect children from violence. Violations such as sexual abuse of children by public authorities, which regretfully occur in Pakistan, need to be considered and to be introduced in the legal framework. Clear and strict definition of punishment for violence against children is also a necessary step.

4.2. Cases of torture

On 2 August 1995, Shazia Bano, a 17-year-old pregnant woman, was allegedly raped by police officials in front of her husband, Farooq da da, alias Farooq Patni, at their home in Karachi. A number of officers had reportedly raided the home and severely beaten Farooq, his father-in-law Abdul Samad, and his brothers-in-law Abdul Wahid (aged 14) and Abdul Abid Abdul Sajid⁵³.

On 17 May 1997, Mohammed Yaman, a local mosque employee, and Fahimullah, a 14-year-old student, were reportedly subjected to, respectively, 75 and 32 lashes for alleged homosexual acts in a public toilet in Bara Bazar. Their punishment is said to have taken place in front of a large crowd in a compound in Bara Bazar in the North West Frontier Province. It is alleged that Maulana Abdul Hadi, a local leader and elders of the Afridi tribe passed sentence on the two after they allegedly confessed their guilt to having sex in a public toilet. The information suggests that the two initially denied the acts but later confessed. It is alleged that Fahimullah, was paid 100 rupees (3\$) for the act⁵⁴.

On 24 June 1997, the Peshawar daily *Frontier Post* reported that police officers in the town of Jauharabad had allegedly assaulted four boys, Tariq Aziz, Muhammad Hassad, Farooq and

⁵² Article 1 states that “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, but it does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

⁵³ Report of the Special Rapporteur on Torture, Mr. Nigel S. Rodley, submitted to the 53rd session of the Commission on Human Rights, E/CN.4/1997/7/Add.1, October 1996, para. 358.

⁵⁴ Urgent Appeal, OMCT, PAK 300597, 30 May 1997.

Ghulam Abbas, while holding them in custody. The boys were detained as suspects in theft cases. The boys' parents told to the *Frontier Post* that their children were repeatedly removed from the lockup on the pretext of interrogation, and sodomized by the assistant sub-inspector, the head constable and other constables⁵⁵.

On 12 May 1998, Ghulam Jilani, aged 14, was allegedly arrested by police in Mansehra on theft charges. The boy was pronounced dead a few hours later at the Mansehra hospital. The police alleged that the victim had tried to hang himself, but the autopsy report showed that he died of head injuries and that his body bore marks of torture. He was also allegedly sexually abused⁵⁶.

On 11 April 1999, uprising by children in the juvenile ward of Punjab's Sahiwal Central Prison dramatically shed light on the sexual abuse of juvenile inmates by prison staff as well as the lack of effective complaint mechanisms. The incident was set off when members of the prison staff beat Aslam, a 13 years-old boy, in the juvenile ward, for complaining of sexual abuse by Zulfiqar, the head warder⁵⁷.

On June 27 2002, Yaqoob Masih, a 15-year-old Pakistani Christian, died following torture inflicted by police during interrogations. Yaqoob Masih was a resident of Christian Kachi Abadi, a small Christian community. Yaqoob Masih witnessed an act of bribery between customs officers and the owner of a vehicle who was evading paying taxes. Yaqoob was warned not to tell senior customs officials about what had happened, but Yaqoob said that he, as a Christian, would have to tell the truth if asked. Fearing that Yaqoob might talk, the owner of the van lodged a false case against Yaqoob, resulting in his arrest by the local police. On the influence of the vehicle owner, the police tortured Yaqoob, breaking several ribs. He received other serious injuries on his body as a result of the cruel acts of torture by the police, including pulling out his finger nails with a pair of pliers. Succumbing to the excruciating pain inflicted by the barbaric actions of the police, Yaqoob passed out and was taken to the hospital where he later died⁵⁸.

4.3. Training of law enforcement, prison and judicial officials

As Human Rights Watch explains, "even a well-drafted law is unlikely to achieve its objectives in the absence of a trained and accountable police force, adequately staffed probation departments, judges that are familiar with the applicable domestic law and international standards, and facilities that are designed for the guidance and care of juvenile offenders"⁵⁹.

OMCT welcomes the training measures for prison, police and judiciary officials that Pakistan set up and that are presented in the official report⁶⁰. Training programmes for bringing awareness on human rights standards to public authorities in charge of juveniles is a fundamental step in the fight against child violations and abuses. OMCT would like to know

⁵⁵ "Prison Bound – the denial of Juvenile Justice", Human Rights Watch, 1999, p. 27.

⁵⁶ Report of the Special Rapporteur on Torture, Mr. Nigel S. Rodley, submitted to the 56th session of the Commission on Human Rights, E/CN.4/2000/9, February 2000, para. 826.

⁵⁷ "Prison Bound – the denial of Juvenile Justice", Human Rights Watch, 1999, p. 51.

⁵⁸ La voix des Martyrs, Aide aux Eglises Martyres (AEM), December 2002, p. 8.

⁵⁹ "Prison Bound – the denial of Juvenile Justice", Human Rights Watch, 1999, p. 7.

⁶⁰ "Progress Report on the implementation of the Convention on the Rights of the Child", Government of Pakistan, 2000, p. 109.

more about the content of these trainings, about the number of public officials concerned, and about any evaluation that has been done.

5. PROTECTION AGAINST OTHER FORMS OF VIOLENCE

The Convention aims at guaranteeing a comprehensive protection of children against all forms of violence and abuse. States parties are asked to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents or others⁶¹. Specific measures against child labour⁶², child sexual abuse⁶³, child trafficking⁶⁴, and child enrolment in the army⁶⁵ are also provided.

