

PRISON BOUND
THE DENIAL OF JUVENILE JUSTICE IN PAKISTAN

Human Rights Watch

New York • Washington • London • Brussels

Copyright © November 1999 by Human Rights Watch
All rights reserved.
Printed in the United States of America.

ISBN: 1-56432-242-4
Library of Congress Catalog Card Number: 99-067700

Cover photograph: reprinted with permission from Lawyers for Human Rights and Legal Aid (LHRLA), Karachi, Pakistan.

Cover design by Rafael Jiménez

Addresses for Human Rights Watch
350 Fifth Avenue, 34th Floor, New York, NY 10118-3299
Tel: (212) 290-4700, Fax: (212) 736-1300, E-mail: hrwnyc@hrw.org

1630 Connecticut Avenue, N.W., Suite 500, Washington, DC 20009
Tel: (202) 612-4321, Fax: (202) 612-4333, E-mail: hrwdc@hrw.org

33 Islington High Street, N1 9LH London, UK
Tel: (171) 713-1995, Fax: (171) 713-1800, E-mail: hrwatchuk@gn.apc.org

15 Rue Van Campenhout, 1000 Brussels, Belgium
Tel: (2) 732-2009, Fax: (2) 732-0471, E-mail: hrwatcheu@skynet.be

Web Site Address: <http://www.hrw.org>

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

Human Rights Watch is dedicated to
protecting the human rights of people around the world.

We stand with victims and activists to prevent
discrimination, to uphold political freedom, to protect people from inhumane
conduct in wartime, and to bring offenders to justice.

We investigate and expose
human rights violations and hold abusers accountable.

We challenge governments and those who hold power to end abusive practices
and respect international human rights law.

We enlist the public and the international
community to support the cause of human rights for all.

HUMAN RIGHTS WATCH

Human Rights Watch conducts regular, systematic investigations of human rights abuses in some seventy countries around the world. Our reputation for timely, reliable disclosures has made us an essential source of information for those concerned with human rights. We address the human rights practices of governments of all political stripes, of all geopolitical alignments, and of all ethnic and religious persuasions. Human Rights Watch defends freedom of thought and expression, due process and equal protection of the law, and a vigorous civil society; we document and denounce murders, disappearances, torture, arbitrary imprisonment, discrimination, and other abuses of internationally recognized human rights. Our goal is to hold governments accountable if they transgress the rights of their people.

Human Rights Watch began in 1978 with the founding of its Europe and Central Asia division (then known as Helsinki Watch). Today, it also includes divisions covering Africa, the Americas, Asia, and the Middle East. In addition, it includes three thematic divisions on arms, children's rights, and women's rights. It maintains offices in New York, Washington, Los Angeles, London, Brussels, Moscow, Dushanbe, Rio de Janeiro, and Hong Kong. Human Rights Watch is an independent, nongovernmental organization, supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly.

The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Reed Brody, advocacy director; Carroll Bogert, communications director; Cynthia Brown, program director; Barbara Guglielmo, finance director; Jeri Laber special advisor; Lotte Leicht, Brussels office director; Patrick Mingos, publications director; Susan Osnos, associate director; Maria Pignataro Nielsen, human resources director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Jonathan Fanton is the chair of the board. Robert L. Bernstein is the founding chair.

The regional directors of Human Rights Watch are Peter Takirambudde, Africa; José Miguel Vivanco, Americas; Sidney Jones, Asia; Holly Cartner, Europe and Central Asia; and Hanny Megally, Middle East and North Africa. The thematic division directors are Joost R. Hiltermann, arms; Lois Whitman, children's; and Regan Ralph, women's.

The members of the board of directors are Jonathan Fanton, chair; Lisa Anderson, Robert L. Bernstein, David M. Brown, William Carmichael, Dorothy Cullman, Gina Despres, Irene Diamond, Adrian W. DeWind, Fiona Druckenmiller, Edith Everett, Michael E. Gellert, Vartan Gregorian, Alice H. Henkin, James F. Hoge, Stephen L. Kass, Marina Pinto Kaufman, Bruce Klatsky, Joanne Leedom-Ackerman, Josh Mailman, Yolanda T. Moses, Samuel K. Murumba, Andrew Nathan, Jane Olson, Peter Osnos, Kathleen Peratis, Bruce Rabb, Sigrid Rausing, Orville Schell, Sid Sheinberg, Gary G. Sick, Malcolm Smith, Domna Stanton, and Maya Wiley. Robert L. Bernstein is the founding chair of Human Rights Watch.

ACKNOWLEDGMENTS

This report is based on research conducted in Pakistan during May and August 1998 by Vikram Parekh, a Human Rights Watch researcher, and Ali Qazilbash, a consultant to Human Rights Watch. The report was written by Vikram Parekh, and edited by Yodon Thonden, counsel to Human Rights Watch, and Patricia Gossman, senior researcher at Human Rights Watch. Additional comments were provided by Michael Bochenek, counsel to Human Rights Watch.

Human Rights Watch is indebted to several individuals and non-governmental organizations in Pakistan that have done extensive work on juvenile justice and who generously assisted us in the course of researching this project. They include Zia Awan of Lawyers for Human Rights and Legal Aid; Hina Jilani, Mohammad Hamza, and Rana Muhammad Athar Jamal of the AGHS Child Rights and Legal Aid Cells; Afrasiab Khattak, I.A. Rehman, Aziz Siddiqui, and Brig. (ret'd) Rao Abid Hamid of the Human Rights Commission of Pakistan; Anees Jillani of the Society for the Protection of the Rights of the Child; and Dr. Amin A. Gadit, Associate Professor of Psychiatry, Hamdard College of Medicine, Karachi.

We would also like to thank several government officials and judicial authorities for their generous cooperation and assistance in our research. They include Mian Saqib Nisar, who at the time of our initial visit was Secretary of Law in the Government of Pakistan; Dr. Faqir Hussain, Joint Secretary, Pakistan Law Commission; Dr. Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Ministry of the Interior; Muhammad Masood Khan, Senior Lecturer (Law), Central Jail Staff Training Institute, Ministry of the Interior; Kamran Dost, Deputy Secretary (General), Home Department, Government of Sindh; Zain-ul-Abideen, Inspector-General of Prisons, Government of the North-West Frontier Province; Neelofar Shahnawaz, Judicial Magistrate (Juvenile Court), Karachi, and Mohammed Aslam, judicial magistrate, Lahore.

Special mention should be made of the Government of Punjab province, which granted us permission to inspect each of the facilities that we requested. In particular we wish to thank Zia-ul-Hassan, Inspector-General of Prisons, who authorized our visits; Muhammad Arshad Bhatti, Additional Secretary, Home Department; Captain Sarfraz Mufti, Deputy Inspector-General of Prisons; Chaudhry Afzaal Mehmood, Superintendent, and Tareen Farooq, Deputy Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur; Zia Ullah, Superintendent, District Jail, Lahore; and Kasim Baloch, Deputy Superintendent, Rawalpindi.

Finally, we would like to thank the many children whom we interviewed, whose names have been changed in this report to protect their privacy. We also wish to thank those human rights activists and government officials whose names have been withheld so as not to jeopardize their security or position.

TABLE OF CONTENTS

I. SUMMARY AND RECOMMENDATIONS	1
Recommendations	7
To the Government of Pakistan.....	7
Regarding the Police.....	8
Regarding the Prisons	9
Regarding the Child Offenders Act (Bill), 1995	11
Regarding Other Laws Affecting Juveniles	12
To the Governments of Punjab and Sindh Provinces.....	13
To Donor Countries	14
II. BACKGROUND	15
Criminal Law.....	16
Juvenile Justice Laws	18
III. CHILDREN IN POLICE CUSTODY	20
Custodial Abuse of Children	22
Conditions in Police Custody	24
Illegal Detention.....	28
IV. JUVENILE WARDS OF PRISONS	33
International Standards.....	33
Prison Rules	34
Pakistan's Prison System	35
Accommodations.....	36
Lahore District Jail.....	36
Rawalpindi Central Prison	38
Other Prisons.....	39
Medical Care and Nutrition.....	40
Education and Vocational Training.....	42
Disciplinary Measures.....	45
Training of Jail Staff	48
Sexual Abuse.....	51
V. JUVENILE INSTITUTIONS	54
Juvenile Institutions.....	55
Borstal Institute and Juvenile Jail, Bahawalpur.....	57
Accommodations	57
Medical Care.....	58
Education	59

	Vocational Training and Labor	61
	Disciplinary Measures	63
	Grievance Mechanisms	64
	Visits by Family Members	65
	Youthful Offenders Industrial School, Karachi	66
	Governing Legislation.....	66
	Accommodations	67
	Education and Vocational Training	70
	Abuses by Jail Staff.....	70
	Remand Home, Karachi	71
VI.	CHILDREN IN THE CRIMINAL JUSTICE SYSTEM	73
	Defects in the Criminal Justice System	73
	Delayed Investigation Reports	73
	Restrictive Application of Bail Laws	74
	Frequent Adjournment of Hearings.....	75
	Limited Use of Probation and Parole.....	77
	Lack of Counsel	80
	Criminal Courts	80
	Sentencing.....	80
	Tribal Courts	84
	Anti-Terrorism Courts	85
VII.	JUVENILE JUSTICE SYSTEMS	90
	Juvenile Justice in Sindh	90
	Juvenile Justice in Punjab.....	93
	The Child Offenders Act (Bill), 1995.....	94
	Definition of a Child	97
	Arrest and Bail	97
	Disposal of Cases	99
	Training of Personnel.....	100
	Conflicts With Provincial Laws	100
	Recommendations of the Pakistan Law Commission	101
VIII.	CONCLUSION.....	103
	APPENDICES	105
	APPENDIX A: Excerpts from the U.N. Convention on the Rights of the Child	105
	APPENDIX B: U.N. Standard Minimum Rules For The Administration of Juvenile Justice	115

APPENDIX C: U.N. Rules For The Protection of Juveniles Deprived of Their Liberty	125
APPENDIX D: Child Offenders Act 1995	142

I. SUMMARY AND RECOMMENDATIONS

They kept us for one month in the [police] station. There were about twenty-five to thirty people in the lockup. When there were more, we couldn't lie down. Whenever it rained, water used to seep in from the roof. There were no windows. I was beaten all over my body, and the investigating officer demanded Rs. 50,000 [\$980] to release me.

—Taher Hussain, fifteen

Though nine years have passed since Pakistan ratified the U.N. Convention on the Rights of the Child, Pakistani children in conflict with the law continue to be denied the juvenile justice protections of the convention.

Juvenile justice, as conceptualized in the Convention on the Rights of the Child and other international instruments, is predicated on the adjudication of children's cases with a view to their rehabilitation and early reintegration into their communities. It entails separate custodial arrangements for children, a right to counsel, the timely processing of their cases, and the liberal use of alternative sentencing measures, such as release on probation or education and vocational training. The convention prohibits the imposition of capital punishment as well as torture and any other form of cruel, inhuman, or degrading treatment or punishment.

What children in Pakistan actually encounter in the criminal justice system is at stark variance with these provisions. Of the 2,700 juvenile prisoners in Punjab province during February 1998, 91 percent were awaiting the conclusion of their trials, a process that can take months or even years. While their trials are pending, children languish in overcrowded, often harsh detention facilities that offer few educational or recreational opportunities. Their situation is rendered all the more poignant by the low conviction rate for children: between 13 and 17 percent.

Although Pakistan's Criminal Procedure Code requires that detainees be brought before a magistrate within twenty-four hours of their arrest, most are held for extended periods of time in police custody. One child interviewed by Human Rights Watch had spent three months in police lockups, while several others had been held for at least two weeks without being produced before a magistrate. Such cases of illegal detention are often masked by the police practice of falsifying arrest dates.

Children and adults in police custody usually share the same cells and in most respects receive the same deplorable treatment. Detainees generally depend

on their families for meals, and the cells in which they are held are sometimes severely overcrowded. While in police custody children and adults alike are routinely subjected to various forms of physical torture, including being beaten, hung upside down, or whipped with a rubber strap or specially designed leather slipper. Torture is employed to obtain confessions or information about a case, although police officers also rely on it to punish, intimidate, or extort payment from detainees. In addition, children are also vulnerable to sexual assault by police.

In May 1998, a thirteen-year-old boy, Ghulam Jilani, died in a police station in the northern town of Mansehra. Although the police filed a report asserting that the boy had committed suicide, a fellow detainee's account provided to Human Rights Watch indicated that he died after severe and prolonged torture. Public protests against the boy's apparent murder resulted in the arrest of the Mansehra police station's head constable and the launching of a judicial inquiry into the case. In most cases, however, human rights violations go unreported, due in large part to the lack of independent complaints mechanisms.

Following their appearance before a magistrate, children may either be remanded to police custody or transferred to a detention facility. Most such children, including those who have not yet been convicted, are held in prisons—usually in separate juvenile wards, although in some smaller prisons they are held with adults. At present, Pakistan has only two institutions specifically designated for juveniles; these are located in Karachi, the capital of Sindh province, and Bahawalpur, a remote town in the southern part of Punjab province.

With the authorization and cooperation of the Punjab prisons department, Human Rights Watch in May 1998 visited the juvenile wards of two major urban prisons, Lahore District Jail and Rawalpindi Central Prison, as well as the Bahawalpur borstal, which holds all children in Punjab sentenced to terms of detention of two months or more. We interviewed a total of twenty children who were selected as broadly representative of the juvenile population with respect to age, offense, and status. All of their names have been changed in this report, with the exception of one child whose case had already prompted the public intervention of the president of Pakistan. The Sindh provincial government withheld permission to visit Pakistan's other juvenile institution, the Youthful Offenders Industrial School in Karachi. However, we gathered extensive information about conditions and inmate treatment in the industrial school and other institutions that we were unable to visit from judges, legal aid lawyers, and physicians who have visited them. In addition, prison directors in the facilities we visited freely described punishments and grievance procedures that deviated from domestic and international requirements, while government authorities and local nongovernmental organizations (NGOs) provided us extensive data about the juvenile population.

