STREET CHILDREN AND JUVENILE JUSTICE IN PAKISTAN

AMAL Human Development Network
In partnership with The Consortium for Street Children

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Street Children and Juvenile Justice in Pakistan

The way a society treats its children reflects not only its qualities of compassion and protective caring, but also sense of justice, its commitment to the future, and its urge to enhance the human condition for coming generations. This is as indisputably true of the community of nations, as it is of nations individually.

Javier Perez de Cuellar
Former UN Secretary General

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Consortium for Street Children


The Consortium for Street Children (CSC) is a network of NGOs working with street-involved children, and children at risk of taking to street life in Africa, Asia, Eastern and Central Europe, and Latin America.

Street children are particularly vulnerable to abuses in juvenile justice systems: they are more likely to come into (actual or perceived) conflict with the law, and they are less able to defend themselves from abuse once within the system. CSC has undertaken a two-year research and advocacy project with local partners to examine the situation of street children in juvenile justice systems in six countries: Kenya, Nicaragua, Nigeria, Pakistan, the Philippines and Romania.

This report documents the findings from this project in relation to Pakistan.

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The project in Pakistan is funded with generous support from the UK Foreign and Commonwealth Office Human Rights Project Fund.
In many countries around the world street children are particularly vulnerable to abuses in juvenile justice systems: they are highly likely to come into contact with the criminal justice system in the first place, and they are less able to defend themselves from abuse once within the system. In some countries, in the absence of adequate social welfare responses, the criminal justice system is used to warehouse homeless children regardless of whether or not they have committed a crime. In other countries, outdated legislation means that children face harsh sentences for petty (often ‘survival’) theft, substance abuse, begging and ‘vagrancy’. In short, these children are discriminated against and have their rights violated because they are poor.

In response to the internationally identified need to address the particular overlap between street children and the criminal justice system, CSC has undertaken a two-year research and advocacy project working with local partners to examine the situation of the human rights abuses of street children in juvenile justice systems in six countries: Kenya, Nicaragua, Nigeria, Pakistan, the Philippines and Romania.

Research was undertaken and national, cross-sectoral workshops were convened involving street children themselves, civil society organisations, the police, judiciary, social and probation services and other stakeholders to identify key obstacles to the implementation of international human rights standards for street children in juvenile justice systems in each country. With an emphasis on constructive dialogue and collaboration between civil society and government, the workshops addressed issues of national relevance, examined examples of innovative good practice in this area and outlined recommendations for further action.

The project helped to promote international exchange of experiences through a workshop attended by project partners from all six countries, held in London in July 2003. The discussions from this were then compiled together with case studies and the findings from each country into a practical, international handbook on street children and juvenile justice.

CSC would like to thank all those who contributed to this project in Pakistan, in particular our local partner, AMAL Human Development Network without whose dedication, enthusiasm and hard work, none of this would have been possible. Special thanks must also go to SPARC for assisting the CSC mission in the field and in collaborating with CSC to publish their research document on children and the juvenile justice system in Pakistan. Finally, CSC would like to the children who had the opportunity to take part in this project, as well as to those who did not: those who are still on the streets or behind bars. Hopefully this project will go some way towards sharing their stories and highlighting their incredible resiliency, courage and imagination in the face of exceptionally difficult circumstances, reminding us that street children are first and foremost children, humans entitled to human rights, who need us to work together as a matter or urgency to put the ‘justice’ back into the ‘justice’ system.

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The International Project

The aim of the project under which this report was made, is the mobilization of national and international response to uphold the human rights of street children within the juvenile justice system, recognizing and highlighting the pivotal issues and problems and working towards child-friendly resolutions. As part of an on-going global campaign and a multi-country production of a Handbook on Street Children and the Juvenile Justice System by the Consortium for Street Children, this report is also intended as a tool for lobbying and advocating the rights of street children in detention or in the juvenile justice system in Pakistan.

The Project in Pakistan

Culling reports and studies made by different government organizations and agencies, NGOs and other institutions, this report is the culmination of researches and workshops conducted by the AMAL Human Development Network in collaboration with Azad Foundation (Karachi), Godh (Lahore) and Dost Foundation (Peshawar). The organizations and people behind this report believe it is paramount that street children in general and children in conflict with the law (CICL) in particular play a key role in the development of policies and programming for their own rehabilitation, reintegration and education.

The objectives of the project were to:

(a) Collate accurate information on street children within the context of the Juvenile Justice System Ordinance 2000 to act as a basis for more focused and effective lobbying in Pakistan by conducting a literature review and provincial workshops with street-living/working children and children in prison.

(b) Identify the gaps in the Juvenile Justice System Ordinance 2000 and devise recommendations to help implement the JJSO more effectively and better assist street children in conflict with the law in Pakistan.

(c) Establish a National Steering Committee through which to channel the recommendations to the NCCWD, Ministry of Law and police departments.

These objectives were then met through a preliminary literature review, a series of consultative workshops with street living/working children in and out of prison, and a national conference, the outcome of which was the National Steering Committee.

The Literature Review and Consultative Workshops

The research began with a literature review to assess the existing state of knowledge on street children and juvenile justice in Pakistan, to compile the recommendations that had already been made, and to highlight continuing gaps in the research. This was then followed by four national consultative workshops on “Juvenile Justice System and Street Children- Present, Past and Future” in Islamabad (April 9, 2003), Karachi (April 26, 2003), Lahore (May 11, 2003) and Peshawar (May 30, 2003). These were attended by a range of national and international organizations, ministries and law enforcing agencies. More than 100
street-living/street-working children also participated in these workshops (of whom 7 were girls), with an average age of 12.

The objectives of these consultative workshops were:

• To elicit from the children, issues and problems of street children and the juvenile justice system;

• To raise awareness and promote a better understanding of the rights, laws, policies and programmes for street children in the juvenile justice system;

• To draw out from the children good practices in upholding and promoting the rights of street children in the juvenile justice system;

• To come up with realistic and systematic programmes or plans directly from the children that address the issues and problems of street children and the juvenile justice system.

The National Conference on Street Children and Juvenile Justice, June 13-14 2003

The key findings of the consultative workshops were then discussed in a national conference in Islamabad attended by more than 60 participants from different governmental ministries including Ministry of Law, Justice and Human Rights, Law and Justice Commission of Pakistan, Ministry of Youth Affairs, Ministry of Social Welfare and Women Development, law enforcing agencies such as the Police Department, Reclamation and Probation Home Department, Central Jail Staff Training Institute, lawyers, probation officers and national and international organizations like UNHCR, Plan International, Children Resource International, Concern International, Save the Children UK and the World Population Foundation.

Examples of innovative good practice were also put forward, with the intention that all of this information and learning – along with that from the other countries involved in the project - would then feed into the development of a practical, international handbook on street children and juvenile justice, available separately.¹

¹ This handbook highlights factors common to all countries and includes examples of good practice from across the four continents. It contains: practical help on advocacy on this issue; specific sections on gender, on racial, ethnic, socio-economic and other forms of discrimination, and on street children’s coping strategies, resiliency and participation.
INTRODUCTION

Stigmatized and feared by a society that looks upon them as criminal ‘delinquents’, street children in Pakistan today constitute a large and growing sector of the country’s most disadvantaged youth, facing continual and serious dangers to their health, moral and social development. Few people are willing to acknowledge their presence on the street – let alone offer them money or work – and with rapid population growth, urbanization and rampant poverty, their numbers are quickly increasing. In turn, more and more are finding themselves in conflict with the law at one stage or another, often without adequate understanding of either the charge or the punishment meted out to them.

For children in conflict with the law in Pakistan, torture, prolonged delays in the trial of their cases, and detention in overcrowded facilities without adequate educational or recreational opportunities remain the norm. Those who are convicted encounter harsh forms of justice including long prison terms, compulsory labor, and fines that serve as a barrier to their release. In neither case are the rights of the child or the interests of society served. Nevertheless, street children in Pakistan continue to manifest an irrepressible determination and courage, and remain spirited and resourceful in the face of the varied adversity that confronts them.

With the United Nations Convention on the Rights of the Child (UNCRC) definition of a child as the backdrop, the report provides an overview of the situation of Pakistan’s street children and children in conflict with the law (CICL) as well as the status of the Pakistan juvenile justice system. Within the context of traditional culture, social organization and local setting, the work provides a demographic and qualitative description of Pakistan’s street children, CICL and their families.

This report also examines the reasons behind children ending up in the street as well as the offences they commonly commit or are accused of committing. It also explores the socio-cultural factors behind the commission of crimes. However, rather than just presenting these children within the realm of risks and offences, the report is also an attempt to feature their resilience. While interest in the concept of resilience is quite recent among local and overseas professional workers and researchers, we are hoping for a shift in perspective. By using this forward approach, we hope to remove the stigma from these children and de-emphasize the ‘street’ in ‘street children’.

3 The usage of the term, “children in conflict with the law” (CICL) is reflective of international concerns for the promotion of the child’s sense of dignity and worth. However, there recently is an increasing tendency to talk about “children in actual or perceived conflict with the law” (CAPCL), which more actually captures the situation of street children who can come into contact with the law even if they had not committed any crime. There is also the debate about whether any of these terms accurately capture the idea that some laws are “in conflict” with the children, such as outdated legislations on vagrancy. Nonetheless, the “child-friendlier and child-sensitive” term “children in conflict with the law” is becoming more popular among Pakistan’s NGOs in preference to the terms “youthful offender” and “juvenile delinquent” – although these continue to appear in many official government documents, reports and articles. Connoting a prejudicial and negative outlook towards children who are alleged or accused of breaking the law, these two terms strongly reflect the often out-dated nature of Pakistani laws and attitudes on juvenile justice.
In reality, the “street” is hardly a representation of “the sum total of their social networks or experiences.”\(^4\) Definitely, “there is more to the lives of [street] children than what is revealed by ad hoc categorizations based on criteria of physical location, social neglect, and economic activity.”\(^5\)

Documenting the experiences of street children from the point they had left their homes to the time of arrest, detention, prosecution, the conduct of post-trial processes, and rehabilitation and reintegration, the report records the voices and views of some of these children.

The report also contains an overview on the existing responses and projects by the government, NGOs and other institutions. In identifying areas where stronger responses are desired and what challenges both system and society face in their efforts to address the plight of street children, the report looks into Pakistan’s juvenile justice system, and presents proposals as stated by the workshop participants for the improvement of mechanisms at the legislative, administrative, judicial and policy levels.

Much of the information used in this report is taken directly from the proceedings of the regional and national workshops. Previous studies and reports, though few, were also consulted. *With regards to the names of the children who participated in the national and regional workshops and whose statements were quoted in the report, they have been changed for purposes of protection and privacy.* We have provided English translations in the cases the quotes were in the vernacular. Stressing the use of child-sensitive terminology and unless quoting references and identifying the titles of previous researches, we carefully avoided using the terms “youth offender” and “juvenile delinquent,” which appear all too often in local literature on CICL. As part of this policy point, we, unless quoting sources, have also used the word “children” and not “minors” or “juvenile” in referring to children. Terms such as “juvenile” and “minor” detract from the reality that children are children.

We hope that as virtually an extension of the workshop, this report will be valuable to policy makers and implementers, and stimulate increased support and genuine concern from the general public for the welfare of street children in general and those caught up in the justice system in particular.

PAKISTAN AND CHILDREN’S RIGHTS

The Islamic Republic of Pakistan was founded in 1947 by Mohammad Ali Jinnah, following the partition of British India. Pakistan, "the land of the pure”, is bordered by India to the east, China to the north, and Afghanistan and Iran to the west, while its southern coastline lies on the Arabian Sea. Much of the country is made up of hot dry desert, whereas the northwest has a temperate climate. Large reserves of natural gas, limited petroleum and coal reserves, iron ore, copper, salt and limestone are found in Pakistan.