As a state party, Pakistan committed itself to adapt its legal framework to the Convention. In January 2000, Anees Jillani and Zarina Jillani affirmed that virtually nothing had been done during last years to adapt the laws or the policies on the pattern of the Convention⁶⁶. OMCT regrets that the official report consecrate only a very short paragraph⁶⁷ to child sexual abuse, prostitution and trafficking. This is highly representative of the poor social awareness on these issues and on the difficulties that the Government has in coping with them. There is a need to break the deafening silence around the issue of child sexual abuse and child commercial sexual exploitation as well as to add substance to the debate and decisions on the subject of sexual abuse and sexual exploitation of children in Pakistan⁶⁸.

5.1. Child sexual abuse and prostitution

Child sexual abuse is probably one of the least acknowledged and least explored forms of child abuse in Pakistan⁶⁹. This situation may be a result of the taboo attached to this issue. Such matters continue to be viewed as domestic affairs and the police only take action in cases of particular cruelty and violence. In addition, the media often tends to report only sensational cases⁷⁰.

According to a report by Madadgaar, a joint venture between UNICEF Pakistan and Lawyers for Human Right and Legal Aid (LHRLA), 1183 cases of child physical and sexual abuse were

⁶¹ Article 19

⁶² Article 32.

⁶³ Article 34.

⁶⁴ Article 35.

⁶⁵ Article 38.

⁶⁶ Anees Jillani, Zarina Jillani, "Child Rights in Pakistan", Society for the Protection of the Rights of the Child, Islamabad, January 2000, p. 135.

⁶⁷ "Progress Report on the implementation of the Convention on the Rights of the Child", Government of Pakistan, 2000, p. 126.

⁶⁸ "Sexually abused and sexually exploited children and youth in Pakistan: a qualitative assessment of their health needs and available services", United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), New York, 2001, p. 25.

⁶⁹ Some national and international organizations are actually working to improve knowledge on child abuse (among others, Sahil, Lawyers for Human Right sand Legal Aid, and UNICEF Pakistan).

⁷⁰ "Sexually abused and sexually exploited children and youth in Pakistan: a qualitative assessment of their health needs and available services", United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), New York, 2001.

reported in 2001, while 447⁷¹ cases were reported in the first four months of 2002⁷². Rights activists say that number of child abuse is increasing, clearly indicating the failure of the Government to tackle the problem⁷³.

In 2001, the Pakistani National Commission for Child Welfare and Development (NCCWD), on behalf of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), has conducted a qualitative assessment of sexual abuse and sexual exploitation of children. This study (based on a population of 74 abused children) observed that girls were more likely to be molested by family members, acquaintances and neighbours, whereas the majority of boys were molested by teachers and total strangers; victims of sexual abuse tended to be very young (around 10 years old)⁷⁴.

Child prostitution is another major social problem still very hidden in Pakistan. Human rights organizations say that child prostitution not only exists but it is even on the rise in Pakistan. Poverty, low education level, and social structure that disadvantage children are among the main factors leading to child prostitution.

Female prostitution normally takes place in brothels under cover of dancing bars. Male prostitutes are employed in places like bus stations, hotel and cinema halls. Male prostitutes can be as young as 13 years old, female prostitutes mostly involve themselves at the age of 11 or 12 (the first night of a virgin girl cost much more than usual rate), but cases involving younger children have been recorded. Child prostitutes suffer from repeated sexual abuse. Children in brothels have no control in negotiating how many clients they serve a night. Clients rarely use condoms, exposing children to HIV and other STDs. Medical care is rarely available. Male prostitute can be found everywhere in Pakistan, but in areas such as the Frontier Province some wealthy elders customarily use young attractive boys for sexual pleasure⁷⁵. Child prostitutes are often trafficked from other regions or countries.

Child sexual exploitation has also strong links with juvenile justice issue; in fact, children who are commercially sexually exploited are often put in prison for minor offences such as theft. OMCT wants to express its high concern with these repressive measures targeting child prostitution that, far from solving the problem, exposes children to a new risk of physical and sexual abuse (see chapter 6).

5.1.1. Legal framework

Most of the child sexual abuse in Pakistan is registered under the *Zina* Ordinance of 1979, which prohibits all forms of illegal sexual intercourse, including rape. Since both participants to the unlawful sexual intercourse are punished, women that have been raped are liable to accusation if they cannot prove their statements. As Anees Jillani and Zarina Jillani explain, severe punishments are provided for this offence, whether as *hadd* (stoning to death for a Muslim, and 100 stripes in public for a non-Muslim) or *taazir* (rigorous imprisonment up to 25

⁷¹ 167 young boys and girls murdered, 67 raped, 84 sodomised and 70 seriously injured.

⁷² The Karachi daily DAWN affirms that 1615 cases of physical and sexual abuse were reported against children in prominent national and provincial newspapers in 2002, 3 January 2003.

⁷³ "Pakistan : Focus on violence against children", OCHA, www.irinnews.org.

⁷⁴ "Sexually abused and sexually exploited children and youth in Pakistan: a qualitative assessment of their health needs and available services", United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), New York, 2001.

⁷⁵ Anees Jillani, Zarina Jillani, "Child Rights in Pakistan", Society for the Protection of the Rights of the Child, Islamabad, January 2000, p. 160.

years in case of rape, up to 10 years for adultery, and additionally 30 stripes and fine)⁷⁶. OMCT wishes to express its concern for this law that promotes punishment rather than rehabilitation and reintegration of victims.

Section 366-A of the Pakistan Penal Code deals with procurement of minor girls and maintains that whoever induces any minor girl under the age of eighteen years into an act that force or seduce her to illicit intercourse is punishable with imprisonment which could extend to ten years and liable to fine.