Overcrowding is pervasive throughout the prison system. The juvenile ward of Lahore District Jail, for example, houses three times as many children as it was designed for. The Bahawalpur borstal is a rare exception; it operates below capacity due to the low conviction rate of children and the relatively low population density in the area.

Accommodations in the facilities we visited were exceedingly spare. Children were housed in dormitory-style barracks and slept either on the floor or on raised cement blocks; those in Lahore District Jail were not provided mattresses. Although the juvenile ward in Lahore appeared to be effectively segregated from the rest of the prison, children could easily mix with eighteen to twenty-one-year-olds, who were also housed in the juvenile ward. The institutions Human Rights Watch visited all had clean, flushing squat toilets, but a boy who had been held in Sahiwal Central Prison—one of Punjab's larger detention facilities—told us that it had dry, brick squat toilets.

The infirmary in the Bahawalpur borstal had no cooling devices other than fans and only rudimentary medical equipment. In its own evaluation of the country's penal system, the Pakistan Law Commission, a government body charged with proposing reforms to the country's laws and legal institutions, noted that prison hospitals lacked proper laboratories, equipment, and medicines. After examining 200 children in Karachi's industrial school in 1997, an independent Pakistani medical team reported that 57 percent were suffering from scabies and 11 percent had respiratory ailments. Personal hygiene in detention facilities is compromised by a shortage of water, as is the case at Bahawalpur, or congestion, as in Karachi's industrial school.

The provision of education and vocational training in the prisons and juvenile institutions is severely limited. Religious instruction appeared to have been made a priority in all three of the facilities we visited. This stemmed not only from the personal conviction of superintendents, but also from a law that grants prisoners a two-year remission in their sentence if they can demonstrate that they have memorized the entire Quran. The Pakistan Prison Rules only require the provision of secular education to convicts, who form a small proportion of the juvenile population. Professional instructors have been retained in the Bahawalpur borstal and Karachi's industrial school, both of which hold children convicted of crimes as well as those whose trials are under way. Staffing in Bahawalpur appeared insufficient, and classes were held in open barracks without teaching aids. In Rawalpindi, educated adult prisoners are assigned to teach juveniles, while in Lahore, no secular education is provided children at all. Vocational training, where it is available, is essentially punitive. Convicted children in Bahawalpur who have

been sentenced to “rigorous” imprisonment are required to work in six hours shifts with antiquated equipment at tasks such as tailoring, carpet-weaving, and carpentry.

The disciplinary measure most frequently imposed on children is solitary confinement for up to two or three weeks; those in Lahore District Jail are deprived of any communication with their family during that time. Human Rights Watch also observed several convicts attending classes in the borstal with their legs in iron shackles. The medical team that visited Karachi’s industrial school in 1997 found that 17.4 percent of the children had been punished through hard labor or ill-treatment, including food deprivation and being forced to stand in the hot sun or maintain uncomfortable positions. Such ill-treatment, as well as shackling or solitary confinement, violates the ban on cruel, inhuman, or degrading treatment or punishment in the Convention on the Rights of the Child. Its imposition is aggravated by the absence of impartial grievance mechanisms, including those that are required by law. The government of Punjab, for example, has yet to establish a visiting committee for the Bahawalpur borstal in accordance with the province’s borstal rules.

Criminal activities on the part of lower-level prison staff are widespread. We heard credible accounts of staff involvement in extortion and narcotics trafficking, as well as sexual abuse of juvenile inmates. The Central Jail Staff Training Institute, a branch of the Interior Ministry, has made commendable efforts to impart knowledge of prisoners’ rights under domestic and international law. However, prison authorities sometimes prevent staff from attending training classes, citing an inadequate staff-to-prisoner ratio as justification.

There are several general defects in the criminal justice system that have contributed to the massive overcrowding in prisons and prolonged detention of both adults and children:

- Police routinely fail to submit investigation reports within the fourteen-day period prescribed by law, and completion of the investigation is usually subject to further delays—often lasting more than a year.
- The Criminal Procedure Code states that bail amounts should not be excessive, but judges routinely set bail well beyond the reach of detainees’ families. And while judges may grant bail to children under the age of sixteen charged with offenses that are otherwise non-bailable, they often choose not to.
- Court hearings are frequently adjourned, for a variety of reasons. These include the failure of prison authorities to produce detainees, police

disregard of summons, the absence of adequate security and travel arrangements for witnesses, and administrative incompetence in scheduling hearings.

- There has been a decline, over the past twenty years, in the number of prisoners released on probation or parole. This reflects, in part, the inadequate staffing of the provincial reclamation and probation departments: there are at present only eleven probation and three parole officers for the entire province of Sindh. In addition, magistrates and legal aid lawyers report that probation officers frequently fail to perform their duties.
- The state provides legal assistance only when persons are appealing sentences of death, life imprisonment, or *hadd* (Quranic) punishments, such as amputation.

Eighty-seven percent of the juvenile convicts held in the Bahawalpur borstal during March 1998 were serving sentences of ten years or more, with the most common sentence being twenty-five years of imprisonment (on reaching age twenty-one, detainees are transferred to prisons). In addition, the sentences frequently include stiff fines, nonpayment of which can result in indefinite detention. This stems in part from the absence of social inquiry reports prepared by probation officers, as well as the failure of judges to take the child's economic circumstances into account. The requirement of *diyyat* or blood-money payment for certain offenses imposes an extraordinary financial burden on children's families, and often ensures the continued incarceration of children beyond their provisional date of release. Both children and adults convicted of *zina*, sexual relations outside of marriage, face the *hadd* penalty of whipping in addition to their prison terms. Most of the juveniles at Bahawalpur who were convicted of *zina* were sentenced to receive thirty lashes of a whip—the maximum number that may be imposed on children under the law governing *zina*. Sentences to *hadd* punishments, however, must be confirmed by an appellate court. To date, no *hadd* punishments have actually been carried out.

Children, like adults, may in some cases be tried by special courts. Among the latter institutions are the *jirgas*, or tribal courts, that take the place of the judiciary in about one-third of the North-West Frontier Province. A legacy of British colonial administration in the area, the *jirgas* conduct trials without regard to due process guarantees, such as the right to retain counsel, present evidence, or cross-examine witnesses. *Jirga* decisions are countersigned by a federally appointed

political agent and cannot be appealed to a higher court of law. In 1994, a jirga sentenced a thirteen-year-old boy, Ruman Ali, to forty-three years in prison for murder. In other parts of Pakistan, the government has periodically introduced emergency laws and special tribunals to curb ethnic and sectarian strife, often at the expense of civil rights and liberties. The Anti-Terrorism Act, introduced in 1997 and amended in April 1999, includes a provision overriding all other laws currently in force, giving anti-terrorism courts authority to try juveniles and sentence them to death, in violation of the Convention on the Rights of the Child and provincial juvenile justice laws.

Of Pakistan's four provinces, only Sindh and Punjab currently have juvenile justice laws: the Sindh Children Act and the Punjab Youthful Offenders Ordinance. In Sindh, more than twenty years after the province's juvenile law was brought into force, there is only one industrial school for juveniles, located in Karachi. Until recently, Sindh also had only one juvenile court, in Karachi. However, the provincial government in 1999 issued an order designating juvenile courts for all twenty-two districts in the province—an encouraging development, although the judges themselves are not being provided special training in juvenile justice administration.

Operating with few resources, the magistrate of Karachi's juvenile court attempts to conduct inquiries into each child's background and to ensure that parents attend trials, and in a proceeding observed by Human Rights Watch employed alternative sentencing measures. The juvenile court's departure from established patterns of adjudication in Pakistan is matched up to a point by Karachi's industrial school. The efforts of concerned NGOs, judges, and private donors have resulted in facilities that are superior to the Bahawalpur borstal and most prison juvenile wards in Pakistan, according to persons who have visited the industrial school. However, overcrowding and abusive practices by prison authorities there have reportedly replicated many of the conditions prevalent within the prison system as a whole.

The Punjab law was introduced in 1983, but is officially in force in just one of the province's eight divisions. The government of Punjab has recently taken welcome, albeit belated, steps toward instituting a province-wide juvenile justice system. These include designating juvenile courts in all districts of the province and laying plans for the establishment of four juvenile detention facilities—termed industrial schools under the Ordinance. However, these undertakings have been marred by administrative neglect. Although juvenile courts were designated in November 1998, they remained nonfunctional as of early March 1999, as neither the police nor the magistrates had directed cases to them. Moreover, the juvenile court judges, who also serve as appellate judges for the criminal courts and courts of first instance for certain offenses, have not received special training in the

administration of juvenile justice. And as of mid-May 1999, no new funds had been allocated toward the establishment of industrial schools.

The Child Offenders Act, a bill to create a federal juvenile justice law, remains pending before Pakistan's Senate four years after its approval by a Senate standing committee. The bill would make some noteworthy contributions to the administration of juvenile justice in Pakistan, most importantly by requiring the designation of juvenile courts and abolishing capital punishment for children. In several key respects, however, it falls short of the protections accorded to children under the juvenile justice laws of Sindh and Punjab, as well as the Convention on the Rights of the Child and other international juvenile justice standards.

The recommendations that follow have been drafted with a view toward the establishment of a comprehensive, nationwide system of juvenile justice in Pakistan. They include not only specific suggestions for the amendment of the Senate bill, but also proposals for institutional reform. Even a well-drafted law is unlikely to achieve its objectives in the absence of a trained and accountable police force, adequately staffed probation departments, judges that are familiar with the applicable domestic law and international standards, and facilities that are designed for the guidance and care of juvenile offenders. Most importantly, there should be a range of alternatives to the pre-trial detention of children and their institutional placement by the courts. Such arrangements will help avert the prolonged and damaging confinement of children following their arrest, and promote the early rehabilitation and reintegration into their communities of those found to have infringed the penal law.

Recommendations

To the Government of Pakistan

- Submit Pakistan's overdue second report to the Committee on the Rights of the Child.
- Implement the recommendations of the Pakistan Law Commission in its Report on the Criminal Justice System, 1997. These include requiring courts to take notice of negligence or undue delay in the submission of investigation reports, liberalizing the laws governing bail, and prohibiting the frequent adjournment of hearings.
- Implement the recommendations of the Pakistan Law Commission in its report, Reforming the Juvenile Justice System, submitted to the government in June 1999. These include designating juvenile courts in all

provinces and establishing separate juvenile institutions, with facilities for health care, education, and training.

- In accordance with the U.N. Convention on the Rights of the Child, prohibit the imposition of the death penalty on anyone who was below the age of eighteen when the offense in question was committed. Commute all death sentences that have been imposed in such cases.
- Allocate additional resources, including increased staffing, for the provincial reclamation and probation departments.

Regarding the Police

- Institute mandatory training of police in the special needs and rights of children deprived of their liberty.
- Conduct prompt judicial inquiries into all custodial deaths, with public disclosure of findings stemming from the inquiries.
- Establish independent bodies with the authority to initiate investigations of police misconduct based on complaints or other information made available to them. The investigative bodies should have unrestricted access to police stations and all other places of detention used by police, including unofficial detention facilities. The monitoring bodies should be directly accessible to children and their families, and should include sessions court judges.
- Enforce disciplinary action, including dismissal, and initiate criminal prosecution against officers found to have tortured detainees or subjected them to other forms of cruel, inhuman, or degrading treatment or punishment.
- Enforce disciplinary action and initiate criminal prosecution where warranted against police officers who fail to produce detainees before a magistrate within the prescribed twenty-four-hour period.
- Require police to immediately notify probation officers upon detaining a child. Probation officers should conduct prompt interviews with detained children and should verify the date and time of each child's arrest.

Disciplinary action, and criminal prosecution if warranted, should be taken against officers found to have falsely recorded arrest dates.

- Make arrangements in each local jurisdiction to house those children who cannot immediately be returned to their families in an appropriate setting pending their appearance before a magistrate. Such arrangements should be consistent with the international standards governing pre-trial detention of children, and should preclude the commingling of adults and children. If remand homes are established for this purpose, they should be expressly reserved for the temporary custody of children.

Regarding the Prisons

- Implement the recommendations of the Pakistan Law Commission in its Report on Jail Reform, 1997. These include providing all prisons with facilities for education and vocational training as well as qualified medical officers and nursing staff, and requiring regular prison visits by high court and subordinate court judges.
- Make instruction in reading, writing, arithmetic and other subjects compulsory up to the matriculation standard (tenth grade), both for convicted children and those who are under trial. Allow prison superintendents to provide for education beyond the matriculation standard and to increase the number of subjects taught for all promising children, irrespective of gender. Amend Rule 298 of the Pakistan Prison Rules accordingly.
- Require the provision of sufficient and accredited teaching staff for each facility where children are held, as well as all necessary teaching aids and writing materials. Incorporate these requirements in Chapter 12 of the Pakistan Prison Rules.
- Eliminate the punishments of whipping, imposition of fetters, placement in cellular confinement, and assignment to hard labor. Amend Rules 583 and 584 of the Pakistan Prison Rules accordingly.
- Prohibit the appointment of convicts as prison officers. Repeal Rules 456, 458, and 459 of the Pakistan Prison Rules, which authorize and govern these appointments.