People

Pakistan has an estimated population of 150 million people (July 2003 estimate). Almost one half (49 percent) of Pakistan’s population is under 18 years of age, while 22 percent is adolescent (10-18 years). Five out of seven children under 5 years are denied their right to an identity (registration at birth) and to be counted as citizens (the majority of those few registered are boys). It is estimated that 3 million children in Pakistan are engaged in child labour. Furthermore, data on children and women are frequently not disaggregated, which makes it difficult to assess their needs.

The dominant religion is Islam (97%), while religious minorities including Christians, Zoroastrians, Hindus and Buddhists make up the rest. Pakistan is a diverse country, with a number of distinct ethno-linguistic and cultural traditions. The Punjabis, including Seraiki speaking people, constitute approximately 55% of the population, Sindhis 20%, Pathans 10%, the Muhajirs (those who migrated from India in 1947) 7%, and the Balochis 5%. The other sub-groups include the Hindko speakers in the NWFP and the Brahuvis of Balochistan.

Politics

In October 2002, Pakistan held its first parliamentary elections since the October 1999 coup that brought President Pervez Musharraf to power. Measures taken by Musharraf's administration in the months preceding the elections, however, all but ensured a military-controlled democracy. Chief among them were an April referendum that extended Musharraf's presidential term for five years, and constitutional amendments announced in August that formalized the military's role in governance and extended

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6 Taken from UNICEF Pakistan website www.unicef.org/pakistan
restrictions on political party activities. Independent observers reported extensive fraud and coercion during voting for the referendum, and widespread poll-rigging and harassment of candidates preceding the parliamentary elections.\(^8\)

**Economy**

Pakistan, an impoverished and underdeveloped country, suffers from internal political disputes, low levels of foreign investment, and a costly, ongoing confrontation with neighboring India. Pakistan's economic prospects, although still marred by poor human development indicators, continued to improve in 2002 following unprecedented inflows of foreign assistance beginning in 2001. Foreign exchange reserves have grown to record levels, supported largely by fast growth in recorded worker remittances. Trade levels rebounded after a sharp decline in late 2001. The government has made significant inroads in macroeconomic reform since 2000, but progress is beginning to slow. Although it is in the second year of its $1.3 billion IMF Poverty Reduction and Growth Facility, Islamabad continues to require waivers for politically difficult reforms and approximately 35% of the population remains under the Poverty Line. Long-term prospects remain uncertain as development spending remains low, regional tensions remain high, and political tensions weaken Pakistan's commitment to lender-recommended economic reforms.\(^9\)

**Child Rights\(^10\)**

Pakistan is a signatory to several international commitments that cover basic human rights, including the United Nations Convention on the Rights of the Child (CRC), which it ratified with a general reservation stating that the provisions will be interpreted in the light of Islamic injunctions. This reservation was later withdrawn in 1997.

The National Commission for Child Welfare and Development (NCCWD)\(^11\) within the Ministry of Women's Development and Social Welfare has been given the task of coordinating national efforts for implementation of the CRC in collaboration with the Provincial Commissioners for Child Welfare and Development (PCCWD). The Commissioners have been given a huge mandate but they lack adequate manpower and resources to play this role effectively. Despite plans to raise the status of the Commissioners and to give them more resources, necessary action is still pending.

In their Concluding Observations of October 2003, the Committee on the Rights of the Child praised Pakistan for the introduction of the Juvenile Justice System Ordinance in 2000, but specified a number of concerns relevant to juvenile justice and street children, namely:\(^12\)

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\(^11\) At the time of writing the Pakistan government had expressed its intention to revise this committee under the title of The Pakistan Commission for the Welfare and Protection of the Rights of the Child. It was not yet clear what changes this may have on the resources and direction of the commission.

Concerns relative to street children in general:

- The increasing number of street children and the vulnerability of these children to violence, torture, sexual abuse and exploitation and the lack of a systematic and comprehensive strategy to address the situation and protect these children as well as at the very poor registration of missing children by the police.

- The high number of children living in poverty, the shortage of adequate housing, of clean water and adequate sanitation and sewage, and at the problem of air pollution, all of which have a serious negative impact on the living conditions of children in the State party, causing injuries, sickness and death.

- The lack of an adequate data collection mechanism within the State party to allow for the systematic and comprehensive collection of disaggregated quantitative and qualitative data…in relation to all groups of children.

- The high prevalence of violence, abuse, including sexual abuse, and neglect of children within the State party, and the lack of effective measures taken to combat this problem. For instance, the existing legal provisions do not protect children sufficiently and the implementation of laws concerning child abuse and neglect is modest.

- The existing institutions for children in need of alternative care are inadequate both qualitatively and quantitatively, and record keeping on children in need of these services is poor. Furthermore, the Committee is concerned at the absence of a mechanism to conduct periodic reviewing of placement.

Concerns relative to the Juvenile Justice System

- The high number of children in prisons, who are detained in poor conditions, often together with adult offenders and thus vulnerable to abuse and ill-treatment. The very low minimum age of criminal responsibility (7 years) is also of concern to the Committee. Further, the Committee is deeply concerned about the reports of juvenile offenders sentenced to death and executed, which have also occurred after the promulgation of the Juvenile Justice System Ordinance.

- The numerous reports of torture, serious ill-treatment and sexual abuse of children by police officers, in detention facilities and other state institutions.

It is now widely recognized that communities need to be involved in the development process as equal partners through community based organizations (CBOs) and non-governmental organizations (NGOs). But the NGO sector is weaker in Pakistan than in other countries of South Asia. Traditionally, local organizations led by community activists or philanthropists have concentrated predominantly on social welfare activities. However, this is beginning to change with some NGOs, particularly urban ones, concentrating on advocacy and lobbying. Other NGOs have fostered and strengthened village organizations in order to implement development activities through them.
Definitions and Estimates

The United Nations have defined the term ‘street children’ to include “any boy or girl… for whom the street in the widest sense of the word… has become his or her habitual abode and/or source of livelihood, and who is inadequately protected, supervised, or directed by responsible adults.” A generic term indeed, the label is often understood to include all children found in or on the streets doing some activities regardless whether they have a family or not. The term also widely refers to (1) children forced to live in the streets and fend for themselves either because they have no families, were abandoned, or have run away from their families and (2) children forced to work in the streets but who return home after having earned enough or at the end of the day. The Consortium for Street Children (CSC) acknowledges the limitations and many connotations, both positive and negative, of the term “street children”, but – in the absence of a widely acceptable alternative - uses the term for convenience, on the understanding that “in reality, street children themselves often defy such convenient generalizations because each child is unique”. CSC also maintains that definitions of “street children” in different contexts must take into account the child’s own perceptions of their individual circumstances and how they themselves wish to be described.

The varied interpretations of the term ‘street children’ and the need for clarity in its usage have made difficult to obtain exact estimates of how many children fall into this category in Pakistan. Different methodologies and definitions among government and NGO sources have produced exaggerated, underestimated or often wildly conflicting statistics. Most estimates refer to the main urban centres, suggesting that Lahore is host to around 14,000 street children compared to just 5,000 in Peshawar, while Karachi and Quetta are thought to have around 15,000 each. The reliability and potential for comparison of these estimates is, however, questionable, and there has to date been no unified effort to assess the scale nationwide using a single methodology, perhaps because the issue of street children has not generally been considered important or urgent enough in Pakistan to warrant such a check. This is despite reports from the Human Rights Commission of Pakistan suggesting that the kidnapping and rape of children has become one of the most common crimes in the country, averaging one girl every day. In fact, the more visible problem of child labour instead continues to dominate the focus of most intervention and analysis, with the plight of street children coming to the fore only in relation to specific and brutal incidents (see Case Study below). Whether reliable or not, the few statistics that are available suggest that Pakistan has.

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considerably fewer children living on the street than those living off the streets (who have a family to go home to). However, the number of children frequenting streets and public places during the day to earn, beg and “hang out” with their peers is growing, as is the population with no apparent family links.

CASE STUDY - THE JAVED IQBAL MURDERS

"I am Javed Iqbal, killer of 100 children... I hate this world, I am not ashamed of my action and I am ready to die. I have no regrets. I killed 100 children."

These are the last words of the man who, on 16 March 2000, was found guilty of brutally murdering 100 boys living on the streets of Lahore. By first drugging and abusing them, Iqbal then strangled each boy, cut them into pieces and dissolved them in a vat of acid, keeping only their shoes, clothes and sometimes a photo he had taken of them before they died as trophies.

In his trial, Iqbal made a point of claiming that as no-one ever notices when a street child disappears, he could have gone on to kill 500 before anyone took action. As it happened, he sent photographs of the boys along with a letter to police in early December 1999, when his target of 100 had been achieved. Authorities then searched his house, and nearly a month later Iqbal turned himself in. Judge Allah Baksh then sentenced him in March to the same death as he had meted out to his victims.

Poor police response

According to newspaper reports, Iqbal's neighbor, Jabbar, said that before Iqbal wrote his letter the killer went to the police station to report his crimes, but was sent away. It took two weeks before police investigated Iqbal's house after receiving information about the crimes committed there, Jabbar said. "The police never took it seriously," he said. "Police thought it was a joke and that he was a mental patient. He told the police 'I have killed these children,' and the police said, 'Come back in the morning.'"

In late December, after the extent of Iqbal's crimes was known, the Punjab police chief distributed a memo to officers throughout the province saying "reports of missing children should not now be taken lightly."

The revelation of Iqbal's horrific crimes, committed with two teen accomplices, woke up human rights groups in Pakistan to the plight of street children in Pakistan. It "brought home with a bang how limited society's safeguards for the children were and with what gruesome consequences," the Human Rights Commission of Pakistan wrote in its annual report. One 9-year old street boy who used to live in the same alley as Iqbal confirmed how the terrible incident had affected him: "In the dark, I worry about bad spirits from there," he said. "I am afraid they will come and eat me."

Iqbal's murders also exposed a number of unpleasant truths about the frailty of the family and its crumbling support system in the face of extreme poverty. All the victims had come from poor families, and had left home either to look for work or to escape the harshness of their existence at home. Although it was suggested that parents of 17 of the victims had reported their missing children to the police, only one report had been registered. A possible reason for this is the desire to make the crime rate look low, and police performance better. However, in this case, the police said that it had not any complaints regarding these missing children.


Experience on the Streets
For those street children who do not have families to go back to at the end of the day, ‘home’ can take numerous forms, including bus and railway stations, deserted alleys and rubbish bins. Many sleep in their place of work, risking eviction by security guards or police patrols, while others are found in the vicinity of religious shrines where people donate to the poor. Sleeping near restaurants and eating-places can often lead to lucky handouts of leftover food. It is rare that street children are ever able to find a place where they feel completely safe, and most face continuous risks from petty criminals, drug addicts and the police.

Health Problems

Street children participating in the workshops cited poor nutrition/malnutrition, a lack of clean water, and a low level of personal cleanliness due to lack of hygienic facilities as issues they were worried about relating to health. Indeed, the living and eating patterns of street children in Pakistan create a variety of health problems, most of which are related to the unhygienic, overcrowded surroundings and exposure to extreme weather and in some cases, to sexually-transmitted infections (STIs). They also have a higher risk of acquiring STIs and HIV, because of their early exposure to both heterosexual and homosexual sex. Finally, skin ailments, bacterial and parasitic infections and malnourishment are all common, but street children tend to neglect their health due to financial constraints and the fact that they will often be refused treatment at the government hospitals. The widespread lack of health information and education further aggravates these children’s problems.

One of the most prominent issues with regards to their health, however, was drug use and addiction. Street children reported being in almost daily exposure to a variety of drugs, including cigarettes, alcohol, solvents, marijuana, and even crack cocaine. Being approached by adults and older children on the streets to act as traffickers/drug dealers was apparently very common in urban centres of Pakistan, with children also indulging in drugs to keep themselves awake for work or to anaesthetize physical or emotional pain.