Sections 375 and 376 of the Penal Code forbid acts of rape and punish it “with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”⁷⁷. Certain case of sexual abuse are also prohibited by section 377 concerning unnatural offences, that states that whoever voluntarily has carnal intercourse against the order of the nature with any man, woman or animal shall be punished with imprisonment which could extend to life imprisonment and liable to fine. Acts of sodomy are prohibited by this provision.

Child prostitution is mostly covered by the same legal framework as child sexual abuse. Nevertheless, other legal protection schemes seem to exist. According to the ESCAP report, the Provincial Suppression of Prostitution Ordinance of 1961 is a comprehensive legislation related to prostitution. “This law makes it illegal to keep a brothel; to attract attention by words, gestures, wilful and indecent exposure of the body for the purpose of prostitution of a girl under 16 years of age; to procure, entice or lead away, or attempt to do so, any woman or girl for the purpose of prostitution; to bring, or attempt to bring, into a province any woman or girl with a view to luring her to become a prostitute; and to keep or detain any woman or girl against her will, at any place, with intent to force her to have sexual intercourse with any man other than her lawful husband”⁷⁸.

At a provincial level, the Sindh Children Act, 1955 and the Punjab Children Ordinance, 1983 cover some forms of child sexual abuse. Anees Jillani and Zarina Jillani, maintain that under these laws it is a crime to allow a child between the age of four and 16 years to frequent a brothel not being the home of the child, or to abet, cause or encourage the seduction or prostitution of a girl under 16 years or encourage anyone other than her husband to have sexual intercourse with her. These offences are punishable with imprisonment up to two years and with fine⁷⁹.

The provisions included in the *Zina* Ordinance, the Pakistan Penal Code and the Suppression of Prostitution Ordinance give a quite complex legal framework for the protection of children against sexual abuse, exploitation and trafficking⁸⁰. In accordance with the conclusions of the

⁷⁶ Anees Jillani, Zarina Jillani, "Child Rights in Pakistan", Society for the Protection of the Rights of the Child, Islamabad, January 2000, p. 162.

⁷⁷ Section 376.

⁷⁸ “Sexually abused and sexually exploited children and youth in Pakistan: a qualitative assessment of their health needs and available services”, United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), New York, 2001.

⁷⁹ Anees Jillani, Zarina Jillani, "Child Rights in Pakistan", Society for the Protection of the Rights of the Child, Islamabad, January 2000, p. 165.

⁸⁰ The problem of child pornography, which we didn't treat in this report, is also relevant in Pakistan and, regrettably, national legislation is weak on this issue (see www.ecpat.net).

ESCAP report⁸¹, OMCT believes that Pakistan still has to harmonize its legal provisions on the basis of the Convention. First, the age defining a child should be brought up to 18 years; indeed protection against sexual violence has to be guaranteed to all children, that means up to 18 years of age. Second, an equal legal treatment for everybody should be ensured, in particular the protection of female children has to be ameliorated (as for the *zina* crimes, female victims should no longer be punishable for an abuse they suffered). Finally, stricter punishment against perpetrator should clearly be provided by every law dealing with sexual abuse and exploitation of children, but they should not consist in act of torture themselves.

5.1.2. Cases

Child sexual abuse

The scarcity of filed cases and denunciations of child sexual abuse makes it very difficult to tackle this problem. This scarcity reflects the social and cultural taboo that is attached to this issue, and on the poor likelihood of seeing such denunciation succeed, if not even turned against the victim (rape allegations transformed in adultery confessions under the *Zina* Ordinance). Hereafter, some cases that have been reported by human rights defenders.

In 1997, the special rapporteur on torture referred to the Commission on Human Rights the case of Shanaz, a 13-year-old girl employed as a housemaid in Lahore, who was reportedly raped by her employer's son and threatened with death if she reported the incident. After her parents approached the employer regarding the incident, the employer allegedly filed a false case of theft against Shanaz and, as a consequence, she was arrested in October 1994. After a habeas corpus petition had been filed in the Lahore High Court by her brother, she was discovered in the home of a police subinspector in Model Town. The sub-inspector had allegedly raped her repeatedly in custody⁸².

Among the child sexual abuse cases reported in Karachi during 1998-99, the rape of a baby girl just over two years old, and that of a 6-year-old girl raped thrice by her teacher. She had a vaginal tear and was bleeding profusely when the case was reported after she had been raped violently for the third time⁸³.

5.1.3. Measures against sexual abuse and exploitation

In accordance with the engagements that Pakistan took at the first international Congress against Commercial Sexual Exploitation of Children⁸⁴, the Government introduced the "National Plan of Action (NPA) and policy for the elimination of child labour" in March 2000. Contrary to other countries present at the congress, Pakistan's plan of action was

⁸¹ "Sexually abused and sexually exploited children and youth in Pakistan: a qualitative assessment of their health needs and available services", United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), New York, 2001, p. 30.

⁸² Report of the Special Rapporteur on Torture, Mr. Nigel S. Rodley, submitted to the 53rd session of the Commission on Human Rights, E/CN.4/1997/7/Add.1, October 1996, para. 353.

⁸³ "Confronting Reality: Sexual Exploitation and Abuse of Children in Pakistan", Save the Children Sweden, 2000.

⁸⁴ The first international Congress was held in Stockholm in August 1996, and a second took place in Yokohama in December 2001.

designed to implement ILO Convention 182 against the worst forms of child labour, rather than specially focusing on sexual exploitation of children. Therefore, the National Commission for Child Welfare and Development (NCCWD), after consulting with the NGOs, has drafted a new NPA clearly aiming at coping with child sexual abuse. OMCT believes that Pakistan Government should adopt this draft plan and make it an integral part of its policy for child welfare, taking all the appropriate legislative measures in order to implement it.