-
- Eliminate the mandatory censorship of all letters sent to or received by juvenile prisoners, and amend Rule 546 of the Pakistan Prison Rules accordingly. The Prison Rules should at least be consistent with Rule 16(1) of the Punjab Borstal Rules, which grants superintendents discretion to censor an inmate's correspondence but does not require censorship or extend such authority to lower-ranking staff.
 - Ensure that the right of the child to communicate with family and friends is upheld at all times.
 - Ensure the strict separation of adults from children in all detention facilities. Young adults aged eighteen to twenty-one should not be housed with children under the age of eighteen.
 - Collect data in each facility with regard to the number of female prisoners under the age of eighteen. Arrange separate accommodations for them.
 - Upgrade medical facilities in all detention centers to ensure adequate supplies of essential medicines and diagnostic equipment, the presence of a licensed medical practitioner on the premises at all times, and the provision of preventive medical care and psychological counseling.
 - Ensure that all requests for medical care are honored.
 - Upgrade the accommodations for children in all facilities to include adequate bedding, with mattresses for each child, flushing toilets, private visiting areas, and a range of recreational equipment.
 - Meals should at a minimum conform to the requirements of the Pakistan Prison Rules and should be prepared in consultation with nutritionists.
 - Establish modern vocational training centers in each facility housing children, with professional instruction in occupations likely to prepare them for future employment. Ensure that juveniles are adequately remunerated for any labor performed.
 - Establish for each facility an independent complaints mechanism, with the authority to initiate and conduct investigations. The mechanism should be directly accessible to children and should include NGO representatives.

- Promptly investigate reports of sexual abuse by prison staff or other prisoners and suspend any accused staff from duty pending completion of the inquiry. Prompt medical examinations should be conducted in the event of such a complaint.
- Staff found to have used excessive physical force against children should be subject to strict disciplinary action, including criminal prosecution where warranted. Findings of sexual abuse should result in criminal prosecution.

Regarding the Child Offenders Act (Bill), 1995

The Child Offenders Act, 1995, which is currently pending before Pakistan's Senate, should be redrafted accordingly:

- With regard to the adjudication of children's cases, define the term "child" as "a person who was below the age of eighteen years when the offense with which he or she is charged was committed."
- Prohibit the detention of any child in a police station, unless ordered by a judge. Such detention orders should be employed only in exceptional circumstances and for the shortest possible period of time. Mechanisms should be set up to monitor the strict enforcement of international standards governing the detention of juveniles, including the right to communicate with their family members.
- Direct courts to take into account the social and economic circumstances of the child in setting bail.
- Require juvenile courts, in disposing of cases, to take into account the character, age and circumstances of the child, as well as the report of the probation officer. Direct juvenile courts to dispose of cases with a view to promoting the best interests of the child, including his or her reintegration into society.
- Provide that placement in an institution should be an option of the last resort and for the least possible length of time.
- Provide that juvenile courts shall have recourse to guidance and supervision orders, counseling, probation, foster care, education and vocational training programs, and other alternative disposition measures.

- Require the professional training of all personnel charged with handling juveniles or their cases. Police, judicial authorities, and the staff of facilities having custody of children should be familiarized with the special needs of children, as well as their rights under Pakistani and international law.
 - Prohibit the joint trial of adults and children. When an adult and child are accused of conjointly committing an offense, require the preparation of separate charge sheets and the adjudication of the child's case by the appropriate juvenile court.
 - Prohibit the mandatory transfer of children under the age of eighteen from borstal institutions to prisons. Allow judicial authorities discretion to transfer children to homes, schools, or other institutions that are exclusively designated for juveniles and which afford equivalent or superior educational and vocational training opportunities. Determinations to retain or transfer a child should be made with a view to keeping children in the least restrictive environment possible.
- Regarding Other Laws Affecting Juveniles***
- Repeal all provisions of the Hudood Ordinances that are incompatible with the Convention on the Rights of the Child. These include the Ordinances' establishment of disparate and subjective standards of majority for children according to sex; the inclusion of discriminatory provisions regarding the evidentiary value of testimony by girls and adult women; and the stipulation of whipping, amputation, and death by stoning as forms of punishment.
 - Prohibit the trial of children by tribal courts, including those constituted under the authority of the Frontier Crimes Regulation. Provide accused children and their families transportation and accommodation, as needed, so that their cases may be heard by juvenile courts or ordinary courts of law empowered to try juveniles.
 - The Anti-Terrorism Act denies accused persons fundamental due process guarantees, and should be repealed. In particular, repeal article 32 of the act, which overrides the Code of Criminal Procedure and all other laws

currently in force, and include a provision stating that children under the age of eighteen are not be tried by anti-terrorism courts.

To the Governments of Punjab and Sindh Provinces

- Enforce the Punjab Youthful Offenders Ordinance in all administrative divisions of Punjab province.
- Direct resources toward the training of all juvenile court judges in the applicable international and domestic laws governing juvenile justice administration.
- In accordance with the Sindh Children Act and the Punjab Youthful Offenders Ordinance, ensure that all juvenile cases are systematically directed to juvenile courts, where they have been established, and alternatively to ordinary courts of law exercising juvenile court powers. Issue instructions accordingly to all police station house officers, magistrates, and judges of anti-terrorism and other special courts.
- Designate a Director of Borstal Institutions, with subordinate staff, and a Visiting Committee for the Bahawalpur Borstal, as required by the Punjab Borstal Act and the Punjab Borstal Rules. Transfer administrative responsibility for the Bahawalpur Borstal from the Punjab Prisons Department to the Director of Borstal Institutions.
- Appoint Chief Inspectors of Certified Schools in Sindh and Punjab, with subordinate staff, as required by the Sindh Children Act and Punjab Youthful Offenders Ordinance. Transfer administrative responsibility for the Youthful Offenders Industrial School, Karachi, to the Chief Inspector of Certified Schools.
- Allocate resources for the establishment or certification of additional industrial training schools for juveniles. The placement of children in any institution should, however, be for the shortest possible period of time and an option of last resort.

To Donor Countries

- Earmark aid for the training of law enforcement officials, prison staff, and probation and parole officers on the rights of the child and on the handling of juvenile cases.
- Earmark aid for the creation of specialized courts for juveniles, and for the training of judicial authorities on the rights of the child and on the handling of juvenile cases.
- Earmark aid to improve conditions in juvenile institutions and prison juvenile wards to provide for the health, physical, educational, and recreational needs of children committed there.
- Use all available opportunities to press the government of Pakistan to hold law enforcement personnel and prison officers accountable for abuses committed against children, including arbitrary detention, extortion, and physical and sexual abuse.
- Use all available opportunities to urge the government of Pakistan to adopt a federal juvenile justice law consistent with the Convention on the Rights of the Child and other applicable international standards.

II. BACKGROUND

Pakistan's prisons are vastly overcrowded. According to government statistics, 74,483 persons were in prison nationwide as of June 30, 1996, while the total capacity of the country's detention facilities was 34,014.¹ Overcrowding is particularly severe in Punjab, where on February 28, 1998, there were 47,835 persons in prison,² against a capacity of 17,271.³ Underlying the congestion in Pakistan's prisons is a breakdown in the criminal justice system. The failure of police to complete investigations on time, the reluctance of judges to grant release on bail, frequent adjournments of hearings, and a paucity of probation officers have all contributed to the prolonged pre-trial detention of persons charged with criminal offenses.

¹ Pakistan Law Commission, "Report on Jail Reform, 1997," Government of Pakistan, Islamabad, 1997, p. 11.

² Prisons Department, Government of Punjab, "Crime-Wise/Section-Wise Monthly Population Statement for the Month of February 1998, as stood on 28-02-98."

³ Pakistan Law Commission, "Report on Jail Reform, 1997," p. 11.

Child prisoners,⁴ who numbered over 3,700 at the end of 1997,⁵ are among the more conspicuous victims of this administrative and judicial neglect. The proportion who are under trial⁶—91 percent in Punjab—is even higher than the corresponding figure for adults,⁷ while the level of overcrowding that they experience is comparable in some facilities.⁸ The exceptionally low conviction rate for children (between 13 and 17 percent),⁹ coupled with the delays in their adjudication and the severely limited recreational and educational opportunities in Pakistani prisons, means that most spend months or even years in needless and damaging confinement. As children, they are also uniquely vulnerable to ill-treatment and sexual abuse—both in police lockups, where many are illegally held for extended periods, and in prisons.

Criminal Law

A large majority of children in Pakistani prisons are detained on charges of murder, causing hurt with a dangerous weapon, theft, dacoity,¹⁰ prohibition,¹¹ and

⁴ In this report, the word “child” refers to anyone under the age of eighteen. The U.N. Convention on the Rights of the Child, which Pakistan ratified in 1990, defines a child as “every human being under the age of eighteen unless, under the law applicable to the child, majority is attained earlier.” U.N. Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/4/49 (1989) (entered into force September 2, 1990), Article 1.

⁵ Waseem Ahmad, Abid Hassan, Zafar Iqbal, and Mohammad Shakeel, *The State of Juvenile Prisoners in Pakistan 1997* (Islamabad: Society for the Protection of the Rights of the Child (SPARC), February 1998), p. iv. SPARC found a total of 3,433 juvenile prisoners in fifty-one prisons throughout Pakistan, and estimated that there were a further 300 children in prisons in the interior of Sindh province, for which data was then unavailable.

⁶ The term “under trial” is used within the Pakistani penal system to refer to those prisoners who have not been convicted. Pakistan Prison Rules, 1978 (U/S 59 of Prisons Act, 1894), Rule 224(b).

⁷ During February 1998, nearly 80 percent of Punjab’s adult prison population was awaiting the conclusion of their trials. Calculation based on figures reported in Prisons Department, Government of Punjab, “Crime-Wise/Section-Wise Monthly Population Statement...”

⁸ During May 1998, the juvenile ward of Lahore District Jail was operating at nearly three times its rated capacity. The prison as a whole was operating at three-and-a-half times its capacity.

⁹ Asma Jahangir and Mark Doucet, *Children of a Lesser God: Child Prisoners of Pakistan* (Lahore: Vanguard Books, 1993), p. 1.

¹⁰ “When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a

zina (sexual acts outside of marriage). Of these, the first four are defined by the Pakistan Penal Code. Much of the code is retained from the colonial period, although significant portions—notably those governing murder and other “offences against the human body”—have been amended to bring them into accordance with Islamic law. The Penal Code sets the age of criminal responsibility at twelve,¹² 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.”¹³ 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.

Prohibition and *zina* are defined under a parallel body of criminal law: the Hudood Ordinances. The Ordinances were promulgated in 1979, two years after a coup by Army Chief of Staff General Zia-ul-Haq that ushered in more than a decade of military rule and a sweeping program of Islamizing Pakistan’s laws and legal institutions. Besides the two aforementioned offenses, the Hudood Ordinances include certain crimes against property as well as false accusations of *zina*. In the event of a conflict between the ordinances and the Penal Code, the ordinances’ provisions prevail.

robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding is said to commit dacoity.” Pakistan Penal Code, Sec. 391.

¹¹ The Prohibition (Enforcement of Hadd) Order, 1979, forbids Muslims in Pakistan from manufacturing, selling, possessing, or consuming any intoxicant.

¹² Pakistan Penal Code, Sec. 82

¹³ *Ibid.*, Sec. 83

The most far-reaching of the Hudood 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.¹⁴ While the number of female children in Pakistan's prisons remains low,¹⁵ 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.¹⁶ The Lahore-based NGO, AGHS Child Rights Cell, which recorded a significantly higher figure for girls in Punjab prisons under the age of eighteen—thirty-three—found that eighteen were charged under the Zina Ordinance.¹⁷

¹⁴ "The number of women in prison at any moment...soared from as few as 70 in 1980 to as many as 4,500 in 1990." Human Rights Watch, *Double Jeopardy: The Abuse of Women in Pakistan* (New York: Human Rights Watch, 1992), p. 37.

¹⁵ There were twenty-six juvenile females in Pakistan's prisons—excluding those in the interior of Sindh province—at the end of 1997, according to data collected from the provincial prisons departments. Ahmad et al, *The State of Juvenile Prisoners in Pakistan 1997*, p. iv. This figure may substantially underrepresent the number of girls in prison. See note 17.

¹⁶ Prisons Department, Government of Punjab, "Crime-Wise/Section-Wise Monthly Population Statement..."

¹⁷ AGHS noted that girls are seldom counted separately from adult women by prison officials, and that its data were based on reports from two Punjab prisons, Multan West District Jail and Gujranwala District Jail, as well as information that it gathered in a program for women prisoners. AGHS Child Rights Cell, "Children in Prisons: Punjab

The Zina Ordinance defines the age of majority as sixteen for females and eighteen for males, or the attainment of puberty for either.¹⁸ 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.¹⁹ In addition, attaining majority at puberty exposes young children to the prospect of *hadd* (Quranic) punishments, including whipping, amputation, and death by stoning. For minors, the maximum punishment for zina offenses is either imprisonment for up to five years, a fine, or both. Minors may additionally be sentenced to receive up to thirty lashes of a whip.²⁰ It should be noted, however, that sentences to *hadd* punishments must be confirmed by an appellate court,²¹ and that no *hadd* punishments have been carried out to date.

Juvenile Justice Laws

Although there is a juvenile justice bill pending before Pakistan's Senate, discussed in Chapter VII of this report, Pakistan presently lacks a federal juvenile justice law. Two of the country's four provinces, Punjab and Sindh, have enacted juvenile justice laws, but only in the city of Karachi are the rudiments of a juvenile justice system in place. There are no juvenile justice laws operative in Baluchistan or the North-West Frontier Province.

In July 1955, Sindh's provincial legislature enacted the Sindh Children Act, a juvenile justice and child protection law that succeeded the pre-partition Bombay Children Act of 1924. Like most legislation in Pakistan, the Sindh Children Act included a provision stating that it would come into force only when the relevant government office—in this case, the provincial Home

¹⁸ Offence of Zina Ordinance, 1979, Sec. 2(a).

¹⁹ See Human Rights Watch, *Double Jeopardy*, p. 149, Note 124, citing Women Living Under Muslim Laws, "How Far Are the Penal Laws Effective in Protecting Women," *Dossier #3* (1988), p. 33.

²⁰ Offence of Zina Ordinance, 1979, Sec. 7.

²¹ *Ibid.*, Sec. 5(3) and 6(4).