Unfortunately, the increasing number of street children involved in drug abuse has made life difficult for those who abstain from the practice. Populist perceptions that all street children are drug addicts has further restricted their access to basic services, while rendering them more susceptible to verbal abuse and disdain from passers-by.

Abuse and Harassment

‘There is no love for us in this society.’

According to street children consulted in the various workshops conducted by AMAL, harassment has become a part of daily life. Extortion, verbal and physical abuse from the general public and the police in particular are some of the most common problems that street children reported facing on a daily basis. For many, this is the hardest and most feared aspect of living on the street – more so than the lack of food or adequate shelter. Street children are regularly verbally and physically abused by passers-by, shop owners, wealthy businessmen, security guards, vendors, street sweepers and even elderly members of the community. According to the workshop participants, adults pretend to be interested in them or the

18 Workshop participant.
products they sell, only to snatch their goods without paying and run. Similarly, drivers sometimes drive off without paying for the car wash that a child has just carried out, while hotel staff ‘forget’ or delay payment of wages to those who work to collect garbage and tidy their premises. Even when children pay for food themselves, the owners of the café or hotel do not ‘respect or make them feel comfortable.’

Finally, fighting with other children on the street, particularly those who were older and had been around longer was also cited as a frequent occurrence. Although this usually took the form of sporadic fist-fights, some also reported that the elder street children came at night, tore their clothes, and raped/sexually abused them. This abuse was then made worse by having no-one to turn to for support – very few children have family connections they were willing to use, and there was a significant lack of awareness relating to NGOs or social services they could contact for help.

Street Work

In the struggle for survival in the cities, street children undertake a wide range of income-generating activities, including work as household servants, mobile vendors (selling coconuts, towels, flowers and newspapers etc.), bus conductors, car washers, shoe polishers and rubbish collectors (very common among the Afghan children who have come across the border). Some drift into prostitution. There is also a large population of ‘chhootas’ (literally ‘small people’) which have been sent by their families to work for ‘ustaads’ (small business owners). For more on chhootas, see case study below.

The largest numbers of children on the streets are those who beg. They prefer begging because it does not require hard labor and sometimes they can make good money in a day. At times, begging runs in the family where the children are taught early in life, even as infants, the art of getting sympathy. But many families that have suffered socio-economic disasters end up asking their children to beg for money or food.

Many economic activities of the street children are controlled by "territories" which are guarded by members or gangs. A number of these children are terrorized by such gangs and they end up working for them to sell drugs or steal. According to the Director of the Human Rights Commission of Pakistan, "There are certain mafias who take the children on the street and exploit them". "They are the mafias who run begging rings, child prostitution rings." In a report into gang activity on the streets of Pakistan, the Commission found such practices were worryingly widespread. In Sheikhupura, in the Punjab province, one such gang would kidnap young children from the street, break their legs or arms and let the bones reset crooked, and then send them back into the streets to beg. Any alms collected would then be handed over at the end of the day under the threat of beating. Another gang was traced to Multan, also in Punjab, where kidnapped boys between 10 and 14 years were castrated and then sold to the circus and stage shows for entertainment.  

**CASE STUDY – Street Children ‘Chhootas’**

Literally meaning ‘small people’, *chhootas* are children between the ages of 7 and 18 who take up work (either through their families or their own initiative) for *ustaads* (small business owners) in order to learn a skill or trade. Many large families choose to send their children (usually boys) to work as *chhootas* simply to relieve themselves of the burden but also because the *chhoota* will often send home a few rupees each month in return. The wages paid to these interns or apprentices is very low, ranging from Rs. 5 to 15 per day, often working from 6 or 7 a.m. until midnight. Most have never attended school, or have rarely gone beyond 3rd grade.

The *chhootas* often live in groups in a small room (4 to 6 per room) dividing the rent among themselves. Many are forced to live on handouts from eateries (hotels) or the leavings of customers of these eateries. There are no toilets or bathing facilities.

The relationship between the *chhoota* and his *ustaad* is very significant. The latter, by virtue of having been given absolute authority over the boy, frequently becomes his *de facto* father and the two often develop a long-term psychological attachment. It begins with the younger boy being extremely dependent for food and shelter, and gradually becomes one characterized by lesser dependence as his skills develop and he becomes more suitable for the job market.

Hence, the *ustaad* is typically authoritative and often verbally and physically abusive in the early stages of the apprenticeship using fear to achieve psychological control over his younger charge.

This relationship can quickly develop sexually abusive characteristics, however. According to research conducted by AMAL, *ustaads* regularly touch, fondle and kiss their *chhootas*, with particularly "beautiful" *chhootas* enticed through coercion and rewards to masturbate their *ustaads*. Anal intercourse is sometimes practiced and known as *gand mama*. AMAL estimates that between 15 to 20 percent of the *chhootas* are sexually abused in one form or another.

Among *chhootas* there is also a hierarchy with the youngest and weakest making up the bottom of the order, and it is reported that older, mature *chhootas* will demonstrate their power by having anal intercourse with younger colleagues with the approval of their *Ustaad*.

Finally, it is suggested that *chhootas* are also particularly vulnerable to drug abuse, as glue popular for sniffing is widely available in the automobile repair industries in which many *chhootas* work.


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**Education**

There is no federal law on compulsory education, and neither the federal or provincial governments provide sufficient resources to assure universal education. Pakistan’s education system is in disarray, with studies showing that only 70 percent of children under the age of 12 are enrolled in school, less than half of whom actually complete primary school. Even those children who make it up to the fifth grade are not assured of being able to read and write. According to UNICEF figures, a nationwide sample of children in grade five revealed that only 33 percent could read with comprehension, while a mere 17 percent were able to write a simple letter. Development experts point to a number of factors for the poor state of public education, including the low percentage of gross national product devoted to education, and inefficient

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and corrupt federal and provincial bureaucracies. One member of the Prime Minister’s education task force estimated that up to 50 percent of the education budget was ‘pilfered’.\textsuperscript{21}

According to UNICEF, 17.6 per cent of Pakistani children are working and supporting their families. Three out of every ten children aged 5-9 years in Pakistan do not go to school, while three out of every five children aged 10-19 years never see the inside of a classroom. Once in school, the drop out rate is very high; of those children who enroll in school, only one out of two reaches grade 5.\textsuperscript{22}

Most street children do not have the money or the time to attend school in Pakistan. Some also do not have the inclination due to the widespread practice of beating that teachers enforce as punishment. Others fear bullying, or are too ashamed to even consider themselves as having the right to attend schools with other ‘normal’ children.

The stream of government and NGO initiatives to improve enrolment levels – some directly targeting street children – have had mixed results. A gradual acknowledgement among national NGOs that non-formal education was the only option for the majority of Pakistan’s poor was a significant step forward, yet many of the programmes have been less successful than anticipated, while others are not even realized. For example, a government plan to educate children involved in collecting paper and garbage under a non-formal education scheme in Karachi mysteriously failed to materialize, despite receiving high-profile support from the media and NGOs.\textsuperscript{23}

Despite these obstacles, there have been some success stories (see Case Study below), but it remains the case that street children of all ages continue to be marginalized and excluded from education.

\begin{tcolorbox}[title={CASE STUDY – NON-FORMAL EDUCATION IN PAKISTAN: A CHILD’S APPROACH}]

In 1996, Zainab and her brother Junaid (then aged 11 and 10 years respectively) encountered a young lad Asif, selling popadoms in the market. They later met his mother, Zareena, who made the popadoms sold by her husband and son as the sole source of the family's income. The family lived in a squalid community of huts adjacent to one of the expanding modern sectors of Islamabad where Zainab and Junaid lived. Zareena's community had no school. This troubled the children. They recognised their own privileged position and saw with a simple clarity only children can have, the injustice of their position compared to that of children in the mud-hut community. Together with Zareena's encouragement and co-operation among other parents in the community they determined to try and change the situation.

During their summer vacation that first year Zainab, now with Amber, a friend, and Junaid set up their open-air school in the community by the shade of a tree. Junaid recounted for me some of the challenges of those first difficult weeks. 'We had to convince the children that they would not be beaten in school when they came to learn', a practice he assured me was still far too common in state schools. Moreover, the children were told they should come only if they really wanted to. 'The first thing we taught them was how to hold a pencil and draw a straight line', he added. Then gradually, the Urdu alphabet was introduced using pictures of familiar objects and the initial character of the word for that object. The students reproduced the character and picture and learned the appropriate letter sound.

\end{tcolorbox}

\textsuperscript{21} [http://www.globalmarch.org/cl-around-the-world/barometre-asia.php3#Pakistan1]
\textsuperscript{22} [UNICEF Pakistan website, www.unicef.org/pakistan]
\textsuperscript{23} [‘Karachi: Plan to educate street children in doldrums’, Dawn 3 July 2003.]
Zainab said she noticed a change in the children’s appearance after the school lessons were established; they were washed and wore clean clothes, setting them apart from other children in the community. With the summer vacation coming to an end, the classes also now seemed in danger. The community is very poor, women working as domestic help in the nearby modern housing sector, while men find whatever temporary odd jobs they can. Hence, Zainab and Junaid’s parents ensured continuity by hiring a teacher and providing the necessary textbooks and stationery supplies; their mother, a professional consultant on gender issues, has become the key organisational support system behind the enterprise which has gradually expanded to three schools in adjoining communities, with five teachers and some 120 students.


Despite all of these challenges and risks, street children in Pakistan exhibit powerful resilience and determination. They often live together in small groups with a strong sense of family and companionship that leads to mutual protection. Friendship is held in high regard, and the sense of belonging that this affords is crucial in a life that is otherwise unstructured and destabilizing.
It is often assumed that the problem of street children originates through the totality of urban problems, and that the phenomenon is exclusively urban: there are no "rural street children." However, while it is true that Pakistan’s street children are usually found in its urban concentrations (e.g. Islamabad, Karachi etc.), many of these children have rural origins. Some of the children have taken refuge in the city from natural or man-made disasters. A large proportion come from urban slums and townships, and from broken homes or female-headed households. Some of them may have been abandoned by their families but many of them run away from home because of abusive and exploitative family relations. Others come to the cities by themselves, drawn by friends and/or the glamour and promise of city life. The table below summarises the reasons given by street children in the workshops as to why they were on the streets.

The various routes to the street discussed in this section are those that were most commonly raised by the street children themselves during the workshop (see table below), and should not therefore be taken as exhaustive or attributable to all.

<table>
<thead>
<tr>
<th>Economic Reasons</th>
<th>Family Related</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poverty</td>
<td>Physical violence / abuse</td>
</tr>
<tr>
<td>Unemployment / the need to find work</td>
<td>Split / broken families</td>
</tr>
<tr>
<td>Lack of food inside home</td>
<td>Lack of parental support</td>
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<tr>
<td>Forced / bonded labour</td>
<td>Orphanhood</td>
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<tr>
<td>‘Wish to become rich within a day’</td>
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<tr>
<th>Personal / Other</th>
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<tr>
<td>Desire for freedom</td>
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<tr>
<td>Influence of peers / films</td>
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<tr>
<td>Desire for independence</td>
</tr>
<tr>
<td>Drug addiction</td>
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<tr>
<td>Physical violence by teachers and religious leaders</td>
</tr>
</tbody>
</table>

**Economic Reasons**

For decades, the Pakistani State has approached the concept of development with a restricted perspective - the focus on urbanization, in locating industries in major towns and cities, an unequal distribution of resources with a marked rural-urban disparity, policies that stress big dams and reservation of forests for game sanctuaries, attitudes which encourage deforestation - all combine to systematically displace people to towns and cities. Urbanization and displacement also lead to a breakdown of the family structure, social tensions and upheavals driving children to urban streets.
Children participating in the national workshops (particularly boys) related how, due to lack of stable or sufficient income, their parents had often sent them out to beg on the streets, often forcing them to drop out of school in the process. Many children also linked the poor living conditions of their home environment to an increase in various forms of violence within the family that ultimately contributed to them running away permanently.