Political initiatives, such as NPAs, are fundamental, but they require a great deal of work to be implemented. According to child rights workers, the implementation phase seems to be the real problem in policy making in Pakistan. The priority should be given to the enforcement of existing laws, in order to effectively protect children and prosecute people who sexually abuse and exploit them. Parallel, law enforcement personnel need to be trained in order to increase their awareness of these issues as well as of how best to implement existing legislation⁸⁵.

As provided by article 39 of the Convention, Pakistan should take all appropriate measures to promote physical and psychological recovery as well as social reintegration of child victims of child sexual abuse and exploitation. Currently, in Pakistan, programmes for recovery, psychosocial rehabilitation and reintegration of victims are gravely underdeveloped. Some NGOs are putting in place counselling services and reintegration programmes for victims and families, but these actions remain few and lack of a clear governmental support. There is an urgent need to establish such facilities in all the major urban centres of the country as well as programmes in the smaller towns and provinces⁸⁶.

5.2. Child trafficking

Child trafficking is another major social problem often linked with child sexual abuse and prostitution. Female prostitutes are often trafficked from other regions or countries. Victims are often voluntarily trafficked falling prey to prospects of marriage or offers of work. The most common route is Bangladesh, through India to Pakistan, but some girls arrive from Burma, Sri Lanka, India and Afghanistan⁸⁷. Afghan refugee camps are also told to be a source of child prostitutes.

Not only Pakistan is a source, transit and destination country for trafficking in women and children for sexual exploitation, but also for bonded labour. One of the most notorious cases of child trafficking was the smuggling of Pakistani children to Arab countries to become camel jockey. According to SPARC, the desert areas of Southern Punjab, interior Sindh and the coastal towns are the centres of this illegal trade⁸⁸.

5.2.1. Legal framework

⁸⁵ "Sexually abused and sexually exploited children and youth in Pakistan: a qualitative assessment of their health needs and available services", United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), New York, 2001, p. 30.

⁸⁶ "Sexually abused and sexually exploited children and youth in Pakistan: a qualitative assessment of their health needs and available services", United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), New York, 2001, p. 28.

⁸⁷ Source: www.ecpat.net

⁸⁸ "The State of Pakistan's Children 2000", Society for the Protection of the Rights of the Child (SPARC), March 2001.

Article 35 of the Convention requires States Parties to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.” ILO Convention 182 also prohibits “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children”⁸⁹. Furthermore both conventions prohibit bonded labour, slavery, prostitution, and pornography⁹⁰ which are the usual purposes for child trafficking.

Pakistan has laws legislating against the abduction, sale or trafficking of children which are rooted in article 11(2) of the Constitution stating that “all forms of forced labour and traffic in human beings are prohibited”. Selling and buying minor for purposes of prostitution is forbidden by sections 372 and 373 of the Penal Code, which provide imprisonment up to ten years and fine. Under article 364-A of the same code, life imprisonment or capital punishment are awarded for kidnapping or abduction of children under 10 years. The *zina* Ordinance prohibits enticing, leading away, concealing or detaining a female person for illicit intercourse (no differences with regard to ages), and punishes it with imprisonment up to 25 years, 30 strips and fine.

5.2.2. Cases

Concerning trafficking for sexual abuse and exploitation, ECPAT report states that “Pakistan is a receiving country for thousands of trafficked women every year, mainly from Bangladesh. [...] Estimates on the number of women and children vary widely. At minimum thousands of women and children are trafficked into and out of the country each year”⁹¹.

In 1994, OMCT denounced the practice of sending children, some as young as 5 years old, to the Gulf Region to be used as jockeys in camel racing. Some were sold, others abducted. OMCT is deeply concerned about the fact that this practice still exists today. In March 2003, OMCT delegate for Pakistan, Khalida Salimi, reported that 360 children are estimated to be trafficked as camel jockeys to the Middle East and Gulf States every year.

In 2002, a Pakistani human rights organization (Ansar Burney Welfare Trust International) requested the Maltese Government to cooperate in bringing back to Pakistan more than 100 children smuggled to Malta for adoption or for child prostitution⁹².

OMCT wishes to know which are the concrete measures that the Government has adopted to tackle with this grave problem.

6. CHILDREN IN CONFLICT WITH THE LAW

Articles 37 and 40 of the Convention define the basic international standards for children in conflict with the law. The Committee has indicated that the United Nations rules and guidelines relating to juvenile justice can be considered as further framing the implementation of articles 37 and 40. These provisions are the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the UN Rules for the Protection of

⁸⁹ Article 3(a).

⁹⁰ Articles 32, 34, 36 of the Convention and article 3 of the ILO Convention 182.

⁹¹ Source: www.ecpat.net

⁹² Appeal of Ansar Burney Welfare Trust International, 3 June 2002, source : HumanRightsNews@aol.com.

Juveniles Deprived of their liberty, and the UN Rules for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

Human Rights Watch summarizes that in the spirit of the Convention and the UN standards, juvenile justice “is predicated on the adjudication of children’s cases with a view to their rehabilitation and early reintegration into their communities. It entails separate custodial arrangements for children, a right to counsel, the timely processing of their cases, and the liberal use of alternative sentencing measures, such as release on probation or education and vocational training. The Convention prohibits the imposition of capital punishment as well as torture and any other form of cruel, inhuman, or degrading treatment or punishment”⁹³.

In 1999, Human Rights Watch affirmed that the juvenile justice system in Pakistan was far from this ideal situation provided by international instruments. In *Prison Bound – the denial of Juvenile Justice*, the human rights organization denounced that children were judged under the same criminal laws as adults, were awarded with hard sentences (even death sentence), usually shared overcrowded cells with adults, were housed in dormitory-style barracks, were routinely subjected to physical torture, weren’t provided with education and training facilities, couldn’t access proper medical services, and were victims of hard disciplinary measures.