Department—published a notice to that effect in its official gazette. However, the act remained dormant for nearly twenty years, owing in part to Sindh’s merger in October 1955 into the new administrative unit of West Pakistan. In 1974, following Sindh’s reconstitution as a province, the act was applied to the divisions of Hyderabad and Sukkur, and two years later, to Karachi.²²

²² See generally Ilyas Khan, *Laws Relating to Children* (Karachi: Pakistan Law House, 1997), pp. 6-7.

The provincial legislature of Punjab passed a modest juvenile justice law, the Punjab Youthful Offenders Act, in 1952, but subsequently failed to enforce it. The Punjab Youthful Offenders Ordinance of 1983 repealed the province's earlier juvenile legislation. The new law was closely modeled on the juvenile justice provisions of the Sindh Children Act, in most cases replicating its language. However, the law remained entirely inoperative until 1994, when it was brought into force in Punjab's Sahiwal district as part of an unrealized experiment in juvenile justice.²³

²³ Letter to members of parliament, from Hina Jilani, Director, AGHS Child Rights Cell, December 5, 1998.

III. CHILDREN IN POLICE CUSTODY

On the morning of May 12, 1998, police arrested thirteen-year-old Ghulam Jilani at his home in Killay De Kassi, a village in the Hazara division of the North-West Frontier Province. Jilani, who had a fifth grade education and worked as a minibus conductor, was taken to the police station in the neighboring town of Mansehra. The police had registered a First Information Report (FIR)²⁴ against Jilani for the theft of Rs. 2,700 (\$53) from the cash box of a store near his home.²⁵ Sajid, a boy of about fifteen years, was also arrested in the case. That afternoon, police informed Ghulam Rabbani, Jilani's father, that his son had been hospitalized. When Rabbani reached the hospital, he was told that Jilani had died, and that an autopsy was being performed.²⁶

²⁴ The First Information Report (FIR) is a record of the information available to the police regarding the commission of a cognizable offense—that is, an offense where the police may effect an arrest without a warrant. An FIR is ordinarily the starting point of a criminal investigation, but it is not required in order for an investigation to commence.

²⁵ According to Ghulam Rabbani, Jilani's father, the accusation was falsely levied by the shopkeeper, Fayaz, with the collusion of the police. "I worked at Fayaz's house and he had to give me Rs. 1,600 (\$31) for my labor. When time and again I demanded my money from him, he bribed the police and got a case registered against my son." Interview with Ghulam Rabbani, conducted and provided to Human Rights Watch by a local activist who requested anonymity, May 1998. Fayaz contended that his shop had been burglarized the night before, and that a neighbor had seen Jilani and two other boys running by the shop that night. Interview with Fayaz, conducted and provided to Human Rights Watch by a local activist who requested anonymity, May 1998.

²⁶ Interview with Ghulam Rabbani. See also Robina Tariq, "5 killed as boy's death in custody sparks protests," *Nation* (Lahore), May 14, 1998, p. 1.

In a FIR filed shortly before 4:00 p.m. that day, police officer Muhammad Iqbal alleged that Jilani had attempted to commit suicide in violation of section 325 of the Pakistan Penal Code.

The accused Jilani ... was locked in his prison cell along with Sajid. He climbed the wall of the latrine located inside the prison cell, and tried to hang himself by tying a rope around his neck. At this point, the fellow prisoner Sajid shouted that Jilani had hung himself. I...ran towards the cell, and after opening the lock, brought down the accused. Froth was coming out of his mouth, and he was unconscious. He was rushed to the hospital. Presently, the accused is alive, but his condition is critical.²⁷

Sajid himself had a markedly different account to relate:

We were both kept in the same room at the police station. After some time, Ghulam Jilani was taken away from that room. When he was brought back, he was bleeding from the nose and mouth. The bleeding was so horrifying that I became afraid, and I covered my face with a piece of cloth. Soon after this, I was released from the police station.²⁸

The autopsy report stated that Jilani died of head injuries, a finding that prompted Rabbani to file a criminal complaint of murder against Muhammad Nawaz, the head constable of the Mansehra police station.²⁹ A medical examination of Sajid, conducted on May 18, indicated that he too had sustained physical abuse while in custody. According to the medical examiner's report, he was complaining of aches and pains throughout his body and appeared to have been beaten with a blunt object.³⁰

²⁷ First Information Report (FIR) No. 390/98, Police Station, City of Mansehra, District of Mansehra, registered on May 12, 1998, at 15:50.

²⁸ Interview with Sajid, conducted and provided to Human Rights Watch by a local activist who requested anonymity, May 1998.

²⁹ The medical examiner's finding is noted in FIR No. 391/98, Police Station, City of Mansehra, District of Mansehra, registered on May 12, 1998, at 22:30. The FIR stems from a complaint of murder brought by Ghulam Rabbani against Muhammad Nawaz.

³⁰ The report noted contusions on Sajid's left forearm and right thigh. Report No. 1168, from Dr. Shafiqur Rehman, Medical Superintendent, DHQ: Hospital Mansehra, to the Syed Yahya Zahid Gillani Tribunal of Inquiry, May 18, 1998.

Authorities at first appeared eager to deflect attention from the case. According to Rabbani,

The local administration pressured us to bury the body as soon as possible, because they feared unrest. Because of this pressure, and also pressure from some influential people in the area, we buried the body at 9:00 a.m. [on May 13]. My daughter lives in Lahore; we could not even inform her.³¹

³¹ Interview with Ghulam Rabbani.

By the time of the funeral, however, word of Jilani's death had already spread throughout Mansehra and its environs. What ensued were the worst riots in the town's history.³²

On the night of May 12, protesters reportedly set fire to the offices of the Mansehra superintendent of police. The following morning, police used tear gas to disperse a protest march following Jilani's funeral, sparking a violent response from the demonstrators. Over the course of the day, protesters ransacked the local office of the ruling Pakistan Muslim League (PML), set fire to government offices and private businesses, and blocked the strategic Karakoram Highway for over seven hours. Police and paramilitary rangers exchanged fire with armed protesters, resulting in two acknowledged deaths (five by unofficial accounts), as well as over one hundred injuries. The riots rapidly engulfed other towns in the district and subsided on May 15 only after a heavy deployment of police, rangers, and the Frontier Constabulary.³³

For all the damage that it entailed, the unrest in Mansehra precipitated an official response to Ghulam Jilani's death that would probably not have been forthcoming otherwise. Constable Nawaz was arrested and charged with murder,³⁴ while the Chief Minister of the North-West Frontier Province, Sardar Mahtab Ahmad Khan, visited Jilani's family and gave Rabbani Rs. 100,000 (\$1961) in compensation for the loss of his son.³⁵ The Chief Minister also appointed a tribunal of inquiry into Jilani's death, headed by Syed Yahya Zahid Gillani, the district and

³² "Security tightened: Two more killed in Mansehra Riots," *Dawn*, May 14, 1998.

³³ See Syed Kosar Naqvi, "Troops called out as two killed in Mansehra riots," *News International*, May 14, 1998, p. 1; Robina Tariq, "5 killed as boy's death in custody sparks protests," *Nation* (Lahore), May 14, 1998, p. 1; and Robina Tariq, "Peace returns to Hazara," *Nation* (Lahore), May 16, 1998, p. 16.

³⁴ Musaddiq Ali, "Mansehra presents a deserted look," *Frontier Post*, May 16, 1998, p. 4.

³⁵ Interview with Ghulam Rabbani. See also "Mahtab blames administration for violence," *Frontier Post*, May 16, 1998, p. 4.

sessions judge for Abbottabad.³⁶ A Human Rights Watch researcher who visited Abbottabad in August 1998 learned that the tribunal's report had been completed and submitted to the Chief Minister, but had not been released to the public.

Custodial Abuse of Children

Ghulam Jilani's case is unusual in two respects: first, that the injuries he sustained while in custody were severe enough to cause his death, and second, that his treatment by the police provoked a public outcry and, in turn, official intervention. But the central fact of his torture, and the possibility that he had been illegally detained, is sadly emblematic of what Pakistani children experience at the hands of law enforcement authorities. Both of these abuses are expressly prohibited by the Convention on the Rights of the Child. Article 37 of the convention states that no child shall be "subjected to torture or other cruel, inhuman, or degrading treatment or punishment" or "deprived of his or her liberty unlawfully and arbitrarily."

³⁶ Ali, "Manshra presents...", *Frontier Post*.

Although Pakistan has neither signed nor ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the definition of torture contained therein reflects standards that are widely accepted by the international community.³⁷ The definition is furthermore likely to guide the U.N. Committee on the Rights of the Child in evaluating Pakistan's compliance with the prohibition of torture under article 37 of the Convention on the Rights of the Child. Pakistan itself signaled its recognition of the underlying standards in 1994 by inviting Nigel Rodley, the U.N. special rapporteur on torture, to visit the country and investigate reports of custodial torture—a mission that the special rapporteur carried out in 1996.

Other international norms codified in the Convention against Torture include the right of individuals to complain to the appropriate authorities, without fear of retaliation,³⁸ and the obligation of states to conduct prompt and impartial investigations “wherever there is reasonable ground to believe that an act of torture has been committed....”³⁹

³⁷ The convention defines torture as “...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987), Part I, Article 1(1).

³⁸ *Ibid.*, Article 13.

³⁹ *Ibid.*, Article 12.

Conditions in Police Custody

Conditions in police lockups, as described by child prisoners to Human Rights Watch, were typically dire. Children and adults were almost always held together, and detainees either had to purchase food from vendors or rely on family members to deliver their meals. One boy, who spent twelve days in police custody, had food only because other detainees shared their meals with him. The lockups housed anywhere from five to thirty people at a time. Taher Hussain, a fifteen-year-old who spent a month in custody at the Garden Town police station in Lahore, said, "There were about twenty-five to thirty people in the lockup. When there were more, we couldn't lie down. Whenever it rained, water used to seep in from the roof."⁴⁰

Fourteen of the twenty children Human Rights Watch interviewed reported having been physically abused, often severely, while in police custody. The abuse itself ranged from slaps on the face following their arrest to sustained torture over the course of several days, including being hung upside-down, beaten, whipped with rubber belts or specially designed leather slippers, or deprived of sleep.

⁴⁰ Human Rights Watch interview with Taher Hussain, District Jail, Lahore, May 21, 1998.

Their testimony corroborates findings documented in 1997 by a Pakistani medical team that interviewed two hundred children in Karachi's Youthful Offenders Industrial School.⁴¹ The team classified the torture and ill-treatment to which children were subjected into two categories: "major torture" and "minor torture." Major torture included severe beatings, electric shocks, hanging, *cheera*,⁴² cuts, and burns. Minor torture included slapping, verbal abuse, food deprivation, solitary confinement, and being forced to maintain uncomfortable body positions. Applying these standards, the team found that 59.7 percent had been subjected to major torture, and 18.9 percent to minor torture only, while in police custody.

Other studies have shown custodial torture to be pervasive, affecting adults and children alike. The report submitted by the U.N. special rapporteur on torture, following his 1996 visit to Pakistan, noted:

Most of the prisoners who dared to speak claimed to have been ill treated while in custody and/or to have witnessed the ill-treatment of other prisoners. The ill-treatment described included beatings, burning with cigarettes, whippings with rubber or leather straps, sexual assault, being hung upside down for prolonged periods, electric shocks, deprivation of sleep, mock executions, the use of fetters, blindfolding for periods of up to 16 days and public humiliation.... Marks of torture were visible on several of the prisoners; one prisoner removed his shirt to show the Special Rapporteur the large welts on his back caused by whippings with a leather strap.⁴³

Three boys interviewed by Human Rights Watch in Bahawalpur and Lahore described having been beaten with a leather instrument resembling a slipper. According to Imtiaz Ahmad, a seventeen-year-old resident of Lahore who was arrested for dacoity, "I was in a lockup for twelve days, and was beaten every day.

⁴¹ Amin A. Gadit, Ahsan A. Vahidy, and Najib Khalid, "Children of the Corn: A Study Conducted at Juvenile Prison in Karachi - Overview I," *Pakistan Pediatric Journal*, Vol. 21, No. 1 (7-12) (1997), p. 9.

⁴² "Forced stretching apart of the victim's legs, sometimes in combination with kicks to the genitalia." U.N. Commission on Human Rights, Report of the Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, Visit by the Special Rapporteur to Pakistan, U.N. Doc. E/CN.4/1997/7/Add.2, 15 October 1996 (Nigel Rodley, Special Rapporteur), para. 14.

⁴³ Report of the Special Rapporteur on Torture, para. 46.

There were slippers especially made for this purpose, and they used to beat me every day with them."⁴⁴

Rubber straps, as the special rapporteur noted above, are also widely used as torture instruments. Fifteen-year-old Mohammad Shafique was arrested for the theft of a civil servant's motorcycle. He told Human Rights Watch,

I was taken to a police station in Khairpur [about twenty-five miles from Bahawalpur]. As they had recovered the bike, they asked what else I had stolen. I was whipped with a rubber strap or lash used to rotate a motor, like a fan belt. This lasted for fifteen days. Then a magistrate ordered my transfer here [to the Bahawalpur borstal].⁴⁵

⁴⁴ Human Rights Watch interview with Imtiaz Ahmad, District Jail, Lahore, May 21, 1998.

⁴⁵ Human Rights Watch interview with Mohammad Shafique, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

Among the forms of torture encountered by Human Rights Watch in interviews with Pakistani children was the repeated hanging of a detainee upside down. Manzoor Abbas, a sixteen-year-old from Lahore charged with weapons possession, said "I was taken to a police station on Ravi Road. I stayed there for five to six days. They used to tie me with a rope, and turn me upside down, with my head facing the ground."⁴⁶

More often, however, children in police custody were subjected to beatings. Noor Mohammad, a seventeen-year-old from Faisalabad, said he was arrested by police after being falsely named in a gang rape case. "They took me to the Ghulam Mohammadabad police station. I stayed there for four days. I was severely beaten, until I was unable to walk."⁴⁷

According to testimony gathered by Human Rights Watch, torture of detainees is sometimes carried out in special cells within the police station. Seventeen-year-old Fayaz Iqbal was arrested for murder and detained in the Chontra police station, near Rawalpindi. "I was beaten for four days by officials," he said. "They tied my hands with rope and beat me all over my body. They took me out from the police lockup to a special room for such things."⁴⁸ In another case, police tortured a boy while holding him incommunicado away from the police station. Qaiser Nadeem, also seventeen and accused of murder, was arrested by police in Talagang, about sixty miles north of Rawalpindi.