The availability of work for children in Pakistan is considerable, with the legal minimum age for employment at 14 for shops and commerce, industry, and work at sea, and 15 for mines and on railways. Yet the massive informal sector and the general social acceptance of child workers has brought many rural children of a much younger age to the urban streets, with as many as 3.3 million children (73% boys) between the ages of 5 and 14 reported as ‘economically active’ in the country in 2000. 24

A significant proportion of these child workers are involved in bonded labour in brick kilns and carpet factories. When a child’s parents die or become too old to work it is usual for the obligation of repaying the debts to be passed on to their children. Sometimes, however, the children are forced to take on the full burden of the debt from a much earlier age and a child's labour is pledged directly in order to obtain an additional loan of money or goods. This is especially true among families from ethnic minorities, such as the formally pastoral Hindu tribes that have a very low social status and are subject to gross discrimination. Although most of the children under bonded labour sleep and eat within the compound of their factory, the work is seasonal and children often turn to the streets of the nearest urban centre to survive during periods of unemployment, especially if their families live some distance away.

**Family Reasons**

Abusive practices affect children in all circumstances in Pakistan, most commonly in families, where it is manifested as neglect, verbal abuse, physical abuse, sexual abuse, and infanticide. Outside of families, the abuse often takes the forms of child prostitution, displacement, child labour, and marginalisation. Finally, within educational institutions and religious madrassahs, the most common forms of child abuse include rape, sodomy, excessive caning, battering, and verbal abuse.

Although lack of documentation and unified definitions undermine the accuracy of statistics involving child abuse, the trends apparent in the research findings below are significant in helping to understand some of the contributory factors to children leaving home for the streets:

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CHILD ABUSE IN PAKISTAN

Almost one third of adults interviewed in Pakistan’s North West Frontier Province (NWFP) did not consider child sexual abuse bad, let alone a crime or a sin. For many it was a matter of pride, and a symbol of power and status. As one respondent put it, “It is the only way to enjoy life in our dull society”.

Around 50% of children interviewed in a United Nations survey suggested that family factors (i.e. bad marital relations, separation, death of one or both parents, family coercion, etc.) were the biggest contributing factors to child sexual abuse and to children turning to prostitution in Pakistan. Over 90% of respondents in the same survey asserted that better family control, family size and stability of earnings were key factors towards the elimination of sexual exploitation within and outside the family environment.

1,439 cases of physical and sexual abuse against children in Pakistan were reported for the period Jan-Nov 2002. Of them, 550 cases were related to murders of children including boys and girls, 303 rape, 260 sodomy, 188 injury and 50 others of severe torture. In the same ten-month period, 846 cases of child abduction and 831 cases of missing children were also reported from different areas of the country.

Other Reasons

Workshop participants made it clear that the decision to live and work on the streets was sometimes partly (or wholly) their own, either through a desire to gain anticipated ‘freedom’ and ‘independence’, or because they had been attracted by images of the city in popular media such as cinema and television. Pressure from peer groups also appeared to be a factor, especially for those who were not attending school for one reason or another.

It is also evident that a large number of children living and working on the streets in Pakistan are refugees from neighbouring Afghanistan, of whom UNHCR estimates there are approximately 2 million (2001 estimate). Thrust into an already difficult economic situation with extremely high levels of competition, those refugee families that take refuge in urban areas are further neglected by the official development assistance, which concentrates on those inhabiting the official UN camps outside the cities. As such, thousands of Afghan children now work the streets as the principal wage-earners for their families.

Some push heavy carts along the road in either blistering summer heat or chilly temperatures in winter, selling food or wares. Some beg other people for help on buses and along roads, often with a disabled elderly relative.

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27 ‘1,439 cases of child abuse reported this year’, Karachi News, November 21, 2002.
at their side. Others spend their entire day collecting various forms of garbage to be recycled for money. Almost all are boys, ranging from roughly five to 20 years old. They often work 12-hour days carrying heavy loads in very difficult weather conditions, breathing in air heavily polluted by vehicle emissions and dust. They are territorial, staking out claims to certain routes and areas of the city to work. They compete with one another, but at the same time, maintain solidarity and work hard to iron out their problems through “bargaining.”

While some young people feel proud of their work and others ashamed of it, recent research suggests that virtually all work otherwise their parents “would be angry.” Some children also related how their parents would even specify “such and such amount” the young people must bring home. The box below presents case studies of two Afghan refugee children working on the streets of Pakistan.

### CASE STUDIES – Afghan Children on the Streets of Pakistan

**ABDUL** is an Afghan, a Pashtun, but he was born in Pakistan, and he has worked “picking garbage” on Pakistani streets since he was about five years old. “I have three sisters and three brothers,” he says. “I’m the oldest. I’m 15. I live with both my parents. I do this job because my father is old, and we have economic problems. Every day, I come out about 7:00 AM, work until 12:00, and start again at 1:00 until the end of the day. I collect dry bread, in Mari Abad and where the Punjabi people live. I then sell it at a recycling place. It is later ground up and resold as flour for making new bread and as feed for animals. Some days I collect 12 kg or 20 kg. Some days I earn 20, 30, 60, 80 or more rupees, it depends on the situation. [If I collect 20 kgs, I earn] 160 rupees. I’m the only one earning money in my family. Our rent is 1,000 rupees per month, and I am able to earn just enough to meet our costs. The main problems I have with this work come if we go to the Pakistan Army area, and they misbehave with us; or, in the Hazara community, they also create problems for us. In general, however, I like the work, but if I could do something else, I’d work in a garage. I went to school off and on for seven years, but I had to stop completely because of economic problems. When there is peace for sure, I’d also like to go to Afghanistan, to Kandahar.”

**AHMAD** is another Pashtun boy. “I’m 15. I live with my father, mother, six sisters and three brothers. I’m the oldest of the brothers. I started working when I was six years old. All day long, I move around in the city and collect paper – about 15 to 20 kilos per day. I earn 15 to 35 rupees doing that. My father is disabled, but he also collects plastics, and my mother does handicrafts. We have just enough to survive. Collecting garbage is a dangerous activity. We can get diseases. Once I was sick for six months with malaria. I was able to attend school for one year, but I had to stop for economic reasons. I would like to start work in a garage, but there are no opportunities and no money. It only pays 5 to 10 rupees per day, and this is not enough for our families. I would like to go to Afghanistan, too. When there is peace, then I will go.”

Most of the laws having to do with protection of children's rights in Pakistan date from well before the development of the Convention on the Rights of the Child in 1990. Although most of these statutes were legally superceded by the introduction of the Juvenile Justice System Ordinance in 2000, it is worth looking back at the older laws as many of them are still enforced in the Tribal Areas excluded by the JJSO and in areas where it has not yet been fully implemented. Many of them also put forward different ages of criminal responsibility, leading to children of the same age being subject to considerably different treatment depending on where they live and what gender they are.

The Age of Criminal Responsibility

Pakistan’s Penal Code sets the age of criminal responsibility at twelve, with children between the ages of seven and twelve deemed criminally responsible if they have "attained sufficient maturity of understanding to judge…the nature and consequences" of their "conduct on that occasion." Children aged seven and older are therefore potentially eligible for the full range of penalties provided for in the Code, including death and life imprisonment.

The Zina Ordinance defines the age of majority as sixteen for females and eighteen for males, or the attainment of puberty for either. Because the promulgation of the Zina Ordinance entailed the abolition of Pakistan's statutory rape law, girls as young as twelve have been prosecuted for having extra-marital intercourse under circumstances that would previously have mandated statutory rape charges against their assailant (see below).

The Sindh Children’s Act 1955

Prior to July 2000, juvenile laws existed in only two of Pakistan’s provinces. The first of these was Sindh, where a Children’s Act was passed in 1955 and eventually implemented 19 years later when it was made applicable to the Hyderabad and Sukkur divisions in 1974. It was intended to replace the Bombay Children’s Act of 1924, and contained similar provisions, including:

- Delegating powers of a juvenile court to a District Magistrate;
- Defining a youthful offender as any person below 16 years of age (at the time of commission of the offence);
- Providing that no person under 16 could be sentenced to death, transportation or imprisonment;
- Giving other courts the power to try a child if a juvenile court did not exist;
- Prohibiting the joint trial of adults and children;
- Empowering a police officer to release a child arrested on charge of a non-bailable offence provided that releasing the child would not place him/her in any danger or bring him in contact with adult criminals.
Although the Sindh Children’s Act was legally superceded by the Juvenile Justice System Ordinance (JJSO) in 2000 (see below), it continues to be applied by judges who lack up-to-date awareness of the new laws.

**The Hadood Laws of 1979**

These laws were introduced to Pakistan as part of President Zia-ul-Haq’s move to Islamize national law with an extra layer of concepts and judicial structures. Under this policy, sections of the Pakistani Penal Code (PPC) were substituted with Islamic provisions, a parallel Islamic court structure was set up, and a constitutional amendment was introduced stipulating that all laws in Pakistan have to conform to Islamic injunctions.

Most of the Hadood laws relate to the offences of armed robbery, theft, rape, fornication, false accusation of fornication, drinking and drug-taking, with strict fixed punishments for certain crimes once adequate evidence if obtained. These fixed punishments – known as *hadd* – include stoning to death for fornication, judicial amputation for theft and armed robbery and flogging for consumption of intoxicants, all of which are of particular concern to street children and street girls in particular.

Over the years, there have been many attempts to repeal the Hadood Laws, most prominently by the Commission of Inquiry for Women in 1997 and by the Special Committee of the National Commission on the Status of Women (which had been set up to review the Hadood Ordinances in 2002), in August 2003. However, both attempts were unsuccessful. Although the *hadd* punishments may not actually be imposed on individuals convicted of crimes as children, it is important to note that the definition of a child in Hadood law is simply ‘a person who has not attained puberty’. Thus, a girl of 12 who has attained puberty is legally adult, and could be sentenced to *hadd* punishment under the Hadood laws. This is a matter for concern, as the JJSO does not legally override the Hadood Laws.

**The Zina Ordinance**

The most far-reaching of the Hadood Ordinances is that governing *zina*, which in addition to criminalizing extra-marital sex, establishes separate ages of majority for men and women and dramatically narrows the definition of rape. The promulgation of the Zina Ordinance was followed by a sharp increase in the number of women in prison. While the number of female children in Pakistan's prisons remains low, those accused of *zina* account for a grossly disproportionate share of the cases. Of the fourteen girls in Punjab prisons who remained under trial at the end of February 1998, according to official statistics, eleven were charged under the Zina Ordinance.

The Zina Ordinance defines the age of majority as sixteen for females and eighteen for males, or the attainment of puberty for either. Because the promulgation of the Zina Ordinance entailed the abolition of Pakistan's statutory rape law, girls as young as twelve have been prosecuted for having extra-marital intercourse under circumstances that would previously have mandated statutory rape charges against their assailant. In addition, attaining majority at puberty exposes young children to the prospect of *hadd*

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31 A man and a woman are said to commit 'Zina' if they wilfully have sexual intercourse without being validly married to each other.
(Quranic) punishments, including whipping, amputation, and death by stoning. For minors, the maximum punishment for *zina* offences is either imprisonment for up to five years, a fine, or both. Children may additionally be sentenced to receive up to thirty lashes of a whip. It should be noted, however, that sentences to *hadd* punishments must be confirmed by an appellate court, and that no *hadd* punishments have yet been carried out up to the time of writing.32

The Punjab Youthful Offenders Ordinance 1983

The Punjab Youthful Offenders Ordinance was very similar to the Sindh Children’s Act in nature, but introduced to be applied in the Punjab province of Pakistan only. The one notable difference in relation to its Sindh counterpart was that it defined a child as anyone aged 15 or below at the time of commission of the offence. As with the Sindh Act, however, it too was legally superseded by the JJSO of 2000.