In last decades, juvenile justice in Pakistan has always been a sensitive human rights issue. Children have been the most vulnerable victims of the slow and inefficient justice system. An estimated 4,000 children are thought to be in jails across the countries. According to statistics from the Society for the Protection of the Rights of the Child (SPARC), in 2001 some 92 children were detained in the south-western province of Baluchistan, 647 in Sindh, 723 in NWFP and 2,524 in the Punjab Province⁹⁴.

Till the year 2000, protection of children in conflict with the law was dispatched in different federal and provincial legal texts, mainly the Pakistan Penal Code, the Pakistan Criminal Procedure Code, the Sindh Children Act of 1955, and the Punjab Youthful Offenders Act of 1983. While the two federal codes didn’t provide child offenders with special protection and treatment as disposed by the Convention, the two provincial legal texts largely did. Unfortunately, as Anees Jilliani and Zarina Jilliani stress, these provincial laws remained partially and inefficiently applied⁹⁵.

In July 2000, the Juvenile Justice System Ordinance was promulgated, giving a federal legal instrument aiming at better protecting juvenile offenders all over the country. Major innovations have been introduced by this ordinance, namely concerning the death penalty, labour during imprisonment, corporal punishment in police custody, arrest under preventive laws, trial procedures, and use of fetters or handcuffs.

The official report admits that the two federal codes ruling juvenile justice till 2000 (the Pakistan Penal Code and the Criminal Procedure Code), were not applicable in some parts of Pakistan (the Federally Administered Tribal Areas, FATA, of the Frontier Province, and the Provincially Administered Tribal Areas, PATA, of Baluchistan and Frontier Provinces)⁹⁶.

⁹³ “Prison Bound – the denial of Juvenile Justice”, Human Rights Watch, 1999, p. 1.

⁹⁴ “Pakistan : Focus on boys behind bars”, OCHA, www.irinnews.org.

⁹⁵ Anees Jilliani, Zarina Jilliani, "Child Rights in Pakistan", Society for the Protection of the Rights of the Child, Islamabad, January 2000, pp. 182-185.

⁹⁶ “Progress Report on the implementation of the Convention on the Rights of the Child”, Government of Pakistan, 2000, p. 103.

OMCT would like to know which laws apply in the aforementioned regions, and also if the Juvenile Justice System Ordinance 2000 is applicable in these regions.

6.1. Age of criminal responsibility

In Pakistan the minimum age for criminal responsibility is 7 years⁹⁷, but can be raised up to 12 if the child has not sufficient maturity of understanding to judge of the nature and the consequences of his act⁹⁸. OMCT is concerned about the ambiguity of the criterion of “sufficient maturity of understanding” and the arbitrary power that is given to the court to evaluate criminal responsibility of a child between 7 and 12 years.

OMCT believes that the minimum age for criminal responsibility should be raised in order to better respond to international standards. Article 4.1 of the Beijing Rules states that “in those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”. The commentary that goes with this article clarifies that the minimum age of criminal responsibility differs widely owing to history and culture, but if the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless.

Consequently, OMCT is convinced that determining the age of criminal responsibility at seven years is too young. A definition of the age of criminal responsibility in accordance with the Convention would have major positive consequences on the juvenile justice system.

6.2. Deprivation of freedom

6.2.1. Prompt access to assistance

The Convention maintains that “every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance”⁹⁹. The Beijing Rules further declare that “upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension”¹⁰⁰.

According to article 3(1) of the Juvenile Justice System Ordinance, “every child who is accused of the commission of an offence or is a victim of an offence shall have the right of legal assistance at the expense of the State”.

Article 10(1.a) of the same Ordinance states that “where a child is arrested for commission of an offence, the officer in charge of the police station in which the child is detained shall, as soon as may be, inform the guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the juvenile court before which the child shall be produced.”

⁹⁷ Section 82 of the Penal Code.

⁹⁸ Section 83.

⁹⁹ Article 37(d).

¹⁰⁰ Article 10(1).

OMCT wish to remind that of all phases of the proceedings of juvenile justice, it is at the moment of the arrest, or immediately after during custody, that the minor is most exposed to risks of torture and other forms of cruel, inhuman and degrading treatment. It is also at this stage that the minor risks being denied the presence of one of his parents, of a social worker or of a legal representative who would be better suited to provide protection against this type of action.

Therefore, in the spirit of the international guidelines, OMCT believes that the expression “as soon as may be” in article 10(1.a) of the Ordinance should be substituted by “immediately” or “promptly”. The same reference to an immediate access should be added to article 3(1) of the ordinance, providing immediate legal assistance to juvenile offenders.

6.2.2. Police custody and pre-trial detention

Article 10(2) of the Constitution of Pakistan provides 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 a magistrate”.

In February 2000, Human Rights Watch reported that children in Pakistan usually remained in police stations without being brought before a judge well beyond the twenty-four hours permitted by law¹⁰¹. In October 2000, Amnesty International published a report on torture and ill-treatment which confirmed that children deprived of liberty in Pakistan often spent as long as three months in police custody before they even see a judge for the first time¹⁰².

The same procedural slowness exists once the juvenile offender has been officially charged and has to await the trial. Once charged, they typically spent more months, or even years, in custody, waiting for their cases to be concluded. The vast majority of the accused children were eventually found not guilty by the courts - the conviction rate for children was between 13 and 17 %¹⁰³.

The Juvenile Justice System Ordinance addresses the question of pre-trial detention. Release on bail is provided when a child accused of a crime punishable with death has been detained awaiting trial for more than a year¹⁰⁴, when a child accused of an offence punishable with life imprisonment is held pending trial for more than six months¹⁰⁵, or, when a child accused of an offence other than the aforementioned ones is detained waiting his or her judgment for more than four months¹⁰⁶.