⁴⁶ Human Rights Watch interview with Manzoor Abbas, District Jail, Lahore, May 21, 1998.

⁴⁷ Human Rights Watch interview with Noor Mohammad, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998. Mohammad's age was reported as eighteen on an official list of convicted prisoners in the borstal, signed by the Superintendent on March 3, 1998.

⁴⁸ Human Rights Watch interview with Fayaz Iqbal, Central Prison, Rawalpindi, May 15, 1998.

About four police officers arrested me. They kept me in a room where I was subjected to beatings for nine days. The room was not within the premises of the station. I was told by the police that if I confess, I would be released and allowed to go home. But even after the beatings, I didn't confess. During these nine days, my family was not told of my whereabouts. On the ninth day, I was brought to the Talagang police station. Then my family was informed of my arrest.⁴⁹

The practice of detaining and torturing suspects in private buildings or other facilities not meant for detention has been noted by other observers. As the special rapporteur on torture observed in his report on Pakistan, torture and other forms of ill-treatment are also facilitated by the widespread practice of holding prisoners in incommunicado detention, sometimes in premises not designated for the purpose. In such undeclared places of detention, law enforcement personnel are able to commit human rights violations with impunity since legal safeguards against ill-treatment cannot be enforced and detection is unlikely.⁵⁰

⁴⁹ Human Rights Watch interview with Qaiser Nadeem, Central Prison, Rawalpindi, May 15, 1998.

⁵⁰ Report of the Special Rapporteur on Torture, para. 19.

In most of the cases that we encountered, torture was employed to extract confessions or obtain information. However, the motives varied, with some police officers seeking to punish or intimidate detainees, or extort payment from them. Describing his treatment by police in Lahore's Garden Town police station, fifteen-year-old Taher Hussain told Human Rights Watch, "I was beaten all over the body, and the investigating officer demanded Rs. 50,000 (\$980) to release me."⁵¹

Sexual abuse in police custody, as well as in prisons, is difficult to document. Local human rights activists claim that cultural factors inhibit children from testifying to such experiences. However, reports of sexual abuse periodically surface in the local press. The Peshawar daily *Frontier Post* reported on June 24, 1997, that police officers in the town of Jauharabad had allegedly assaulted four boys, Tariq Aziz, Muhammad Assad, Farooq, and Ghulam Abbas, while holding them in custody. The boys were detained as suspects in theft cases, illegally held for twenty days in the Jauharabad police station, and then remanded to police custody, the boys' parents told the *Frontier Post*. The parents further said that their children were repeatedly removed from the lockup on the pretext of interrogation, and sodomized by the assistant sub-inspector, the head constable, and several other constables. Although the parents reportedly complained to police authorities, they said the only action taken was the registration of a case against Ameer Sultan, the head constable of the Jauharabad station, for attempt to commit sodomy.⁵²

Illegal Detention

The custodial abuse of children is compounded by the problem of illegal detention. Although Pakistani law requires that detainees be brought before a magistrate within twenty-four hours of their arrest, most of the children interviewed by Human Rights Watch said they had been held in police lockups for considerably longer periods before being produced in front of a magistrate—often for two weeks, and in one case, for three months. Given the widespread use of torture during interrogation, such prolonged detention greatly increases the risk and potential duration of custodial abuse.

Under article 10(2) of Pakistan's Constitution, "[e]very person who is arrested and detained in custody shall be produced before a magistrate within a

⁵¹ Human Rights Watch interview with Taher Hussain, District Jail, Lahore, May 21, 1998. Police attempts at extortion were also reported by prisoners to the Special Rapporteur during his visit to Pakistan. See Report of the Special Rapporteur on Torture, para. 46.

⁵² "Resentment over police intercourse with minors," *Frontier Post*, June 24, 1997, p. 8.

period of twenty-four hours of such arrest.” This provision is elaborated upon by sections 61 and 167 of the Criminal Procedure Code. Section 61 states that:

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

Section 167 provides for judicial remand in situations “where the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded.” It allows the nearest judicial magistrate to authorize continued detention for a term of up to fifteen days upon production of the accused, and a copy of the diary entries relating to the case, by the officer in charge of the police station or the investigating officer.

Out of twenty juveniles interviewed by Human Rights Watch in Bahawalpur, Lahore, and Rawalpindi, at least thirteen had been held by police without judicial remand for over twenty-four hours. Eleven of those thirteen spent more than a week in police lockups before they were produced in court, including three who remained in custody for one to two months. These figures correspond well to the results of a 1992 study by the AGHS Legal Aid Cell in Lahore which found that “out of 50 child prisoners interviewed only 16 had been produced in court within the required 24 hours. Many had been detained well beyond the maximum remand period of fifteen days, sometimes for months.”⁵³ Such cases are not always provable, however, because the dates of arrest in police records are sometimes falsified to show that the accused was produced in court within a twenty-four hour period.

Human Rights Watch observed a pre-trial hearing on May 23, 1998, in Karachi's juvenile court involving three boys under the age of fourteen who were charged under section 12 of the Zina Ordinance and section 164 of the Pakistan Penal Code with abducting and sodomizing another boy. All three had been arrested on May 21, 1998, according to their lawyer. The police record produced in court, however, listed the arrest as having been effected on May 22. The

⁵³ Jahangir and Doucet, *Children of a Lesser God*, p. 15.

discrepancy prompted the presiding magistrate, Neelofar Shahnawaz, to note that such incorrect dates were “a routine matter.”⁵⁴

Although the police report stated that the three boys had confessed, they denied the charges before the magistrate and stated that they had been beaten in custody. According to their lawyer, the investigating officer had promised the boys that they would be released if they confessed, but that they would otherwise be sent to prison. The lawyer noted that the police had not submitted a medical report, nor had the boys’ or their alleged victim’s clothing been seized and examined for semen stains. Because the offenses with which the boys were charged were triable only by a higher court, the juvenile magistrate’s role was limited to the question of remand. In this case, the magistrate ordered the boys’ transfer from police custody to Karachi’s remand home.

Human Rights Watch documented one case in which an eight-year-old boy was transferred from a police lockup to Lahore District Jail, without ever having been brought before a magistrate. The boy, Tariq Masih, was arrested during an apparent round-up of Christians in Lahore who were suspected of having taken part in protests against Pakistan’s blasphemy law:⁵⁵

I was arrested about five days ago while on a public transport bus. I had gone to visit my sister and was coming home. I was stopped by two police officers at a bus station on Lytton Road and taken to a nearby police station.

I belong to the Christian faith. I was told by the police officers that I was involved in a protest demonstration. The police didn’t listen to me when I tried to convince them that I wasn’t at the protest. The boys sitting next to me were coming from that demonstration, and we were all arrested together.

⁵⁴ Human Rights Watch interview with Neelofar Shahnawaz, Judicial Magistrate, Juvenile Court (Karachi Division), Karachi, May 23, 1998.

⁵⁵ Section 295-C of the Pakistan Penal Code makes it an offense punishable by death or imprisonment for life to directly or indirectly defile the name of the Prophet Muhammad.

I was kept in a lockup for one or two days. My family was informed of my arrest by someone who knows us. They visited me in the police station. I was taken to the magistrate's court, but not taken out of the car. Then I was brought here.⁵⁶

On several occasions, the provincial high courts have forced police to produce illegally detained children in court, following the filing of habeas corpus writ petitions by family members. Three such cases reported in the Pakistani press involved children who had apparently been detained by police in order to compel the surrender of adult relatives.

- Police in southern Punjab reportedly seized twelve-year-old Waqar Ahsan from his home in Gujarpura on December 9, 1997, and illegally detained him in the nearby town of Bahawalpur for two months. Ahsan was brought before the Lahore High Court on February 17, 1998, after his mother filed a writ petition claiming that the police were holding him hostage in order to compel his father's surrender on dacoity charges. The police contended that the boy, rather than being held in custody, was living with a family friend in a neighboring village—a claim that the court rejected.⁵⁷

⁵⁶ Human Rights Watch interview with Tariq Masih, District Jail, Lahore, May 21, 1998.

⁵⁷ See "Police holding boy hostage, LHC Told," *Dawn*, February 5, 1998, p. 8; "Police ordered to produce boy or face kidnap case," *Dawn*, February 11, 1998, p. 9; and "Boy's abduction: LHC rejects police version," *Dawn*, February 18, 1998, p. 7.

- On January 13, 1998, the Lahore High Court fined an Okara, Punjab, station house officer Rs. 5,000 for detaining eight-year-old Muhammad Akhtar in a lockup in Mandi Ahmadabad police station without having registered a criminal case against him. The officer, Sub-Inspector Ubaidullah, had raided Akhtar's house on January 5, 1998, to arrest his uncle, Noor Ahmed, in a murder case, and detained the boy after failing to find the uncle. The court also registered a criminal case against the officer and ordered the police department to take strict disciplinary action against him.⁵⁸
- A Lahore High Court bailiff on November 20, 1997, recovered twelve-year-old Muhammad Ayub from the Duniyapur police station, in Multan, Punjab, after the boy's grandmother filed a writ petition for his recovery. The Karachi-based daily *Dawn* reported a police official as saying that Ayub had been detained to ensure the arrest of his uncle, Mangat, in connection with a dacoity case.⁵⁹

In our interviews with child prisoners and in Pakistani press accounts, there were repeated allegations that police had arrested children in an effort to displace the blame from other, more influential personalities whom they knew to be culpable. Although these accusations are difficult to corroborate, one such case prompted the intervention of Pakistan's president, Mohammed Rafiq Tarar. Thirteen-year-old Qadir Hameed from Kirpa Chira, a village near Islamabad, told us:

I used to take my cattle for grazing. One day, I saw four people carrying a dead body, which they wanted to throw into our house. They followed me, but I quickly ran into someone else's house. The next day, my father was arrested by the police on murder charges. On the third day after the occurrence, I went to meet my father at the Sihala police station. The police officials there told

⁵⁸ "Court punishes SHO for illegally confining minor," *News International*, January 13, 1998.

⁵⁹ "Bailiff recovers boy from police station," *Dawn*, November 19, 1997, p. 8.

me I was also involved in the murder, and arrested me. I was told I was named in the FIR.

I stayed at the Sihala station for eleven days. The police used to make me stand the whole night and beat me, and ask me to confess. After eleven days, I was taken to the magistrate; then I was sent here [to Rawalpindi Central Prison].⁶⁰

The Pakistani daily *Dawn* reported on April 15 that President Tarar had directed the inspector general of police for Punjab, Tariq Saleem Lone, to reopen the inquiry into the Sihala murder. Describing counter-allegations of a police cover-up, *Dawn* noted, “[B]oth the Sihala police and the alleged murderers had struck a deal to hush up the matter. But in order to save their skin, they involved the student and his father in the case under section 302/34 [governing murder]. Both were arrested and subjected to torture by police....”⁶¹

Because Hameed himself was not presented before a magistrate until eleven days after his arrest, his detention, at least, was illegal. Despite the President’s order to reopen the police investigation into the case, at the time Human Rights Watch interviewed Hameed, on May 15, 1998, his trial was already underway:

My trial has commenced—it’s pending before the additional sessions judge in Islamabad. The first hearing was on April 29th.

I was informed [of the hearing date] the day before. My father and I are being tried together.⁶² My brother engaged a lawyer,

⁶⁰ Human Rights Watch interview with Qadir Hameed, Central Prison, Rawalpindi, May 15, 1998.

⁶¹ “Sihala murder inquiry reopens,” *Dawn*, April 15, 1998, p. 3.

⁶² Article 10 of the Punjab Youthful Offenders Ordinance forbids joint trials of adults and children in cases where Sessions courts have exclusive jurisdiction, such as murder. At the time of our interview with Hameed, however, the Ordinance was only in

but I've never met him. He couldn't come to court on the date of the hearing. My next hearing is on May 19.

force in the district of Sahiwal. The Criminal Procedure Code does not require separate trials for adults and children.

IV. JUVENILE WARDS OF PRISONS

Because Pakistan has largely failed to establish the juvenile institutions provided for in its laws, the vast majority of convicted children, as well as those who are under trial, are held in prisons—usually in separate wards, but sometimes in the same cells as adults. In either circumstance, children experience conditions that are similar to those of the prison population at large: overcrowding, harsh disciplinary measures, lack of vocational and educational training, and scant opportunities for recreation. These exigencies are all the more onerous for juveniles because of their youth and their low conviction rate; many endure deprivation and abuse for months or years while awaiting trials that ultimately result in their acquittal.

International Standards

The U.N. Rules for the Protection of Juveniles Deprived of their Liberty includes an exhaustive set of guidelines on the conditions under which juvenile prisoners are held. The U.N. Standard Minimum Rules for the Treatment of Prisoners does the same for prisoners generally; its application is extended “to the treatment of juvenile offenders in institutions” under Rule 27 of the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”). These standards, although nonbinding, have been adopted as resolutions by the General Assembly; they represent the international community’s consensus on the minimum standards under which a state may confine children.

According to the U.N. Rules for the Protection of Juveniles, 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.⁶³ Every juvenile should be provided with separate and clean bedding, and a sufficient quantity of nutritious and hygienically-prepared food.⁶⁴ 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.⁶⁵ In addition, all juveniles have the right to vocational training likely to prepare them for future

⁶³ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990), Rule 32.

⁶⁴ *Ibid.*, Rules 33, 37.