The Juvenile Justice System Ordinance (JJSO) 2000

Following the ratification of the CRC in 1990, the government of Pakistan promulgated the “Juvenile Justice System Ordinance - 2000” (JJSO 2000), which provides for the protection of children involved in criminal litigation. It came into force immediately and was a marked step forward in establishing a fairer and more child-friendly justice system in Pakistan. Although the JJSO contains a number of excellent provisions and rules regarding the appropriate treatment of children in conflict with the law (see table and flowchart below), it does not contain any guidance or protection relating to street children in particular. Moreover, a significant problem is that it does not as yet apply to the Federally Administered Tribal Areas (FATA) or the Provincially Administered Tribal Areas (PATA). This is in line with Article 247(3) of the Constitution of Pakistan, which states that no act of Parliament shall apply to any FATA until it is directed as such by the President of Pakistan himself. To date, President Musharraf has made no such declaration, which means that children in these two areas do not have the protection of the JJSO, and can still face the death penalty sentence.

Recent reports from these areas have also raised cause for concern. In March 2003, the Society for the Protection of the Rights of the Child (SPARC) stated in their monthly newsletter that:

“…normal courts try juvenile offenders in PATA, while in FATA, where there are no normal courts and the superior courts have no jurisdiction, political agents and assistants act as administrative as well as judicial officers.”33

The use of political agents in FATA is particularly worrying, as they do not distinguish when sentencing between an adult and a child.

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33 SPARC Quarterly, Issue 34, March 2003, p.16.
## SALIENT FEATURES OF JUVENILE JUSTICE SYSTEM ORDINANCE 2000

### Definitions

A child is defined as a person who, at the time of commission of an offence, is below the age of 18 years.

### Arrest and Detention

The guardian of an arrested juvenile shall be informed as early as possible after the arrest.

The concerned probation officer has to be similarly informed.

A child arrested for a non-bailable offence must be produced before juvenile court within 24 hours, while a child arrested for a bailable offence must be released on bail even without surety.

It provides for children to be detained in Borstal institutions (which are defined in the JJSO as places where a child may be ‘detained and given education and training for their mental, moral and psychological development’). It also provides for resources and funding for the construction of these Borstal institutions around the country.

It prohibits any child from being handcuffed or put in fetters while he or she is in custody.

It prohibits any child from being forced to suffer corporal punishment / hard labour during custody or detention.

It prohibits keeping children in police stations for bailable offences.

### Trial and Sentencing

It provides the child with free legal representation, free medical treatment and appeal against a conviction within a 30 day period.

It prohibits any joint trial of a child with an adult.

Unnecessary delay in proceedings should be avoided by the authorities.

Offences carrying ten years punishment are made bailable for children less than 15 years of age and it is prohibited to publish proceedings.

It prohibits any child from being sentenced to the death penalty.
The Juvenile Justice System Ordinance (2000)

The centrality of the court in the juvenile justice process highlights the perception of this institution in Pakistan as the sole arbitrating body, with the result that alternatives such as counseling and involvement of parents have been ignored. As one journalist put it, ‘Non-custodial measures of sentencing are not known to our judiciary and it is termed a responsibility of the court to punish all those who are involved
in a crime, whether accidentally or for the first time’. In accordance with the CRC and other international guidelines, the court should be the last recourse for resolution rather than the first, particularly given that most offences committed by children are petty. However, there are still no legal mechanisms or policy framework in place that offer substantial diversionary alternatives. Furthermore, although the establishment of four exclusive juvenile courts in Kohat, Peshawar, Mardan and Swat was promised in a press release of the NWFP, the provincial government are still yet to make these operational.

Implementing the JJSO

Since the JJSO came into force in 2000, there have been a number of positive developments implemented in its name:

- The powers to conduct juvenile courts have been conferred to judges across the country.
- Separate cells for children have been established in various central jails in order to separate children from adults.
- Some of the national NGOs have started providing legal assistance to the children, while other agencies have worked with the NCCWD to build capacity of the relevant authorities.
- A Youth Offender Industrial School in Karachi has been established, as well as a Borstal Jail in Bahawalpur.
- On 4 December 2002, the Government of Pakistan accorded special remission on Eid-ul-Fitr (a Muslim festival) for under-trial children, benefitting 412 children and 264 women across the four provinces.
- Another initiative seeks to assist Pakistan’s remaining 3087 juvenile prisoners under-trial. The Government is processing an enabling provision whereby the withdrawing of prosecution on a one-time basis would allow thousands of children to get immediate benefit.
- NCCWD initiated a process of preparing draft rules for facilitating the Provincial Governments. Draft rules were prepared in a National Consultation among the stakeholders from Federal, Provincial Government and non-governmental organizations on 19th–20th February 2001 and have subsequently been forwarded to the relevant authorities.
- A Ten Year Perspective Plan with Rs.4.947 million has been developed for the period (2001 - 2011) for implementation of the JJSO 2000. In addition to this, another further allocation of Rs.0.17 million has been set aside for the identification of needs / problems with regard to implementation of the acts / Ordinances / other instruments concerning social welfare including children.

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Poor Awareness and Implementation of the JJSO

“The law is there but the environment needed for its implementation doesn’t exist. It’s the callous attitude of the whole society towards children and the government is not interested in improving their plight”.35

Despite the progress mentioned above and the funds set aside in the Ten Year Perspective Plan, only a few of the promises made within the JJSO have been put into action, and violations of children’s basic rights continue to occur in many districts. A fundamental flaw in the JJSO has also been exposed, namely that it is not operationally retroactive, so children whose cases took place before the Ordinance was passed (pre-2000) are not entitled to any protection under it. It is because of this oversight that there are still some 50 children on death row and numerous instances of minors serving harsh sentences, including whipping in public.

At present, a widespread lack of awareness of the principles and implementation methods of the JJSO appears to be the most serious obstacle to the protection of children in conflict with the law. In its Concluding Observations and Recommendations issued 3 October 2003, the Committee on the Rights of the Child expressed concern at the ‘poor implementation of the [JJSO] and that many of the authorities in charge of its implementation… are unaware of its existence.’ A recent Amnesty International mission to Pakistan also corroborated that at each stage of arrest, trial and imprisonment, there was wide-scale failure to implement the provisions of the JJSO.36

35 Noor Alam, a high court Peshawar lawyer specializing in juvenile and drug cases, quoted in ‘It’s a long road to Justice for Pakistan’s poor children’, The Times of Nigeria, 17 July 2003.
For most citizens in Pakistan, particularly street children, confronting routine misbehaviour by the police has been a bitter fact of every-day life. Common complaints against the police range from routine discourtesy and incidents of neglect, incompetence, inefficiency, arbitrariness and widespread resort to high-handed corporal punishment and corruption. According to the workshop participants, most street children are beaten and kicked by police personnel at one time or another. In general therefore, the police are perceived not as an instrument of rule of law, but as a corrupt, insensitive and highly politicised force, operating mainly to look after the interests of the powerful. In 1999, it was alleged that Pakistani police were operating a deliberate policy of extra-judicial killings, executing over 850 suspected criminals in the Punjab and Sindh provinces alone between 1997-99. The killings are reported in the local press as ‘encounters’, and usually follow the same story of police ‘accidentally killing their suspects in the cross-fire of a shootout’. Post-mortem officials and even senior police officials themselves have even admitted that at least 50% of these ‘encounters’ are faked, with the suspect usually being tied up and then shot.

This atmosphere of impunity for serious crimes such as murder poses a serious threat to street children, who often disappear unnoticed. As one boy in the workshop put it, ‘In case of our death, none care for our burial and none come near to us’. Yet the incidence of extra-judicial killing is but one problem among a host of other currently affecting the police forces in Pakistan. In a presentation by the Inspector General of Police for Balochistan province, further constraints to proper police functioning include:

(1) an outdated legal and institutional framework (devised for nineteenth century India consisting of near static villages with hardly any urbanisation or industrialization, and meant principally for a colonial rule);

(2) arbitrary and whimsical (mis)management of police by the executive authority of the state at every level (policemen were increasingly recruited, trained, promoted and posted without regard to merit and mainly for their subservience to people with influence and power);

(3) inadequate accountability;

(4) poor incentive systems;

(5) widespread corruption, and

(6) severe under-resourcing of law and order.

Street children in Pakistan face the consequences of these constraints on a daily basis, and the experiences of children participating in the workshop corroborate this image of police with widespread reports of

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38 Ibid.
corruption, bribery and extortion. For example, children reported that policemen would regularly harass them for ‘protection’ money – i.e. a bribe that would allow the child in question to continue their survival strategies without interference. Some would demand a share of the profits made by child vendors or extort an illegal ‘fee’ before allowing them to tout for business in their areas of patrol; others simply wait until the child has made a sale, and then snatch the money on the grounds that the child is ‘a drug addict’ and ‘involved in crime’. Many are arrested on false charges and then offered release on payment of a fine. Sometimes the process works in reverse, with the relatives of a detained child having to pay the arresting officers a bribe to secure his/her release.

_They accuse us of earning our money through illegal sex activities, and demand their share._

_They take our personal things and call us drug addicts and thieves._

Street children also report that police use false arrests to get children to do odd jobs for them. This usually involves the child being detained for a few hours at the police station, during which time they are forced to clean cells and toilets before being thrown back onto the streets without charge. Unsurprisingly, parents of these children are rarely informed of the detention and no First Information Report is written.

Finally, the large numbers of Afghan refugee children living on the streets of Pakistan’s cities are also particularly at risk from police harassment and arrest. Police officials exploit their extra insecurity by threatening to beat, arrest or deport them back across the border if they do not pay a bribe. Others are simply charged with vagrancy under the Vagrancy Act of 1924, or violation of Section 170 of the Pakistan Penal Code, which declares it an offence when a person "engages with one or more other persons in any conspiracy for the doing of an [illegal] thing." Thus, whole groups of juveniles found on the street in the NWFP have been charged despite only one youth in the group being suspected of petty crime. It is perhaps no coincidence therefore that around 12% of the children detained in the NWFP jails in 2000 were Afghan. Although UNHCR protection staff are aware of the problems and work on a case-by-case basis to assist refugees of all ages in these situations, a great deal more needs to be done. No one agency in Pakistan has information on all refugees in prison and their circumstances, and few have the resources to address all of their legal services needs.

**Determining the Age of the Child under Arrest**

Arrest is a critical stage for children in conflict with the law, as under the JJSO it is the responsibility of the arresting officer to determine whether their suspect is a child or an adult. This is usually done by asking the child or their parents/guardians to declare their age directly, but failing this it is left to the discretion of the officer to estimate the age of the child from his/her physical appearance, or seek ossification tests from a medical officer. The latter is a time consuming process, and it has been suggested that police officers often knowingly register children as adults anyway in the First Information Reports to

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39 Workshop child participant.
40 Workshop child participant.
avoid medical tests and having to contact parents/guardians.\textsuperscript{44} Amnesty International has also confirmed several cases where judges have accepted the age recorded by police even when the child clearly looks younger, which suggests a worrying lack of commitment throughout the juvenile justice system to the proper investigation of cases.\textsuperscript{45}

Given the high proportion of unregistered births in Pakistan and the fact that street children are unlikely to possess documentation certifying their age, many children face more severe penalties simply by looking older than they are. This can have very serious consequences, with reports suggesting that a significant number of children have been wrongly sentenced to the adult death penalty in Pakistan as a result. In the Punjab province alone, as many as 350 children were facing execution in 2002, despite the announcement by President Pervez Musharraf in December 2001 ordering their sentences to be commuted or turned into life imprisonment.\textsuperscript{46}

Further confusion arises from the poor knowledge and implementation of the JJSO, as police and judicial personnel continue to refer to the older laws described earlier, all of which have different age boundaries for ‘children’. Although the CRC and the JJSO define a child and anyone below the age of 18 years, the Sindh Children’s Act lowers this to 15 years, the Pakistan Penal Code to 12 years, and the Hadood Ordinance to ‘the attainment of puberty’. Therefore, the age parameters under which a child is arrested, recorded and charged appear to depend on the geographic region and the knowledge of the officer involved rather than any uniform understanding of the law.