OMCT wishes to emphasise that, as far as possible, detention prior to trial should be avoided and limited to exceptional circumstances. OMCT believes that the Juvenile Justice System

¹⁰¹ Letter of M. Jendrzeczyk to Sandy Berger, National Security Council, 11 February 2000, <http://www.hrw.org/campaigns/sasia/pakistan.htm>.

¹⁰² “Hidden scandal, secret shame – Torture and ill-treatment of children”, Amnesty International, October 2000, p.75.

¹⁰³ “Hidden scandal, secret shame – Torture and ill-treatment of children”, Amnesty International, October 2000, p.75.

¹⁰⁴ Article 7(a).

¹⁰⁵ Article 7(b).

¹⁰⁶ Article 7(c).

Ordinance should prevent such situations by clearly providing rules defining pre-trial detention in accordance with the Convention.

The Convention, together with other international norms, clearly states that the deprivation of freedom must only be used as a last resort, and for the shortest possible period. Regretfully, despite the existence of laws aiming at shortening the pre-trial phase, situation in Pakistan seems still to be critical. Many of the 4.000 juvenile detainees held during 2001, were detained for minor offences (such as theft), and were often detained awaiting trial for longer than the maximum possible sentence for the alleged offence¹⁰⁷. Moreover, despite the requirements of the Juvenile Justice System Ordinance 2000, legal aid was not provided to all juveniles¹⁰⁸.

The case of Ali Sher can be seen as the particularly tragic outcome of the malfunction of the Pakistani juvenile justice system. “On November 3, 2001, Ali Sher, 21, was hanged for murder at the district prison in Timergarah. The convict was only 13 when he killed the younger sister of his sister-in-law in Swat, Mingorah district. Sher had exhausted all legal options and his review petition had been dismissed by the Supreme Court about a fortnight previous to his hanging. Sher’s was the first-ever execution by hanging in the history of the Lower Dir district¹⁰⁹”. The young Ali Sher had been held in prison for 8 years waiting for his sentence to be pronounced. He was finally sentenced to death, since during his detention period he came of age and was therefore no longer protected from death penalty as provided by the Juvenile Justice System Ordinance 2000.

The Juvenile Justice System Ordinance provides some special proceedings concerning release on bail. According to article 10(2), “where a child accused of a non-bailable offence is arrested, he shall, without any delay and in no case later than twenty-four hours from such arrest, be produced before the juvenile court.” According to article 10(3), in case of bailable offences, a child shall, if already not released, be released by the juvenile court on bail, with or without surety, unless the release can bring him in association with criminals or put him in danger, in which case the child shall be placed under the custody of a Probation Officer or a suitable person, but shall not under any circumstances be kept in a police station or jail.

The Juvenile Justice System Ordinance further provides special treatment for children under the age of 15 years. Article 10(5) states that, if arrested for an offence punishable with imprisonment of less than ten years, the child under 15 years shall be treated as if he was accused of commission of a bailable offence. Further, “no child under the age of 15 years shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code [of Criminal Procedure]”¹¹⁰.

OMCT warmly welcomes the special treatment provided for juvenile offenders by commuting their non-bailable punishment in bailable ones, and by prohibiting their preventive detention. Nonetheless, OMCT is concerned about the limit of age (15 years) that is given to this special provision, and would recommend to the Government to extend it to all the children by bringing it up to 18 years.

¹⁰⁷ In 2001, OCHA reported the case of Nasir, who was in jail awaiting trial for having been caught, two years earlier, carrying drugs from North West Frontier Provinces to the capital. See www.irinnews.org.

¹⁰⁸ “Pakistan: Annual Report”, Amnesty International, 2002.

¹⁰⁹ “The Death Penalty Worldwide – 2002 report”, Hands Off Cain, 2002, p. 52.

¹¹⁰ Article 10(6).

6.2.3. Condition of detention: separation of adults and minors

OMCT is very concerned about the condition of detention of juvenile offenders in Pakistan. Human rights organisations have denounced the critical situation of child prisoners, who are not being held in accordance with the international standards, namely concerning the fundamental principle of separation between adults and minors. Such separation is a fundamental condition to protect juveniles from torture and all other forms of inhuman and degrading treatments while in custody or in detention. In Pakistan separation of children deprived of freedom is provided either by creating special juvenile institutions, or by putting children in separate wards of adult prisons, but no legal provision exists for separation during police custody. In accordance with the international norms, OMCT firmly advocates for ensuring separation between adults and minors, and between accused and convicted, from the moment of the arrest.

Establishment of reformatories for boys under the age of 15 is authorised, but not required, by the Reformatory School Act, 1897. In Sindh and Punjab provinces, the creation of industrial schools for juvenile offenders, of remand homes and of borstal institutions is provided by laws dealing with juvenile justice¹¹¹. According to the Pakistan Prison Rules¹¹², children sentenced for three month or over are to be sent to borstals or reformatories, nonetheless, in 1999, only three juvenile institutions were available in Pakistan (one borstal in Bahawalpur, Punjab, one industrial school and one remand home both in Karachi, Sindh) and they were ruled like normal prisons. Many of the abuses prevalent in Pakistani jails were replicated in these juvenile institutions. Human rights organizations, as well as national press reported that abuse and torture of children in such institutions is a problem. In 1999, Human Rights Watch reported that 17.4 percent of the Karachi industrial school's inmates had been tortured or otherwise ill-treated during their confinement in the facility¹¹³, extortion and narcotics trafficking by lower-level staff took place in Karachi institutions, and solitary confinement and shackles were used as punitive measures in Bahawalpur¹¹⁴.