⁶⁵ *Ibid.*, Rule 38.

employment.⁶⁶ The Rules also provide for preventive and remedial medical care, including mental health care.⁶⁷

The U.N. Standard Minimum Rules for the Treatment of Prisoners similarly require that facilities provide prisoners separate beds and clean bedding, adequate sanitary and bathing installations, and well-prepared, nutritious meals.⁶⁸ Young prisoners should additionally receive physical and recreational training with adequate space, installations, and equipment, and vocational training in useful trades.⁶⁹

Prison Rules

⁶⁶ Ibid., Rule 42.

⁶⁷ Ibid., Rule 49.

⁶⁸ U.N. Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), Rules 12, 13, 19, 20(1).

⁶⁹ Ibid., Rules 21(2), 71(5).

Pakistan has a common prison manual in effect throughout the country. Known as the Pakistan Prison Rules, the manual grew out of the federal government's Jail Reforms Conference of 1972 and was adopted by the provinces in 1978.⁷⁰ Chapter 12 of the Rules, governing "juvenile and youthful offenders,"⁷¹ mandates the separation of children and adults, the engagement of children in "sustained work," and the provision of recreational facilities.⁷² For convicts, it requires classes in reading, writing, and arithmetic, religious instruction for Muslim children, and vocational training.⁷³ The Rules further require "careful individual attention" for all juveniles, as well as "careful arrangements for their future after discharge," and advise prison officials that "[t]he stimulus of personal touch and interest will be found far more effective than a rigid insistence on prison routine."⁷⁴

In other respects, the Rules reflect the colonial-era laws on which they are based; this is particularly so with regard to the harsh disciplinary measures that they provide for, described later in this chapter. In 1997, the Pakistan Law Commission—a statutory body chaired by the Chief Justice of Pakistan and charged

⁷⁰ Human Rights Commission of Pakistan, *A Penal System Long Overdue for Change*, Lahore, 1996, p. 7.

⁷¹ The Rules define "juvenile" as a male prisoner "who at the time of conviction was under eighteen years of age," and "youthful offender" as "a male juvenile who, when convicted was fifteen years of age." Pakistan Prison Rules, Rule 280. Rule 230 states that "[w]omen prisoners will be classified in the same manner as is provided in the case of male prisoners." In practice, as noted earlier, prison authorities rarely maintain a separate register of juvenile females and usually house them together with adult women.

⁷² *Ibid.*, Rules 294-296, 299.

⁷³ *Ibid.*, Rules 297, 298.

⁷⁴ *Ibid.*, Rule 295.

with reviewing, reforming, and developing the country's legal and judicial system—issued a report on jail reform that frankly assessed conditions in the country's prisons and included proposals to amend both the Rules and existing legislation.⁷⁵ The report met with a favorable reception from local NGOs concerned with prisoners' rights, whose own findings and proposals it in many ways echoed. The commission's recommendations, however, have gone largely unimplemented since the report's release.

Pakistan's Prison System

⁷⁵ Established under the Law Commission Ordinance (XIV) of 1979, the Pakistan Law Commission includes among its members the chief justices of the Federal Shariat Court and each of the provincial high courts, as well as the federal secretary for Law, Justice and Parliamentary Affairs. Pakistan Law Commission, "Report on Jail Reform, 1997," p. 1.

Pakistan's eighty-two prisons are classified into several categories, based on administrative level, size, and function. At the apex of the prison system are the twenty-two central prisons, which are designed to house over one thousand inmates each.⁷⁶ Although they were originally intended for the confinement of convicted prisoners,⁷⁷ the central prisons presently accommodate both convicts and prisoners held pending completion of their trials. The district jails represent by far the largest category, numbering over forty, and typically have capacities of three hundred to five hundred prisoners each.⁷⁸ In Punjab, they are authorized to hold prisoners undergoing trial as well as convicts sentenced to terms of less than two months; convicts sentenced to longer terms are transferred to central prisons.⁷⁹ Below these are sub-jails, most of which are in the North-West Frontier Province, and judicial lockups, where criminal suspects may be detained on judicial remand. In addition, there are a handful of special prisons, including the juvenile institutions at Bahawalpur and Karachi (which are discussed in the following chapter) and the women's jails at Multan in Punjab, and Larkana in Sindh.

Human Rights Watch visited the juvenile wards of two large, urban prisons in Punjab: Lahore District Jail and Rawalpindi Central Prison. Conditions varied considerably between the two institutions, with the facilities being appreciably superior at Rawalpindi. According to an Islamabad-based lawyer who has visited prisons in different parts of Pakistan, Lahore District Jail is more representative of Pakistani prisons than the newer, better-maintained institution at Rawalpindi.⁸⁰

Accommodations

Lahore District Jail

As the table below indicates, the juvenile ward of Lahore District Jail accommodates nearly three times as many inmates as it was designed to hold, a level of overcrowding that reflects conditions in the prison as a whole.

	Under trial	Convicted	Total

⁷⁶ Pakistan Prison Rules, Rule 5(I).

⁷⁷ Ibid., Rule 3(ii).

⁷⁸ Some of the larger district jails have higher rated capacities. Lahore District Jail, for example, is designed to accommodate one thousand prisoners.

⁷⁹ Human Rights Watch interview with Captain Sarfraz Mufti, Deputy Inspector-General of Prisons, Government of Punjab, Lahore, May 8, 1998.

⁸⁰ Human Rights Watch interview with Anees Jillani, Society for the Protection of the Rights of the Child (SPARC), Islamabad, May 14, 1998.

	Under trial	Convicted	Total
Total capacity			1000
Total population	3447	58	3505
Juvenile ward capacity			100
Juvenile population	273	2	275

Table 4.1: Statistics for Lahore District Jail, April 1998⁸¹

⁸¹ Human Rights Watch interview with Zia Ullah, Superintendent, District Jail, Lahore, May 21, 1998.

As is the case with about half of the prisons in Pakistan, the District Jail was built during the colonial period—specifically, in 1930—and the age of the facility is reflected in its spartan accommodations. The juvenile ward is a two-story building, divided into four halls. Lining either side of each hall are eight raised cement platforms. Although lacking mattresses, these platforms serve as beds, as do the floor spaces between them. The prisoners appear to be responsible for providing their own bedding; one boy told Human Rights Watch that the blanket he had was his own property, while another said he had been given a blanket by a fellow prisoner. Both of the halls that we visited had fans overhead, but in one the fans were not operating. Based on interviews with children in the ward, it appeared that at least two halls lacked working fans. Each hall had a clean squat toilet and a door that was high enough to ensure privacy; the wooden door to one, however, had a sizable hole. According to the prison superintendent, Zia Ullah, running water is available at fixed times each day.⁸²

The ward overlooks a courtyard, in which children are allowed to roam freely between sunrise and sunset. Zia Ullah told Human Rights Watch that the children were provided with balls and cards. However, children whom we interviewed said they had no recreational equipment, other than a donated television in one of the halls.

The juvenile ward accommodates not only juveniles, defined by the Pakistan Prison Rules as male prisoners who were under the age of eighteen at the time of their conviction,⁸³ but also young adults between the ages of eighteen and twenty-one. According to Zia Ullah, juveniles and young adults are assigned to different halls according to their age: children under sixteen are separated from those between the ages of sixteen and twenty-one.⁸⁴ However, there appeared to be no residential separation between sixteen and seventeen year-olds on one hand, and those aged eighteen to twenty-one, on the other. Additionally, inmates of all ages up to twenty-one could easily mix in the courtyard, although two prisoners under

⁸² Ibid.

⁸³ Pakistan Prison Rules, Rule 280.

⁸⁴ The Pakistan Prison Rules require the separation of convicted prisoners under the age of sixteen from those aged sixteen and older. Ibid., Rule 232(*iv*).

sixteen said in practice there was no interaction between older and younger boys there.⁸⁵

⁸⁵ Human Rights Watch interviews with juvenile ward inmates, District Jail, Lahore, May 21, 1998.

Zia Ullah told us that prisoners are allowed to write and mail letters, but that these are censored by his subordinate staff. Rule 546 of the Pakistan Prison Rules, in fact, *requires* the examination of all letters that inmates send or receive. By contrast, the Punjab Borstal Rules, drafted to govern institutions established under the Punjab Borstal Act, grant borstal superintendents discretion to censor correspondence.⁸⁶ This is a preferable formulation, as it does not impose a requirement of censorship and reserves authority to censor correspondence with the superintendent. With regard to juveniles, the Prison Rules should at least be consistent with this provision.

Rawalpindi Central Prison

Despite being a relatively new facility, built in 1986, Rawalpindi Central Prison was grossly overcrowded by 1998, operating at about twice its rated capacity.

	Under trial	Convicted	Total
Total capacity			2000
Total population	2680	1500	4180
Juvenile population	129	7	136

Table 4.2: Statistics for Rawalpindi Central Prison, May 11, 1998⁸⁷

The juvenile ward is a horseshoe-shaped building, formed by three adjoining barracks and separated by a gate from the rest of the prison. One of the barracks is reserved for children under the age of fifteen while the others house those between the ages of fifteen and eighteen. On either side of each dormitory are the inmates' beds—cement platforms, similar to those in Lahore District Jail, but covered by mattresses. The number of beds available, however, falls considerably short of the number of boys in each dormitory. The barracks have fans overhead,

⁸⁶ "The Superintendent may peruse every letter written by or addressed to an inmate and may for any reason that he considers sufficient refuse to issue or deliver any such letter and may destroy the same after informing the inmate concerned." Punjab Borstal Rules, Rule 16(1).

⁸⁷ Population statistics provided to Human Rights Watch by Kasim Baloch, Deputy Superintendent, Central Prison, Rawalpindi, on May 15, 1998. Prison capacity provided to Human Rights Watch by a security guard at the Central Prison, Rawalpindi, May 15, 1998.

and in one corner of the ward there are five squat toilets. Enclosed within the ward is a lawn where, according to one of the prisoners, the boys are allowed to play football (soccer). A prison warden told Human Rights Watch that there is a separate ward for young adults, aged eighteen to twenty-two years.

Two children in the juvenile ward said that prisoners are permitted visits of up to half an hour, as provided for in the Prison Rules.⁸⁸ The conditions under which visits are held, however, are abysmal. Near the entrance to the jail is a large, rectangular cell where the inmates and visitors meet. An iron grille separates the prisoners from their visitors, both of whom stand in large groups during their encounters. The din produced by the acoustics of the cell and the multitude gathered there makes conversation difficult if not impossible, while the dense grille obscures the view inmates and visitors have of each other.⁸⁹

The Central Prison was subject to a surprise inspection in December 1998 by the Divisional Khidmat (Service) Committee, one of five hundred local committees constituted by the ruling Pakistan Muslim League (PML) in April 1998 with the mandate of hearing complaints and intervening in matters related to the functioning of government departments.⁹⁰ One visitor to the prison told members of

⁸⁸ Pakistan Prison Rules, Rule 558.

⁸⁹ The Law Commission acknowledged the inadequacy of the meeting areas and called for their renovation: "The conditions of such meeting places...are stated to be deplorable. It is recommended that proper facilities, such as fans and chairs, etc. should be made available in the meeting halls for the comfort of prisoners and their relatives/friends." Pakistan Law Commission, "Report on Jail Reform, 1997," p. 26.

⁹⁰ The Khidmat Committees have attracted considerable controversy in Pakistan since their introduction. Opponents point out that there is no statutory basis for the committees, and that their ranks have been filled with PML supporters. See Farhan Bokhari,

the committee that jail staff were demanding payment of Rs. 500 (\$10) in order to arrange separate meetings with prisoners. Another said that visitors who wished to convey gifts to prisoners were also subject to extortion by jail staff.⁹¹

Other Prisons

Shahid Alam was thirteen years old in September 1994 when he was transferred from a police lockup, where he had spent three months, to Sahiwal Central Prison, in Punjab. He painted a bleak portrait of conditions at Sahiwal, where he remained for a year. "Sahiwal is a very strict prison," Alam said. "It is overcrowded, there is a shortage of water, and the toilet is a dry latrine, made of brick."⁹²

"Some in Pakistan Wary of 'Service' Committees," *Christian Science Monitor*, May 4, 1998.

⁹¹ Javaid Iqbal, "Divisional Khidmat Committee pays surprise visit to jail," *Nation* (Lahore), December 27, 1998.

⁹² Human Rights Watch interview with Shahid Alam, Borstal Institute and Juvenile Jail, Bahawalpur, November 25, 1998.

Adults and children freely mix in some of Pakistan's smaller prisons. "In big jails, where there is space, we keep them [juveniles] strictly segregated from adults," said Zain-ul-Abideen, Inspector-General of Prisons for the North-West Frontier Province. "But unfortunately our prisons are overcrowded, so in small jails we can't keep them in a separate facility unless it's a small barrack—which would be cruel in and of itself."⁹³ The Convention on the Rights of the Child, Article 37(c), requires the separation of adults and children "unless it is considered in the child's best interests not to do so." The child's best interests are not served by generalized commingling with adult prisoners.

In all prisons, two other categories of juvenile prisoners are ordinarily held with adult prisoners: children sentenced to death and girls. Children sentenced to death are held with adults in separate wards for condemned prisoners. Girls and adult women are almost always housed together in the women's wards of prisons, or in one of the two separate facilities established for women, at Larkana, in Sindh, and Multan, in Punjab. According to AGHS, prison officials rarely record girls separately from adult women, preventing an accurate assessment of their numbers.⁹⁴

Medical Care and Nutrition

⁹³ Human Rights Watch interview with Zain-ul-Abideen, Inspector-General of Prisons, North-West Frontier Province, Peshawar, May 12, 1998.

⁹⁴ AGHS Child Rights Cell, "Children in Prisons: Punjab Report," December 1997.