\textbf{Criminal Investigation Reports (\textit{challans})}

Under the Pakistan Penal Code, police are routinely required to submit Criminal Investigation Reports (or \textit{challans}) to court magistrates within 14 days of registering a First Information Report. If the police are unable to carry out their investigation within this time, they are allowed a further 3 days in which to file an interim report, pending submission of the complete report. The importance of this document to the child charged with an offence cannot be underestimated, and it has the potential to act as a significant diversionary mechanism. But according to Abdul Majeed Ahmed Auolakh, principal of the Central Jail Staff Training Institute, the complete investigation report "usually doesn't come within a year [of the arrest]."\textsuperscript{47}

According to interviews and formal investigations of the criminal justice system by the Pakistan Law Commission, the reasons for these delays include ‘inefficiency, lack of integrity on the part of the investigating staff, [an] inadequate number of investigating officers..., delay in obtaining expert opinion, particularly of the medical/forensic experts, [and] lack of proper supervision by the superior police officials...."\textsuperscript{48} More ominously, it has also been suggested that high-ranking officials as well as

\begin{flushright}
\textsuperscript{46} Ibid.
\textsuperscript{48} Pakistan Law Commission, \textit{Report on the Criminal Justice System, 1997}, Government of Pakistan, Islamabad, 1997, pp. 22-23. As a remedial measure, the Commission proposed the initiation of contempt proceedings against "the investigating officer who deliberately or negligently causes delays in submitting [a] challan or deliberately distorts [the] investigation with a view to favor or disfavor someone."\end{flushright}
investigating officers frequently withdraw *challans* and reinvestigate cases until they obtain the ‘desired results’ (i.e. a guilty verdict).

**Police Accountability**

The options open to a child with a grievance against a member of the police force are few. Only the most determined bring themselves to formally complain against any actual or perceived abuse of authority by the police, which has led to the widely-held belief that police can get away with anything and everything. As Amnesty International concluded in its 2003 study of child prisoners, ‘Fear normally keeps the children from highlighting the abuse’, and gave the example of 14-year-old Sajid as illustration (see Case Study below).

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**CASE STUDY – ABUSE vs. ACCOUNTABILITY**

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

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


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**DETENTION**

Article 37 (b) of the CRC states that:

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

Section 10(2) of the Constitution of Pakistan complements this by guaranteeing that:

> Every person who is arrested and detained in custody shall be produced before a magistrate within a period of 24 hours of such arrest… and no such person shall be detained in custody beyond the said period without the authority of the magistrate.

Yet in the experience of street children across Pakistan, these rules and provisions are rarely realized. Delays often occur due to incomplete (or non-existent) First Information Reports; problems in deciding on the age of the child arrested and/or the offence under which they are to be charged (often subject to change depending on whether a confession is extracted); the potential for the child’s family to offer a bribe for their release; heavy caseloads of magistrates; and sometimes simply because the authorities have not provided the child with transportation to attend the hearing.\(^{51}\) Other delays may occur as officers attempt to contact the parents/guardians of the child, who are often hard to trace, to inform them of the arrest. Finally, when the child is eventually called before court, they are invariably made to attend in handcuffs, despite clear prohibition of this in the JJSO.

**The Initial Court Hearing**

When the child is brought before the courts, the normal procedure is for the police to state why they have been arrested and request an extension of the detention period for further investigation. This is almost always granted, for a lack of evidence is seen to be the result of not enough time for investigation rather than substantiating innocence. The authority to release on bail children who have committed minor crimes (as provided for in Section 10(3) of the JJSO) is also highly under-utilised due to a lack of awareness of this diversionary mechanism; a lack of faith in non-custodial measures; and poor communication between judges, police and probation officers. When bail is offered with surety, it is nearly always far beyond the means of street children or their families because police officers and magistrates are not aware of the laws compelling them to set bail amounts appropriate to the offence.\(^{52}\) According to Amnesty International’s recent investigation, the average bail is set between 40,000-50,000 rupees ($666-833), which, given that the average daily wage of a labourer in Pakistan is 100 rupees per

\(^{52}\) Section 498 of Pakistan’s Code of Criminal Procedure states that ‘The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that bail required by a police-officer or Magistrate be reduced’.
day, is excessive. It is not therefore surprising in light of these violations, to learn that in 2003 approximately 80% of children in detention were under-trial and that most of these were eligible for bail.

As with bail, there is very limited application of the probation law (especially in Sindh and Baluchistan), while the provisions of the JJSO dealing with probation are not being exercised in any province. This appears to be in part because of the insufficient staff – in 2003 there were only 70 Probation staff for the whole of Pakistan, and only 2 female probation officers.

The net result of failing to utilize either bail or probation mechanisms at the initial court hearing has led to the situation where the vast majority of children are simply sent to borstal institutions or, more commonly, prisons, where they must endure ‘under-trial’ detention until their case is ready to be processed. This can last for weeks, months and even years due to one or many of the following reasons:

- case files are incomplete or missing
- relevant officers or witnesses fail to attend the hearings
- legal assistance is denied/unavailable
- poor communication between the police, judiciary and prison/borstal staff
- lack of prioritization of children’s cases among police and judiciary

Although Section 4(6) of the JJSO specifically limits the period of pre-trial detention by requiring all trials to be resolved within a period of 4 months, this is very rarely the case.

**Borstal Detention**

As very few cases are resolved at this initial court hearing, the vast majority of children are sent away for further detention in a borstal or, more commonly, the juvenile sections of adult prison complexes. In fact, at the time of writing there are only two borstal institutions in Pakistan, one in Bahawalpur and one in Faisalabad; both in Punjab province. This is despite provisions in the JJSO that require the government to establish (as soon as possible) borstal institutions in at least every district of a province.

The Borstal Jail in Faisalabad became functional during 2002, but soon after shifting about 200 child prisoners from the northern parts of Punjab to this facility, its wall collapsed, resulting in the children being transferred again to the Faisalabad District Jail. Meanwhile, the Borstal Jail in Bahawalpur remains the largest in the country, lodging 401 children at the end of 2002, out of which 232 were convicted. However, health, education, recreation, drinking water and sanitation facilities remain poor at this jail. There is no doctor available for the inmates, only a medical practitioner from the central prison who occasionally visits the Borstal School.

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Due to the lack of alternative custodial institutions across the region, many children are admitted to Bahawalpur Borstal from far-flung villages, often making it impossible for their families to maintain contact with them because of the distance. This can intensify children’s social and cultural isolation, in addition to feeling homesick and missing their families.

Prison Detention

It is not possible to ascertain the exact number of children in Pakistan’s prisons, simply because the number changes daily with some being released and others brought in. However, the table below gives some idea as to the huge numbers of children detained in prisons alone as of March 2003 in just four regions of Pakistan:

<table>
<thead>
<tr>
<th>Provinces/Regions</th>
<th>Under trial</th>
<th>Convicted</th>
<th>Condemned prisoner, and others</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Punjab</td>
<td>1058</td>
<td>222</td>
<td>13</td>
<td>1293</td>
</tr>
<tr>
<td>Sindh</td>
<td>537</td>
<td>18</td>
<td>1</td>
<td>556</td>
</tr>
<tr>
<td>NWFP</td>
<td>293</td>
<td>81</td>
<td>n/a</td>
<td>374</td>
</tr>
<tr>
<td>Balochistan</td>
<td>54</td>
<td>62</td>
<td>n/a</td>
<td>116</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1942</strong></td>
<td><strong>383</strong></td>
<td><strong>14</strong></td>
<td><strong>2339</strong></td>
</tr>
</tbody>
</table>


These four regions hold over 50% of the total number of children in detention across Pakistan as of October 2003, estimated at 4,500. Two-thirds of these children have not been convicted of any offence, and are waiting for their trial to reach resolution or in many cases, start.57

Overcrowding

Most of the jails in Pakistan are those built to suit the population and crime rate as they existed over 50 years ago. The boom in urbanization and the increasingly slow police investigative and court judicial processes have led to a significant rise in the number of people detained in prison. Overcrowding is now a feature common to all prisons (and indeed the few existing borstals), and the vast majority of facilities are stretched far beyond their capacities, as indicated in the Prisons Reform Report of 1997:58

<table>
<thead>
<tr>
<th>REGION</th>
<th>No. of Jails</th>
<th>Capacity</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Punjab</td>
<td>29</td>
<td>17,271</td>
<td>53,333</td>
</tr>
<tr>
<td>Sindh</td>
<td>16</td>
<td>8,305</td>
<td>15,438</td>
</tr>
<tr>
<td>NWFP</td>
<td>21</td>
<td>7,098</td>
<td>9,291</td>
</tr>
<tr>
<td>Baluchistan</td>
<td>10</td>
<td>1,427</td>
<td>2,465</td>
</tr>
<tr>
<td>Northern Areas</td>
<td>3</td>
<td>125</td>
<td>268</td>
</tr>
<tr>
<td>TOTAL</td>
<td>79</td>
<td>34,226</td>
<td>80,795</td>
</tr>
</tbody>
</table>

NOTE: Figures for different provinces were available on different dates - for Punjab on Oct. 31, for Sindh and Northern Areas on June 30, for NWFP in December and for Baluchistan on March 31. Jails include 18 central prisons, 51 district and special jails, and nine sub jails.

It is worth noting that the vast majority of those detained in prisons are under-trial and without conviction, as shown in the table below:

<table>
<thead>
<tr>
<th>REGION</th>
<th>Convicted offenders</th>
<th>Under-trial detainees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Punjab</td>
<td>10,939</td>
<td>42,394</td>
</tr>
<tr>
<td>Sindh</td>
<td>2,120</td>
<td>13,318</td>
</tr>
<tr>
<td>NWFP</td>
<td>2,816</td>
<td>6,475</td>
</tr>
<tr>
<td>Baluchistan</td>
<td>1,015</td>
<td>1,450</td>
</tr>
<tr>
<td>Northern Areas</td>
<td>15</td>
<td>253</td>
</tr>
<tr>
<td>TOTAL</td>
<td>16,905</td>
<td>63,890</td>
</tr>
</tbody>
</table>


The information from these tables show that in Punjab the under-trials exceed the convicted prisoners by 200%, in Sindh by over 599%, in NWFP by around 150%, in Baluchistan by around 30%, and in the Northern Areas by over 158%. The statistics may be pre-JJSO, but considering the problems of implementation of this Ordinance (discussed earlier), it is very likely that the trends indicated hold true for the system at present.