Pakistan has largely failed in establishing juveniles institutions provided in laws, therefore the majority of convicted or under-trial children are detained in common prisons. The Pakistan Prison Rules provide for segregation of juveniles from all other prisoners. Under-trial and convicted juveniles who are not sent to borstal institution are confined in a separate ward of adult facility prisons. Where such a separate ward is not available, juveniles are to be confined in a cell by night. Despite the fact that juvenile wards in adult prisons are substitutive measure to the lack of juvenile institution, human rights organizations have denounced cases of child prisoners detained along with adults detainees¹¹⁵.

In February 2000, Human Rights Watch launched an appeal to reform the juvenile justice system, reporting that children in Pakistan faced a pattern of abuse beginning at the moment of arrest when they were held together with adults in police lock-ups. While in custody, children and adults were subjected to various forms of torture. While their trials were pending, children

¹¹¹ Respectively, the Sindh Children Act of 1955 and the Punjab Youthful Offenders Ordinance of 1983 for industrial schools and remand homes, and the Punjab Borstal Act of 1926 and the Sindh Borstal Schools Act of 1955 for borstals.

¹¹² "Pakistan has a common prison manual in effect throughout the country. Known as the Pakistan Prison Rules, the manual grew out of the federal government's Jail Reform Conference of 1972 and was adopted by the provinces in 1978.", "Prison Bound – the denial of Juvenile Justice", Human Rights Watch, 1999, p. 34.

¹¹³ "Prison Bound – the denial of Juvenile Justice", Human Rights Watch, 1999, p.24.

¹¹⁴ "Prison Bound – the denial of Juvenile Justice", Human Rights Watch, 1999, p. 54.

¹¹⁵ See "Prison Bound – the denial of Juvenile Justice", Human Rights Watch, 1999, p. 33.

languished in overcrowded, often harsh detention facilities that offered few educational or recreational opportunities, and where there was a serious risk of sexual abuse by prison warders or adult inmates¹¹⁶.

6.3. Children's Courts

Article 40(2.b.iii) of the Convention maintains that every child accused of having infringed the law shall “have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law”. Article 40(3) asks States Parties to “seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law”.

According to Human Rights Watch, in 1999 Pakistani juvenile justice system was far from this ideal situation. Child criminal cases were adjudicated in the same manner and by the same courts as those involving adult offenders. Therefore, children suffered from the vagaries of an overstressed and inefficient criminal justice system, with frequent and prolonged delays in their trial and appeals¹¹⁷.

The Juvenile Justice System Ordinance 2000, as well as some provincial laws¹¹⁸, provide for the establishment of juvenile courts. The federal ordinance states that one or more juvenile courts should be established in every province¹¹⁹, and that these courts “have the exclusive jurisdiction to try cases in which a child is accused of the commission of an offence”¹²⁰.

OMCT wishes to have information on these juvenile courts, especially after the promulgation of the Juvenile Justice System Ordinance in 2000. OMCT would like to know if such courts have been established, and, in case of negative answer, if special judges and procedures have been established to deal with juvenile offenders.

Moreover, OMCT would also like to express its concern about tribal courts (*jirgas*), which operates in the North-West Frontier Province. These courts do not respect the official procedures and violate fundamental human rights: the investigation and the sentencing are done in a discretionary way, and punishments awarded consist often in cruel ill-treatment¹²¹. Children have also been judged by such courts. OMCT would appreciate to have information about *jirgas*, in order to better understand their role and functioning

Finally, OMCT wishes to know more about anti-terrorist courts. The Anti-Terrorism Act of 1997, amended in 2002, provided police with wide-ranging powers to arrest suspects of terrorism and established special court to try cases speedily. In violation with basic principles such as the independence of the judiciary, these tribunals include military staff and can sentence the accused to death. The anti-terrorism law includes a provision permitting to

¹¹⁶ Letter of M. Jendrzeczyk to Sandy Berger, National Security Council, 11 February 2000, <http://www.hrw.org/campaigns/sasia/pakistan.htm>.

¹¹⁷ “Prison Bound – the denial of Juvenile Justice”, Human Rights Watch, 1999, p. 73.

¹¹⁸ The Sindh Children's Act, 1955 and the Punjab Youthful Offenders Ordinance, 1983.

¹¹⁹ Article 4.

¹²⁰ Article 4(3).

¹²¹ The case of Mukhtara Bibi who was condemned by a tribal court to be raped by four men shocked the world in 2002, see Amnesty International, ASA 33/018/2002 .

override all other laws in force. These courts can legally sentence juveniles to death¹²². OMCT urges the Pakistani authorities to give clear explanations on the juridical powers and role of these courts, especially regarding children.

6.4. Death penalty and life imprisonment

Article 12 of the Juvenile Justice System Ordinance 2000, deals with orders that shall not be passed with respect to a child”, and paragraph (a) states that “no child shall be awarded punishment of death [...]”.

OMCT welcomes the clear prohibition that is done to sentence a child to death, but is gravely concerned since no reference is done to life imprisonment. Article 37(a) of the Convention maintains that “neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”. OMCT believes that life imprisonment, even when there is a possibility of release like the presidential mercy, inflicts severe psychological and developmental suffering on condemned children. OMCT recommends to Pakistani authorities to amend the Ordinance adding a provision forbidding life imprisonment, which is a fundamental step toward a justice system based on rehabilitation and reintegration of the juvenile offenders.