The U.N. Rules for the Protection of Juveniles require the provision of adequate preventive and remedial mental health care, including dental, ophthalmological and mental health care, and immediate access to adequate medical facilities and equipment.⁹⁵ The U.N. Standard Minimum Rules for the Treatment of Prisoners state that every institution shall retain the services of at least one qualified medical officer.⁹⁶ For institutions that have hospital facilities, the Standard Minimum Rules further require proper equipment, furnishings, and pharmaceutical supplies, as well as a staff of suitably trained officers.⁹⁷ The Pakistan Prison Rules require each prison to maintain a hospital on the premises;⁹⁸ staffed by a medical officer, a junior medical officer, and a dispenser.⁹⁹ However, there are no guidelines specifying the medications or medical equipment to be maintained in the facilities.

The hospital in Rawalpindi Central Prison has two doctors on staff and is equipped with fifty beds, an operating room, a laboratory, and a dispensary, according to the deputy superintendent, Kasim Baloch. The prison budget covers the purchase of medicines, he said, and the hospital's resources are augmented by donations from nongovernmental organizations.¹⁰⁰ Lahore District Jail's hospital consists of two rooms, with twelve beds each, staffed by two medical officers and two dispensers, according to superintendent Zia Ullah.¹⁰¹ By the government's own admission, however, the standard of care provided throughout the prison system is plainly inadequate. In its 1997 report on jail reform, the Pakistan Law Commission noted that "[i]n all prisons, the hospitals are without proper laboratories, equipments and necessary medicines."¹⁰²

Access to medical care itself is a critical problem. The U.N. Rules for the Protection of Juveniles require the prompt examination by a medical officer of "[e]very juvenile who is ill, complains of illness or who demonstrates symptoms of

⁹⁵ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 49.

⁹⁶ U.N. Standard Minimum Rules for the Treatment of Prisoners, s. 22(1).

⁹⁷ *Ibid.*, s. 22(2).

⁹⁸ Pakistan Prison Rules, Rule 787.

⁹⁹ See Prisons Act, Sec. 6, and Pakistan Prison Rules, Rule 1063. Medical officers are appointed by the provincial Health Department, and must serve on a full-time basis in central prisons and district prisons designed to accommodate five hundred or more inmates. Pakistan Prison Rules, Rule 974.

¹⁰⁰ Human Rights Watch interview with Kasim Baloch, Deputy Superintendent, Central Prison, Rawalpindi, May 15, 1998.

¹⁰¹ Human Rights Watch interview with Zia Ullah, Superintendent, District Jail, Lahore, May 21, 1998.

¹⁰² Pakistan Law Commission, "Report on Jail Reform, 1997," p. 24.

physical or mental difficulties.”¹⁰³ The Pakistan Prison Rules similarly state that “[e]very prisoner complaining of illness shall be brought before the Medical Officer or the junior Medical Officer who shall examine him and determine whether he shall be treated as an out-patient or admitted to the hospital.”¹⁰⁴ A seventeen-year-old inmate of Rawalpindi Central Prison painted a picture that was at considerable variance with these provisions. “The head warden’s permission is needed to go to the clinic,” he told Human Rights Watch. “At times it’s easily granted, at times not.”¹⁰⁵ According to the Human Rights Commission of Pakistan, an independent NGO, medical officers frequently abuse their authority to provide treatment. “Those without money are denied even ordinary medical treatment,” the commission stated in a 1996 report on Pakistan’s penal system, adding, “Often denial of medical care is used as a form of punishment in our prisons.”¹⁰⁶

¹⁰³ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 51.

¹⁰⁴ Pakistan Prison Rules, Rule 788.

¹⁰⁵ Human Rights Watch interview with Qaiser Nadeem, Central Prison, Rawalpindi, May 15, 1998.

¹⁰⁶ Human Rights Commission of Pakistan, *A Penal System Long Overdue for Change*, p. 31.

The U.N. Rules for the Protection of Juveniles state that juveniles shall receive food “of a quality and quantity to satisfy the standards of dietetics, hygiene, and health.”¹⁰⁷ The Pakistan Prison Rules prescribe the meals that prisoners are to be provided with considerable specificity. Prisoners are entitled to 58 grams [2 ounces] of milk every day at breakfast, along with *roti* (unleavened bread) and tea.¹⁰⁸ Their midday and evening meals are supposed to consist of *dal* (lentils), vegetables, and *roti*; twice a week, beef is to be substituted for *dal* at the rate of 58 grams per prisoner.¹⁰⁹ In reality, milk, vegetables, and beef are frequently absent from their diet. As one juvenile in Rawalpindi told Human Rights Watch, “We have *dal* and a cup of tea for breakfast, and *dal* and two *roti* for lunch. It’s the same for dinner [as for lunch].”¹¹⁰

Education and Vocational Training

¹⁰⁷ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 37.

¹⁰⁸ Pakistan Prison Rules, Rule 472.

¹⁰⁹ *Ibid.*, Rules 473(I) and 473(III).

¹¹⁰ Human Rights Watch interview with Qadir, Central Prison, Rawalpindi, May 15, 1998.

For children held in prisons other than juvenile institutions, the Prison Rules provide that “efforts shall be made to teach the Nimaz [prayer], elementary education, and industrial training under proper supervision.”¹¹¹ Such efforts, however, are generally expended only with regard to religious education, which the Rules state “shall be compulsory for all prisoners.”¹¹² According to Zia Ullah, the Lahore District Jail has no facilities for secular education or vocational training, but a government-appointed teacher leads mandatory classes in Islam, lasting from three to four hours each day.¹¹³ The teacher also holds classes in *hifz*, or memorization of the Quran. Prisoners have a strong incentive to complete *hifz*: those who can demonstrate their ability to recite the Quran from memory before an examination board are entitled to a remission in their sentence of up to two years.¹¹⁴ Islamic education is similarly made the priority at Rawalpindi Central Prison, where according to the deputy superintendent, Kasim Baloch, it has been “very helpful and shown positive results.”¹¹⁵ Baloch told Human Rights Watch that the prison staff includes an Islamic teacher, who provides religious education for three hours each day, as well as classes in *hifz*. Secular subjects, on the other hand, are taught by adult prisoners—who Baloch said were teachers before their incarceration—for three hours each morning.¹¹⁶ “The classes are held within the halls,” said Fayaz Iqbal, a seventeen-year-old inmate, adding, “One of the prisoners, who has a M.A., teaches.”¹¹⁷ Despite the makeshift nature of the arrangement, Iqbal appeared to have kept up with his studies since his arrival in the prison fifteen months earlier. “I am a student of class nine,” he said. “I took all the arts subjects in the jail, and have appeared for the matric [matriculation] examination.”¹¹⁸

¹¹¹ Pakistan Prison Rules, Rule 301.

¹¹² *Ibid.*, Rule 679.

¹¹³ Human Rights Watch interview with Zia Ullah, Superintendent, District Jail, Lahore, May 21, 1998.

¹¹⁴ Pakistan Law Commission, “Report on Jail Reform, 1997” p. 22.

¹¹⁵ Human Rights Watch interview with Kasim Baloch, Deputy Superintendent, Central Prison, Rawalpindi, May 15, 1998.

¹¹⁶ The Rules permit such arrangements, but fail to specify educational qualifications for the prisoners chosen to teach juveniles. “Should it be necessary at any time to employ a prisoner for the instruction of the juvenile prisoners, an elderly well-behaved casual prisoner shall be specially selected by the Superintendent himself for this purpose.” Pakistan Prison Rules, Rule 302.

¹¹⁷ Human Rights Watch interview with Fayaz Iqbal, Central Prison, Rawalpindi, May 15, 1998.

¹¹⁸ *Ibid.* The term “matriculate,” as used in Pakistan, means to pass a standardized test at the conclusion of tenth grade that qualifies students for a college education.

The Prison Rules set a higher standard for the provision of education to convicted juveniles than to undertrial juveniles. Under the Rules, education is mandatory for juveniles sentenced to a prison term of one year or more. All such convicts “shall be brought under a course of Instruction, in reading, writing, and arithmetic for two hours daily,” and “[t]he standard of education will be up to the Matric standard as laid down for schools by the Education Department.” Prison superintendents are furthermore authorized to “raise the standard and to increase the subjects taught, in the case of promising boys,”¹¹⁹ a provision that should be amended to cover all children, irrespective of gender. The Rules do not require the provision of education to undertrial children, who form the overwhelming majority of the juvenile prison population.

¹¹⁹ Pakistan Prison Rules, Rule 298.

The education of convicted children in the juvenile institutions at Bahawalpur and Karachi will be discussed in the next chapter. Zain-ul-Abideen, the Inspector General of Prisons for the North-West Frontier Province, noted that an educational and vocational training center for juveniles had been established at Haripur Central Prison, where both convicted and undertrial children are held. The provincial government, he said, employed teachers of both secular and religious subjects in the training center. In addition, convicted children were required to undergo “training in traditional jail industries—carpetmaking, handicrafts, and stitching.”¹²⁰

The U.N. Rules for the Protection of Juveniles recognize the right of every juvenile to practice his or her religion, including through the attendance of “services and meetings provided in the detention facility” and “the possession of the necessary books and items of religious observance and instruction....”¹²¹ The U.N. Rules are equally clear that religious education shall neither be compulsory,¹²² nor the sole component of a juvenile’s education. The Rules state that “[e]very juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society.”¹²³ Pakistani law clearly encourages vocational training and education up to and beyond matriculation for juvenile prisoners, and requires them in the case of juvenile convicts. In this regard, the Pakistan Prison Rules appropriately emphasize the need to prepare children for their reintegration into society. According to Rule 297, a juvenile should either choose or be assigned training in an industry “which he may follow after release to enable him to earn an honest living.”

The Pakistan Law Commission’s report recognizes that “in fact no proper and organized system for imparting education to [the] prisoner exists.”¹²⁴ The report further states:

It is recommended that in every Jail, facilities should be established for the purpose of general as well as vocational and

¹²⁰ Zain-ul-Abideen readily acknowledged that while jail factories existed in all three of the central prisons, Haripur was in other respects an atypical facility. “Haripur was built by the British for European prisoners and political prisoners,” he said. “It’s a beautiful jail, if you can use that term.” Human Rights Watch interview with Zain-ul-Abideen, Inspector-General of Prisons, North-West Frontier Province, Peshawar, May 12, 1998.

¹²¹ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 48.

¹²² “Every juvenile should have the right...freely to decline religious education.”

Ibid.

¹²³ Ibid., Rule 38.

¹²⁴ Pakistan Law Commission, “Report on Jail Reform, 1997,” p. 16.

technical education to prisoners. They should also be provided facilities to acquire higher qualification. Such facilities should include class rooms, qualified teachers and reading material.¹²⁵

¹²⁵ Ibid., p. 16.

The Law Commission duly notes in its report that the large majority of prisoners in Pakistan have not been convicted.¹²⁶ With regard to the provision of education, the Commission significantly makes no distinction between convicts and inmates who are under trial.

Disciplinary Measures

The punishments provided for in the Prison Rules include placement in solitary confinement; the use of handcuffs, chain links, and bar fetters; whipping; and assignment to hard labor.¹²⁷ These measures are antiquated, draconian, and sharply at variance with international human rights norms. The U.N. Rules for the Protection of Juveniles Deprived of their Liberty state that “[a]ll 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.”¹²⁸ The U.N. Standard Minimum Rules for the Treatment of Prisoners also prohibit without exception the use of “corporal

¹²⁶ *Ibid.*, p. 12.

¹²⁷ Pakistan Prison Rules, Rules 583 and 584. “Bar fetters consist of iron rings locked around the ankles of prisoners; an iron bar is riveted to each of these iron shackles making an inverted “V”. These two vertical bars are about 50cm long and are linked at mid-thigh by an iron ring which the prisoner must hold or which is connected to a rope or chain around the waist.... The iron bars are about 1.2 cm in diameter and weigh, together with the ankle shackles, around 4 kg.” Report of the Special Rapporteur on Torture, para. 50.

¹²⁸ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 67.

punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments as disciplinary measures.”¹²⁹

Although the Lahore High Court has banned the placement of juveniles in chain links or bar fetters,¹³⁰ restraints continue to be employed on children in some facilities. During its surprise inspection of Rawalpindi Central Prison in December 1998, the Divisional Khidmat Committee found six children in the juvenile ward in chain links.¹³¹

¹²⁹ U.N. Standard Minimum Rules for the Treatment of Prisoners, Rule 31.

¹³⁰ Human Rights Watch telephone interview with Anees Jillani, Society for the Protection of the Rights of the Child (SPARC), Islamabad, May 20, 1999.

¹³¹ Javaid Iqbal, “Divisional Khidmat Committee pays surprise visit to jail,” *Nation* (Karachi), December 27, 1998. Human Rights Watch researchers also observed children in the Bahawalpur Borstal wearing chain links, during a visit to the facility on May 18, 1998. See Chapter V of this report for a further discussion of this issue.

The Prison Rules themselves make no distinction between the punishments that may be imposed on juveniles and those that adults may receive, except with respect to whipping. A prisoner under the age of sixteen years may receive no more than fifteen lashes, while prisoners over sixteen years may receive up to thirty.¹³² Although Human Rights Watch did not encounter any cases in which superintendents had ordered the whipping of juveniles, the law authorizing the use of whipping for disciplinary purposes in prisons—the Prisons Act of 1894—remains in force, in clear violation of international standards prohibiting the use of corporal punishment as a disciplinary measure. Paradoxically, the Abolition of the Punishment of Whipping Act, passed in 1996, prohibits courts from ordering the whipping of any prisoner as part of their sentence (except when imposed as a hadd punishment).¹³³ Recognizing the disparity between the two Acts, the Pakistan Law Commission proposed amending the Prisons Act to bar whipping as a punishment for offenses committed in prison.¹³⁴

Under the Pakistan Prison Rules, labor can only be assigned to convicts,¹³⁵ who form a relatively small proportion of the juvenile population. This provision nevertheless contravenes the U.N. Rules for the Protection of Juveniles Deprived of their Liberty which, under Rule 67, prohibits the use of labor as a disciplinary sanction.