The growing incidence of children being born in prison to mothers serving a sentence is also adding pressure to these facilities. In Udiala prison, Rawalpindi, 123 women have 28 children with them born inside the jail, while across the 21 jails of North Western Frontier Province (NWFP) there are 55 women having 66 children with them, many of them born inside the jail including 34 girls and 32 boys from 20 days to 8 years old.60

This heavy overcrowding has made the separation of child offenders and adult prisoners in detention increasingly difficult. In Interior Sindh, most of the children in the province’s 16 prisons are detained alongside adult prisoners, resulting in numerous reports of sexual exploitation. Similarly, in Balochistan, there are no separate or special prisons for children. Most convicted child prisoners are kept in the central Mach prison, while the majority of children under-trial are detained at the Quetta prison.61

According to the U.N. Rules for the Protection of Juveniles Deprived of their Liberty, children should be provided a physical environment designed with the aim of rehabilitation and with regard to their need for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure time activities.62 Every juvenile should be provided with separate and clean bedding, and a sufficient quantity of nutritious and hygienically-prepared food.63 Juveniles of compulsory school age have the right to an education suited to their needs and abilities, and designed to prepare them for their return to society.64 In addition, all juveniles have the right to vocational training likely to prepare them for future employment. The Rules also provide for preventive and remedial medical care, including mental health care.65

However, due to the intense overcrowding, conditions within the prisons are invariably poor and few of these provisions are met. The Pakistan government at present spends just 30 rupees a day to house, feed and care for each child in prison,66 and the complaints put forward by previously detained street children participating in the workshops reflect this long-term under-funding:

_They have no proper place for us... Most of the time I slept in standing position and there were 8 individuals in a small lock up room._

_They force us to sleep in dormitory style barracks either on floor or on raised cement blocks._

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63 Ibid, Rules 33, 37.
64 Ibid, Rule 38.
65 Ibid, Rules 42 and 49.
The food provided inside the jails is low standard and unhygienic. [Children are given meat once a week, the rest of the time just lentils and bread]

There are no medical facilities inside the jails. If someone feels ill, no medicine is provided by the police personnel. [Outbreaks of tuberculosis have caused considerable suffering in many prisons]

Despite sporadic attempts to improve the conditions of these institutions through government and private funding initiatives, the critical problem of overcrowding continues to undermine all efforts, as the case study below confirms.

**CASE STUDY – PRISON CONDITIONS IN KARACHI JUVENILE PRISON**

Shortly after her appointment as juvenile magistrate for Karachi in December 1993, Neelofar Shahnawaz paid a visit to the juvenile jail, which had opened the previous month. What she found was appalling. "The first time I visited, the conditions were horrible. There were no fans, water, or pots. The children had scabies and kidney problems, and there were many cases of tuberculosis, and blood in urine."

The children in the new facility had been relocated from Karachi's Landhi Jail, where most of the juveniles in the city were previously held. The new juvenile jail provided complete separation from adult offenders in the adjacent Central Prison, but a December 1993 report by Ghous Bux, a member of the Sindh High Court Inspection Team, noted numerous deficiencies, including the lack of a kitchen, adequate bedding, a dispensary and basic medicines, doors on toilets, and facilities for sports and physical exercise.

Shahnawaz promptly took it upon herself to remedy conditions in the juvenile jail. "I got donations from the private sector," she said. "I had one room converted to a kitchen, and arranged to have four or five water bearings [taps] installed. There were cells for solitary confinement-I turned them into workshops and a hospital." A Pakistani charity, the Abdus Sattar Edhi Trust, provided support for the medical facilities, Shahnawaz said, while a civil liberties lawyer, Nihal Hashmi, established a computer center. "There are also many private, corporate donors," she added. Unfortunately, the efforts of Shahnawaz and others to improve conditions in the industrial school were outstripped by a rapid increase in its population. On December 5, 1993, the number of children in the facility stood at 419, a reasonable figure for a facility that was designed to accommodate 500. By the end of December 1997, the number of children had roughly doubled to 831. Of these, only nineteen had been convicted. The remaining 812 were under trial.

In late 1997, a team of Pakistani physicians published the results of a study of two hundred children in the industrial school. The team found that 57% of the children were suffering from scabies, which they attributed to "inadequate treatment facilities, lack of proper hygiene, scarcity of water and accommodation of [a] large number of prisoners in each barrack." In addition, 11% of the children had chest infections. The team also found that psychiatric disorders were widespread. According to the study, 55.8% of the children suffered from mild to moderate depression and 65% displayed mild anxieties.

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conditions that the physicians attributed to "the circumstances leading to incarceration and the agony of the non-conducive custody environment."


Allegations of sexual abuse within the prisons – by wardens, police or other inmates – are also worryingly common, with both boys and girls at risk. One child at the workshop described being abused by a group of 8 policemen during their detention, while another suggested that abuse had become almost a standard practice among some officials:

They take “white and beautiful” children with them, keep them inside jail, have group sex with them and leave them in the morning. The child is beaten badly in case of refusal and kept in locks...

The lack of efficient complaints mechanisms within these institutions make it very difficult to seek redress for any abuse a child suffers, and as such it is very likely that the practice of sexual abuse within prisons is far more widespread than the isolated testimonies suggest. However, the case study below from Punjab’s Sahiwal Central Prison shows how children can work together to seek justice against abusers, albeit it in a dangerous and unconventional way.

CASE STUDY – UPRISING AGAINST ABUSE IN PUNJAB PRISON

An April 11, 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 complaints mechanisms. The incident was set off when members of the prison staff beat Aslam, a thirteen-year-old boy in the juvenile ward, for complaining of sexual abuse by Zulfiqar, the head warder. Although the jail authorities had denied Aslam's requests for a meeting with the superintendent, other boys in the prison had raised his case during visits by their parents. The parents in turn informed Syed Alamdar Hussain Shah, a Sahiwal legal aid lawyer. Shah obtained permission from the inspector-general of prisons for Punjab to visit the prison, but was prevented from meeting any of the juveniles by the prison superintendent.

The jail staff's blunt retaliation against Aslam set off a violent reaction on the part of the juvenile prisoners. According to a local journalist who documented the case, the boys broke the wall of the prison cell in which they were locked, and set fire to the gallows as well as prison furniture. The riot was suppressed shortly thereafter by the Frontier Constabulary, who had been summoned by the prison staff. The clash resulted in injuries to nearly twenty children, including six who reportedly remained in the jail hospital three weeks after the riot. Shah said that the Sahiwal deputy commissioner had rejected his application for an independent medical examination of the children.

The deputy inspector-general of prisons, Captain Sarfraz Mufti, visited the prison on April 13, and ordered the suspension of Zulfiqar, as well as Malik Ijaz, an assistant superintendent, and Abdullah, a
warder. On the recommendation of the prison superintendent, criminal cases were registered the same day against ten of the boys for rioting and damaging prison property.


Previously detained street children participating in the workshop also pointed to the widespread practices of corporal punishment that children are subject to in detention, many of which are used to try and force a confession from the accused:

*They torture us physically - kicking, beating with leather shoes and sticks, slapping and shouting abuse.*

*They use different cruel styles of punishment like being beaten, hung upside down, whipped with a rubber strap or leather slipper...*

*We are sometimes made to wear iron shackling*

*They torture us physically, mentally and emotionally to force us to confess or give information about a case.*

*They force us to accept the crimes which we did not commit...*

Human Rights Watch also unearthed instances of punishment in prison, including food deprivation, being forced to stand in the hot sun or maintain uncomfortable positions, and manual labor assignments, such as cleaning eight barracks. All of these violate Article 37(a) of the CRC (‘*No child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment*’), and the U.N. Rules for the Protection of Juveniles Deprived of their Liberty, which states that:

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. (Rule 67)

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Having spent months and sometimes years illegally detained in a borstal or prison, many ‘under-trial’ children finally begin court proceedings only to find that violations against their rights continue to occur. According to the CRC, trials involving children should be conducted in respect of the following provisions:

The best interests of the child shall be a primary consideration. (Article 3)

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. (Article 37/d)

Children accused of committing a penal offence to be treated in a manner that takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a productive role in society. (Article 40/1)

Children are to be dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the offence. (Article 40/4)

Legal representation

Sections 3(1) and 3(2) of the JJSO specifically call for a lawyer of at least 5 years court experience to represent the child at state expense, yet research suggests that very few children or their parents are actually aware of this right as the arresting officer commonly fails to inform them. In the words of one child participating in the workshop, “They never want to appear us in front of the judges and lawyers”. Furthermore, even lawyers working in Pakistan themselves admit that those with more than 5 years experience are not really interested in representing cases at the state’s expense, as the government salary is very small. This means that if children do receive legal representation at all, it is more often than not handled by an inexperienced lawyer or an NGO providing free legal aid.69

Separate Juvenile Courts

Under the JJSO, child offenders can only be tried before a juvenile court established especially for that purpose. Section 4 thus directs every provincial government to establish juvenile courts after consultation with the Chief Justice of each respective High Court. If the establishment of new courts is not possible, the High Court may confer the power of a juvenile court on a Court of Sessions or Judicial Magistrate of the First Class.

Unfortunately, it would appear that all provincial governments in Pakistan have so far taken the latter option and conferred special powers to Judicial Magistrates and the Court of Sessions as follows:  

**Punjab Province and Islamabad Capital Territory:**
Special powers to hear children’s cases have been conferred to senior civil judges.

**Peshawar:**
The High Court conferred the power of Juvenile courts on the District and Sessions Judges.

**Sindh:**
Juvenile courts have been established consisting of two Additional District Judges and two Judicial Magistrates for the Karachi division.

**Baluchistan:**
Conferred powers of a Juvenile court to the District and Sessions judges as well as the Additional District and Sessions judges and Judicial Magistrates of the First Class.

The net result of this transferal of powers rather than the establishment of new and independent juvenile courts is that children are often tried on the same day as adults with the same judge and the same adult environment. This can be a very intimidating process for children and is also likely to prejudice the judge towards dealing more harshly with a child as they will be in the mindset of dealing with adult criminals.

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It is indicative of the number of innocent children caught up in Pakistan’s juvenile justice system that of the many tens of thousands who are held for long periods ‘under-trial’, actual conviction rates through eventual sentencing are as low as 15-20%.\(^{71}\) Moreover, because of the lack of awareness, implementation and training relating to the JJSO in Pakistan, sentencing seems to be largely at the discretion of the judges rather than in reference to the relevant laws, and constitutes little change from the practices employed previously.\(^{72}\)

**Corporal Punishment**

Under the Zina Ordinance, which makes sexual relations outside of marriage a criminal offence, whipping is formalized as an appropriate punishment. Although the Abolition of the Punishment of the Whipping Act (passed in 1996) specifically exempts from its provisions the imposition of whipping as a punishment for this crime, a number of children interviewed by Human Rights Watch in 1999 received sentences under the Zina Ordinance that included whipping.\(^{73}\) This violates Article 37 of the Convention on the Rights of the Child, which states that "[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

**Imprisonment and Fines**

Article 39(b) of the Convention on the Rights of the Child states that the imprisonment of a child "shall only be used as a measure of last resort and for the shortest appropriate period of time," while Article 37(a) prohibits the imposition of "life imprisonment without possibility of release." However, imprisonment is a relatively common sentence handed out to children in Pakistan, and is often over a decade in length, regardless of the crime. Human Rights Watch found that 87% percent of the convicted children held in the Bahawalpur borstal during March 1998 were serving sentences of ten years or more, with the most frequent sentence imposed being twenty-five years.\(^{74}\)

In addition to serving their time in prison, children may be sentenced to fines ranging from Rs. 1,000 ($20) to about Rs. 200,000 ($3,922). Nearly half of the convicted children in Bahawalpur interviewed by Human Rights Watch had fines of Rs. 20,000 ($392) or more imposed on them – a heavy burden for their families, who on average earn around Rs. 4,350 ($85) a month to support the whole family. The imposition of such fines contravenes the requirement in the Sindh Children Act and the Punjab Youthful Offenders Ordinance that courts take into account the "circumstances in which the child is living" when passing orders.\(^{75}\) It also means that street children in particular have little chance of paying, given that

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\(^{75}\) Sindh Children Act, Sec. 21(b), Punjab Youthful Offenders Ordinance, Sec. 18(b).
they rarely have any external support able to contribute towards the fine. Those with wealthier families or greater public influence are usually able to get around the sentence imposed, as shown in the case study below.