Since the promulgation of the Juvenile Justice System, many cases of children in death row have been reviewed. In December 2001, President Musharaff announced that the death sentences of around 100 young offenders would have been commuted to imprisonment¹²³. In July 2002, Punjab’s Law Minister Rana Ijaz Ahmad Khan affirmed that the death sentences of 74 juvenile delinquents had been converted into life imprisonment¹²⁴. OMCT welcomes these decisions, but regrets that life imprisonment has in certain cases been awarded as substitutive punishment.

7. CONCLUSIONS AND RECOMMENDATIONS

OMCT is deeply concerned about the situation of children in Pakistan, in particular, that children are at a high risk to be subject to various forms of abuse and cruel, inhuman, or degrading treatment and punishment. OMCT is aware that many of the structural causes of the violations of children's rights require economic and social change at a structural level, we nevertheless feel that some fundamental legislative and administrative changes in the country would enable a better implementation of children’s rights that could lead to a considerable improvement in the lot of children. Therefore, OMCT would like to make several conclusions and recommendations, both legislative and practical.

Regarding the legal system, OMCT would recommend that the Committee on the Rights of the Child:

urge the Pakistani Government to:

¹²² “Prison Bound – the denial of Juvenile Justice”, Human Rights Watch, 1999, p. 77.

¹²³ Amnesty International, ASA 33/029/2001.

¹²⁴ “Daily Newsletter on the death penalty worldwide – 29 July 2002”, Hands Off Cain, year 1, n. 4.

- ratify the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
- undertake all appropriate legislative, administrative, and other measures to ensure the full implementation of the Convention at national level;
- undertake all necessary measures deemed as permitting to the federalist framework to play a fostering role for the implementation of children's rights.

Concerning the regional war context and its effect on children, OMCT would recommend that the Committee on the Rights of the Child:

ask the Pakistani Government to:

- provide information about the recruitment of children in the armed groups present in the country. A detailed description of the role played by *madararas* (Islamic schools) should be provided, with a particular attention on the situation that children face in these institutions;
- provide the Committee with information on the overall situation of refugee children, and, in the case of Afghan refugees, on the measures that have been adopted for their repatriation.

As for the situation of discrimination against children, OMCT would recommend that the Committee on the Rights of the Child:

urge the Pakistani Government to:

- amend the *Zina Ordinance*, in particular abolish the definition of majority on attaining puberty and bring it up to 18 years both for boys and girls;
- provide information about legal regimes applicable to female children between age 11 or 12 (in cases of external signs of attained puberty) and age 18;
- undertake necessary measures to immediately halt discriminatory practices such as honour killings and child marriages;
- provide information about the situation of children belonging to religious minorities and undertake necessary measures so as to guarantee that these children fully enjoy their rights to health, survival and life.

Regarding the definition of the child, OMCT would recommend that the Committee on the Rights of the Child:

urge the Pakistani Government to:

- amend existing legislation in order to establish an age of majority that is fixed at 18, equally for boys and girls, and consistent with the whole of the Convention and its general principles.

Concerning torture and other cruel, inhuman or degrading treatment or punishment of children, OMCT would recommend that the Committee on the Rights of the Child:

urge the Pakistani Government to:

- abolish all legislation prescribing corporal punishments, either being in the form of *qisas*, or being provided under the *hudood* laws;
- introduce clear and strict punishment for torture and other cruel, inhuman or degrading treatment against children, and subsequently prosecute and punish those who impose torture or ill-treatment;
- adopt a more encompassing and clearer definition of torture, in particular in the Juvenile Justice System Ordinance. Namely, violations such as sexual abuse of children need to be introduced in this legal framework;
- ensure education and training for all personnel who may be involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention, or imprisonment;
- take measures to ensure the physical and psychological recovery and reintegration of children who have been tortured or otherwise ill-treated.

Regarding sexual abuse, exploitation and trafficking of children, OMCT would recommend that the Committee on the Rights of the Child:

urge the Pakistani Government to:

- take the necessary measures to effectively implement the National Plan of Action against child sexual abuse;
- harmonize its legal provisions on the basis of the Convention, namely by bringing up to 18 years the age defining a child, by ensuring an equal legal treatment for girls and boys, and provide stricter punishments in case of sexual abuse and exploitation of children;
- provide information on the concrete measures that the Government has adopted to tackle with child trafficking.

Concerning children in conflict with the law, OMCT would recommend that the Committee on the Rights of the Child:

urge the Pakistani Government to:

- ensure that all branches of the juvenile justice system implement measures consistent with the Convention, as well as with the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
- raise the minimum age of criminal responsibility in accordance with article 40 of the Convention, following the recommendations of the Committee that the age limit ought to be set as high as possible;
- stop the practice of the *incomunicado* detention by substituting the expression “as soon as may be” in article 10(1.a) of the Juvenile Justice System Ordinance by “immediately” or “promptly”, in order to ensure that the guardians are immediately informed about the arrest of the child. The same reference to an immediate access should be added to article 3(1), providing immediate legal assistance to juvenile offenders;

- avoid detention prior to trial and limit its use to exceptional circumstances. Clear rules defining the pre-trial detention in concordance with the Convention should be introduced in the Juvenile Justice System Ordinance;
- extend the special proceeding measures provided by article 10 of the Juvenile Justice System ordinance to all the children by bringing the age limit up to 18 years;
- take all the necessary measures to effectively implement the legal provisions ruling the separation between adult and minor detainees, and between alleged and convicted detainees.
- provide information on the juvenile courts, the special judges and special procedures that have been established to deal with juvenile offenders;
- provide clear explanations on the judicial powers and role that the tribal courts and the anti-terrorisms courts have in Pakistan, especially regarding children.
- amend article 12 of the Juvenile Justice System Ordinance dealing with sentences that cannot be passed with respect to a child, adding a provision forbidding life imprisonment;
- increase the involvement of police and jail officials in trainings aimed at raising awareness on the provisions included in the Convention.