**CASE STUDY – Juvenile Justice for the Privileged**

17 year-old Qismat Ali is currently serving a 43-year sentence for robbery and ‘anti-state activities’ at the Haripur Central Jail in the North-West Frontier Province (NWFP). Ali was at school when he was arrested in 2000. He says the Police held him for 16 days, tortured until he signed away his family’s land, and then sent to prison on fabricated charges. Before his sentence ends, Ali’s family must pay a surety bond of Rs. 100,000 ($1,743) – otherwise Ali faces another 10 years in jail. He says his brother, who was arrested at the same time, is serving a life sentence on similar fabricated charges. Over 85 per cent of NWFP’s juveniles come from poor backgrounds.

Anees Jillani, head of Society for the Protection of Rights of the Child (SPARC), an Islamabad-based child rights organisation, says the juvenile justice system is skewed in favour of the privileged. “It’s not only the poor children who commit crimes. In fact the children from the rich class commit more crimes, but they get away with them because of their financial background and influence. The whole system is lopsided”. A recent example is the case of Asif Khan, a politician’s son from Landi Arbab Village near Peshawar, who faced a 14-year jail sentence after stealing a car. His family bailed him out after three days in custody, claiming he was a juvenile and therefore did not have to be locked up pending a trial. According to legal sources, they then put pressure on the owner of the car to drop the case. Mukhtar Khan, a Peshawar Policeman, admits that the Police treat rich and poor kids differently. “Policemen sometimes come under pressure from different people in different ways and for different reasons”, he says, referring to the bribes offered by wealthy parents. “I have a lot of sympathy for poor kids, but I also know that a lot of children nowadays are involved in serious crimes like drug pushing. If we treat them leniently, lots of others will follow them”, he says.

*Source: ‘It’s a Long Road to Justice for Pakistan’s Poor Children’, The Times of Nigeria, 17/7/2003.*

**Death Penalty**

Article 37(a) of the U.N. Convention on the Rights of the Child unequivocally prohibits the imposition of the death penalty for "offences committed by persons below the age of eighteen years." But the difficulty in determining the age of the accused means that an unknown number of children are still being wrongly sentenced as adults to face the death penalty. In the Punjab province alone in 2002, there were 350 cases of children facing execution despite the announcement by President Pervez Musharraf in December 2001 that those children facing execution would have their sentences commuted or turned into life imprisonment.⁷⁶

Although death sentences imposed on children are usually commuted on appeal, they have been upheld in rare cases and Pakistan is one of six countries known to have executed juvenile offenders during the 1990s. It is today one of only four countries to have executed children since 2000, along with the Democratic Republic of Congo, Iran and the United States.\textsuperscript{77} The most recent case in Pakistan involved Shamun Masih, who was hanged in Hyderabad Central Prison on September 30, 1997. Masih had been sentenced to death in August 1991 for an armed robbery and triple murder committed in 1988, when he was fourteen years old.\textsuperscript{78}

Although the death penalty for children is prohibited under the JJSO 2000, the FATA and PATA areas of Pakistan (which are not yet bound by the JJSO) continue to utilize it as a sentencing option. For example, on 23 July 2002, two boys were convicted and put on death row having been sentenced to capital punishment by a court in the Swat district (PATA) of Pakistan.\textsuperscript{79}

\textsuperscript{77} Amnesty International USA website; http://www.amnestyusa.org/abolish/juveniles.html
The challenges of assisting children in conflict with the law are multiple and diverse, differing from country to country. In some countries it may simply be a problem of being overwhelmed by the number of child offenders passing through the juvenile justice system, but this is not true of Pakistan. As stated earlier, the large number of children in custody institutions suggests that Pakistan’s child crime problem is far more serious than it actually is, with less than 20% of these children actually convicted of a crime.

Pakistan is relatively privileged in relation to many other South Asian countries in having a very broad (if under-developed) NGO community. However, as this report has shown, juvenile justice in Pakistan is a complex and multi-faceted system, and any intervention targeting children in conflict with the law runs a substantial risk of further complicating or aggravating the existing problems. The lack of accurate and comprehensive documentation on the experiences of children within the system has proved a constant hindrance, and the sensitivity of the issue has acted as a deterrent for many smaller agencies who would otherwise get involved. As such, most interventions concerning juvenile justice in Pakistan have historically focused on raising awareness of abuses through reports and high-level advocacy. Many of these interventions assisted children in a piecemeal way, but lacked a systematic or targeted direction to meet the requirements of those most in need. There have been some successful direct interventions such as the Dost Welfare Foundation’s mobile treatment centres for child prisoners, but monitoring and evaluation of these programmes has been inconsistent or non-existent in many cases, making it difficult to assess the progress and impact achieved.

The government’s willingness to work with NGOs on issues such as juvenile justice was declared by one minister in 2001:

> The government wants to go all out to support non-governmental organisations in the field of social welfare, women development and human rights. We want to wholly facilitate the activities of NGOs working for the betterment and protection of the vulnerable sections of society including women, children, special persons and elderly.  

However, a major barrier to improved relations between government and NGOs in the field of juvenile justice is the fact that the former views the latter as a nuisance rather than a partner, and training of judicial personnel gives no guidance on cooperating with NGOs at any stage. For this reason, the alliances needed to secure early intervention strategies such as diversion programmes (to channel children away from courts and prisons into alternative care) have yet to materialize. Provisions for this are also lacking in the JJSO, which would have been the most suitable and timely document to use for guidance on implementing such initiatives.

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CONCLUSION

With the introduction of the Juvenile Justice Systems Ordinance in 2000, the Government of Pakistan and civil society groups have taken a definite step towards improving the situation of children in conflict with the law in Pakistan. Almost all the provincial and district governments now claim to use and implement it in one way or another. However, as this report has shown, there are still numerous gaps at the planning, implementation and monitoring levels. Suitable supporting infrastructure is currently inadequate, while the essential coordination between stakeholders and law enforcing agencies is yet to materialise. The reasons for this have been identified as a lack of financial support, training materials and capacity building initiatives among police and judicial staff, as well as among street living/working children, who are not fully aware of their rights.

To improve awareness and implementation of the JJSO 2000, local governments, law enforcing agencies, community stakeholders, schools and workplaces are the most relevant institutions to offer effective capacity building and awareness raising campaigns. School-based clubs, student unions, youth organisations, NGOs, school boards, health/village committees, sports clubs, boy scouts, theatre-music groups and children’s councils can all be effective entry points in Pakistan.

The public view of street children in countries such as Pakistan is overwhelmingly negative, and this is partly due to the continued perception of them as criminal offenders. The police, judiciary, government and media all have a responsibility to show that this is not necessarily the case, but this can only be achieved through substantially greater transparency in their operations and adherence to established legal instruments such as the JJSO. It is slowly being recognized that stiffer penalties are not necessarily the required response at this time, despite the continued public call for such. Empirical research shows that stiffer penalties may even increase re-offending, and community based treatment thus appears a more effective way to meet the best interests of children in conflict with the law and protect further children from becoming embroiled.

Community based rehabilitative treatment also allows for continuous research and evaluation of programmes that can inform practitioners. While resources are admittedly scarce, those that are available still suffer from under-utilisation and inappropriate distribution. Staff training must therefore be given a high priority if professionals are to provide effective and comprehensive services to children in conflict with the law.

Ultimately, the target to aim for at present is to ensure the full implementation of the JJSO at all levels of police, judiciary and government operations. Only then will these groups receive the sympathy and respect that they have been denied for so long.
Recommendations to the Government of Pakistan

On Juvenile Justice Laws in General

- Raise the minimum age of criminal responsibility (currently 7 years) to an internationally acceptable level, and ensure that children below the age of 18 are accorded the protection of juvenile justice provisions and are not treated as adults.

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

- Ensure that the JJSO 2000 is reflected in State Policy and constitutes part of the existing syllabus and curriculum of jail staff training institutes, police training academies and schools.

- Special emphasis is required on vulnerable groups of street living/working children and children comes in conflict with the law for poverty elevation, educational/vocational service and formal training sector is essential as committed in World Education Forum in Dakar, National Plan of Action and Education For All. Special attention needs to be given to the girl child, as this is not properly addressed in the Juvenile Justice System Ordinance 2000. The girl child needs a special focus in all programmes and policies.

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

On Improved Implementation of the JJSO 2000

- Action Plans for improved implementation and coordination at the National, Provincial and District levels should be prepared to ensure that state institutions, civil society groups and the general public are aware of the provisions made in the JJSO in relation to street living/working children and children in conflict with the law.

- An awareness raising campaign should be launched targeting judges of juvenile courts, probation officers, police prison authorities, management of special institutions (e.g. borstal institutions and certified schools) and the relevant civil society actors. Children at risk also need training and orientation on the applicable laws and standards in the field of juvenile justice.

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A national mapping and research exercise should be conducted to know the volume of street children and the multiple points of contact with the JJSO 2000. This exercise can also help in establishing better uniformity of the laws and in the appropriate preparation and dissemination of training and information material.

The implementation process needs greater profile at the national level, clarifying the significance of the Ordinance and renewing the nation’s obligation to the children. The wide range of actors involved in the juvenile justice system: police, judges, lawyers, prosecutors, probation officers and jail officials all need focused training and capacity building in order to realize their commitments.

There should be appropriate monitoring and evaluation systems to support juvenile prisons and the withdrawal of children from jails on priority basis, with a special focus on the protection of vulnerable street living/working children and other groups of children that most frequently come into conflict with law. These children should be provided with educational/vocational skills development programmes.

On Improving Conditions in State Prisons and Detention facilities

- Ensure that child detainees are, in accordance with human rights standards, at all times detained separately from adult offenders with separate facilities.
- Encourage greater contact between the child prisoner and their family, and wherever possible locate child detainees in prisons closest to their family homes.
- Ensure that all child detainees have the basic material necessary for their physical health and well-being, including mattresses, blankets and adequate clothing.
- Increase medical care in places of detention and improve the diet of child detainees.
- Increase access for child detainees to education, rehabilitation, skills development and sporting activities.

Recommendations to the National Police of Pakistan

General Police Procedure and Arrest

- Update the legal and institutional framework governing police functions to take into account the requirements of rapid urbanization, industrialization and the associated changes in crime and policing.
- Ensure full transparency and appropriately high standards in police recruitment and training programmes that reflect the provisions of the JJSO, and include a compulsory section in the syllabus on respecting human rights in general and child rights in particular.
Ensure that police receive training on the legal guidelines and restrictions concerning arrest as provided in the JJSO, UN CRC and other relevant legal instruments.

Prohibit the practice of extorting ‘protection money’ and bribes in routine police procedures by introducing severe penalties and monitoring systems in local stations to ensure transparency and adherence to the rules at all times. An independent body should also be created to listen to and deal with complaints arising from members of the public who have suffered mistreatment at the hands of police officers.

Ensure that arresting officers follow the correct procedure in determining the age of the child arrested, and that they have prompt access to adequate external verification sources if necessary.

Ensure that police stations are adequately staffed and resourced to meet the 14 day period for compiling and submitting Criminal Investigation Reports to court magistrates, and that all relevant parties (especially parents) have had the opportunity to contribute.

**Police Detention**

Ensure that deprivation of liberty is applied only as a measure of last resort and for the shortest possible period of time. This involves developing non-custodial sentences and introducing initiatives such as community-based rehabilitation.

Ensure that all children remanded in custody have immediate access to family/guardians, legal assistance and medical care.

Ensure that children are detained in separate facilities from adults at all stages of the judicial process.

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

**Recommendations to members of the National Judiciary**

**Bail**

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

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

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

- Ensure that expert legal representation is provided for all children under trial.

Sentencing

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

- Develop and utilize where possible non-custodial measures aimed at rehabilitating child offenders.