Solitary confinement, on the other hand, is regularly ordered by prison authorities for a sweeping range of infractions, whether committed by convicts or

¹³² Pakistan Prison Rules, Rule 591. Rule 588 provides that the “total number of stripes shall never be less than fifteen.”

¹³³ “Except in cases where the punishment of whipping is provided for as hadd, the sentence of whipping provided under any law, rule, or regulation for the time being in force shall stand abolished.” Abolition of Punishment of Whipping Act, 1996, Sec. 3.

¹³⁴ Pakistan Law Commission, “Report on Jail Reform, 1997,” pp. 31, 37.

¹³⁵ Pakistan Prison Rules, Rule 584(1).

prisoners who are under trial.¹³⁶ According to Lahore District Jail Superintendent Zia Ullah, confinement is the main disciplinary measure imposed on juveniles in his prison.

¹³⁶ According to the *Herald*, a respected monthly newsmagazine published in Karachi, “[t]hrowing prisoners into the isolation ward is routine punishment in most Pakistani prisons, and is frequently meted out for the most trivial offenses.” Hasan Iqbal Jaffi, “In the Belly of the Beast,” *Herald*, September 1996, p. 71.

The Prison Rules draw a distinction between “separate confinement,” in which a prisoner is allowed to exercise for at least one hour per day and to take meals in the company of one or more prisoners, and “cellular confinement,” in which a prisoner is entirely secluded from communication with other prisoners. For “minor” offenses, prisoners may be kept in separate confinement for no more than fourteen days, and in cellular confinement for no more than seven days. For “major” offenses, separate confinement may be ordered for up to three months, and cellular confinement for up to fourteen days.¹³⁷ Neither major nor minor offenses are adequately defined in the Rules,¹³⁸ and local human rights lawyers told us that solitary confinement orders generally entail cellular confinement.

According to Zia Ullah, juveniles in Lahore District Jail may be held in solitary confinement for periods of up to thirty days—a term which exceeds by two weeks the maximum length of time permitted by the Prison Rules. Prisoners placed in confinement, he said, are deprived of all rights, including letter writing and visits.¹³⁹ The latter conditions are contrary to the U.N. Rules for the Protection of Juveniles, which state that the “restriction or denial of contact with family members should be prohibited for any purpose.”¹⁴⁰

In exceptional cases, Human Rights Watch found, juveniles are held in confinement for even longer periods. Seventeen-year-old Noor Mohammad told us that prior to his conviction on charges of gang rape, he was held in solitary confinement in Faisalabad District Jail for two months and twenty-eight days. During his time in the cell, he said, prison authorities repeatedly subjected him to

¹³⁷ Pakistan Prison Rules, Rules 583 and 584.

¹³⁸ The distinction turns on the severity of the punishment that the superintendent chooses to award. The Rules state, “An offence will be considered a minor offence, when it is dealt with by a minor punishment, and a major offence when dealt with by a major punishment.” Pakistan Prison Rules, Rule 587.

¹³⁹ Human Rights Watch interview with Zia Ullah, Superintendent, District Jail, Lahore, May 21, 1998.

¹⁴⁰ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 67.

beatings. According to Mohammad, his confinement was based not on any offense that he had committed while in prison, but on the nature of the crime that he was charged with.¹⁴¹

¹⁴¹ Human Rights Watch interview with Noor Mohammad, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

The Prison Rules grant superintendents sole authority to award punishments, and leave prisoners no recourse for appeal.¹⁴² The Law Commission noted the inherent risks in such an arrangement and proposed granting a right of appeal to prisoners. “With a view to check the abuse/misuse of authority by [a] jail superintendent,”¹⁴³ the commission recommended amending the Prisons Act so that “[t]he offences falling under major punishments shall be appealed before the Inspector-General, Prisons, whose order shall be final.”¹⁴⁴

Aside from prescribed punishments, there are informal means of enforcing discipline that are often excessive. The Prison Rules permit superintendents to appoint convicts as prison officers if they meet certain qualifications, with respect to offense, time served, and conduct.¹⁴⁵ Among the duties they may be assigned are to “patrol the inside of the ward and assist in maintaining discipline at night,” and to “assist in quelling any disturbance.”¹⁴⁶ Yusuf Ramzan, a thirteen-year-old in Rawalpindi Central Prison, said that adult prisoners deputized as watchmen would sometimes beat juveniles for fighting among themselves.¹⁴⁷

Although the Prison Rules do not explicitly preclude the appointment of adult prisoners to supervise juvenile wards, the practice is clearly contrary to other provisions contained therein. Rule 296 states that “there must, on no account, be opportunity for conversation or communication with adults.” Rule 302 provides for the employment of a prisoner as an instructor, but it attaches the caveat that “[he] shall, on no pretext, be left alone with the juveniles.” More critically, the use of inmates to police juvenile wards contravenes the U.N. Rules for the Protection of

¹⁴² Pakistan Prison Rules, Rule 580.

¹⁴³ Pakistan Law Commission, “Report on Jail Reform, 1997,” p. 20.

¹⁴⁴ *Ibid.*, p. 37.

¹⁴⁵ Pakistan Prison Rules, Rules 456, 458, and 459.

¹⁴⁶ Pakistan Prison Rules, Rule 460.

¹⁴⁷ Human Rights Watch interview with Yusuf Ramzan, Central Prison, Rawalpindi, May 15, 1998.

Juveniles, which stress the need for professional staff, with specialized training related to children.¹⁴⁸

Training of Jail Staff

¹⁴⁸ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 85.

The Prisons Act of 1894 requires the provincial government to designate a superintendent and a deputy superintendent for each prison.¹⁴⁹ Subordinate to the deputy superintendent are the assistant superintendents, chief warden or senior head warden, head warders, and warders.¹⁵⁰ The Prison Rules require male warders to have attained at least a “middle standard” education, although the Rules permit the Inspector General of Prisons to relax that requirement by a special or general order.¹⁵¹ A lower threshold is set for the educational level of women warders, who are required only to be literate.¹⁵²

The U.N. Rules state that “personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men.”¹⁵³ In addition,

The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.¹⁵⁴

Aside from employing inmates as prison officers, Pakistan's prison administration deviates from this prescription with respect to the training and qualifications of its professional staff. According to the Human Rights Commission of Pakistan,

A majority of the jail staff are without formal training, education, and aptitude for their challenging and sensitive assignments. These weaknesses are compounded by job dissatisfaction and personal frustration. The jail officials are accorded a low status

¹⁴⁹ Prisons Act, 1894, s. 6.

¹⁵⁰ Pakistan Prison Rules, Rules 1041, 1138, 1139, and 1147.

¹⁵¹ Ibid., Rule 1113. “Middle standard,” in Pakistan's school system, consists of grades six to eight. See Samra Fayyazuddin, Anees Jillani, Zarina Jillani, *The State of Pakistan's Children: 1997* (Islamabad: Society for the Protection of the Rights of the Child (SPARC), 1998), p. 87.

¹⁵² Ibid., Rule 1182.

¹⁵³ Ibid., Rule 83.

¹⁵⁴ Ibid., Rule 85.

in the administration and are poorly paid....¹⁵⁵ Promotion in this
service is very slow....¹⁵⁶

¹⁵⁵ Human Rights Commission of Pakistan, "A Penal System Long Overdue for Change," p. 13.
¹⁵⁶ Ibid., p. 15.

The Central Jail Staff Training Institute, a branch of the Interior Ministry, is located in Lahore, in a facility that was originally designed as a borstal institution.¹⁵⁷ Plans to upgrade the institute to a national corrections academy, drawn up in 1981, appear to have been shelved, along with the allocation of land for the academy in Islamabad. Abdul Majeed Ahmed Auolakh, the principal of the institute since 1977, is widely acclaimed by local NGOs for his efforts to impart human rights training to jail staff and to promote penal law reform, including juvenile justice legislation. According to the Human Rights Commission of Pakistan, the institute “with extremely meagre financial and human resources is doing exceptionally good work not only for the Prison and Probation/Parole Departments, but also for the prisoners.”¹⁵⁸

Auolakh told Human Rights Watch that jail staff of all ranks attend courses at the institute that last from fifteen days to six months. While he said there was no course dedicated to the rights and treatment of child prisoners, the subject is incorporated in an initial six month training course for assistant superintendents, as well as in subsequent refresher courses of four months duration. NGOs—including Prison Reform International and AGHS—have given guest lectures on juvenile issues, he said.¹⁵⁹ Juvenile justice appears to be covered from the vantage points of both Pakistani and international law. “In our classes, we teach the Beijing Rules,” said Muhammad Masood Khan, the institute’s senior lecturer.¹⁶⁰

¹⁵⁷ The facility in fact functioned as a borstal institution from 1932 until 1965, when the borstal was shifted to its present location in Bahawalpur.

¹⁵⁸ Human Rights Commission of Pakistan, “A Penal System Long Overdue for Change,” p. 14.

¹⁵⁹ Human Rights Watch interview with Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Lahore, May 16, 1998.

¹⁶⁰ Human Rights Watch interview with Muhammad Masood Khan, Senior Lecturer, Central Jail Staff Training Institute, Lahore, May 16, 1998.

The problem, in fact, appears to be not so much one of content, but of attendance. Although Rule 1129 of the Pakistan Prison Rules requires prison warders to complete a four-month training course in prison rules and regulations, its application has been curtailed by the frequent refusal of provincial prison authorities to permit the attendance of new recruits. Citing an inadequate prisoner to staff ratio as justification for their non-compliance, the authorities have compelled the institute to abbreviate its courses, sometimes drastically. Training courses for warders in Punjab have been reduced from four to just three months. The situation in Sindh is even worse, with institute staff having to conduct field training courses for warders, of no more than three weeks' duration, in the various jails of the province. The Prison Rules do not require the training of assistant superintendents, but their completion of the Institute's initial six-month course is usually mandated by their appointment orders.¹⁶¹

Sexual Abuse

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.¹⁶²

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.¹⁶³ The clash resulted in injuries to nearly twenty children, including six who

¹⁶¹ Human Rights Watch telephone interview with Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Lahore, May 13, 1999.

¹⁶² Human Rights Watch telephone interview with Syed Alamdar Hussain Shah, Free Legal Aid Cell, Sahiwal, May 3, 1999.

¹⁶³ Human Rights Watch telephone interview with Anwar, correspondent for *Dawn*, Sahiwal, April 13, 1999.

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.¹⁶⁴

¹⁶⁴ Human Rights Watch telephone interview with Syed Alamdar Hussain Shah, Free Legal Aid Cell, Sahiwal, May 3, 1999.

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.¹⁶⁵

Aslam's case was unfortunately far from unique. Shah told us that he has received many reports of sexual abuse of juveniles in Sahiwal Central Prison, by both prison staff and adult inmates. He noted that prison authorities sometimes held up to five or six boys in a cell with adult prisoners.¹⁶⁶ However, determining the extent of sexual abuse of children in other detention facilities remains difficult. One study of three Punjab jails, conducted in 1992 on the orders of Lahore High Court Chief Justice Mehboob Ahmed, found that forty-four of 200 children examined had been sodomized. However, the study compromised its own data by presenting such cases exclusively as the result of intercourse among juveniles. The report included the results of a medical examination of 116 children in Lahore District Jail.

[The examination] revealed that sodomy had been committed with 19 of the children, while another 14 children were suspected to have been victimized. In all of the cases in which sodomy was positively identified, the abuse was characterized as 'habitual.'¹⁶⁷

¹⁶⁵ The charges were registered against the following juvenile prisoners: Mohammed Ameer, Mohammed Aslam, Ijaz Ahmad, Maqsood Ahmad, Munir Ahmad, Sadaqat, Qasim Ali, Mohammed Afzal, Sabir, and Riaz Shah. Human Rights Watch telephone interview with Anwar, correspondent for *Dawn*, Sahiwal, April 13, 1999. See also "Sahiwal: Trouble in juvenile section: 23 hurt in Sahiwal prison riots," *Dawn*, April 12, 1999.

¹⁶⁶ Human Rights Watch telephone interview with Syed Alamdar Hussain Shah, Free Legal Aid Cell, Sahiwal, May 3, 1999.

¹⁶⁷ Jahangir and Doucet, *Children of a Lesser God*, p. 52.

Auolakh of the Central Jail Staff Training Institute elaborated on the medical examiner's conclusions. "They reported to the District Health Officer that the children had the habit of homosexuality," he said. "The doctors declared that it was from outside [the prison]."¹⁶⁸

¹⁶⁸ Human Rights Watch interview with Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Lahore, May 16, 1998.

In some prisons, the authority exercised by gangs compounds the risk posed by the lack of effective separation between juveniles and adults. The daily *Dawn* reported in October 1998 that a 150-strong tribally-based gang in Jhang District Jail, in Sindh province, was engaged in activities “ranging from openly selling narcotics to criminally assaulting small children in the adjacent children’s jail, ‘Munda Khana.’”¹⁶⁹

¹⁶⁹ Q.A. Bukhari, “Jhang: Drug trade, biradrism destroy Jhang jail peace,” *Dawn*, October 10, 1998.

V. JUVENILE INSTITUTIONS

The dangers arising from the collection of criminals of all ages have long been recognized, and an experiment has been made during the last few years in Lahore, by which young prisoners have not only been confined in a separate building, but have been subjected to special treatment. This has been based on the experience gained in England of "Borstal" system ...and the general results of the experiment have been so satisfactory that this Bill has been framed with a view to the expansion of the system.¹⁷⁰

— Punjab Gazette, 1926

In the decades since the passage of the Punjab Borstal Schools Act, in 1926, official enthusiasm for the establishment of juvenile institutions has evidently waned. Today, Punjab has only one borstal in operation, at Bahawalpur—and that too, in a facility that was built before independence. Elsewhere in Pakistan, there are just two other institutions that are specially designated for juveniles: the Remand Home and the Youthful Offenders Industrial School, both of which are in Karachi.

Although governed by separate legislation from the Prisons Act of 1894, the Bahawalpur borstal and Karachi's industrial school essentially function as jails. They are managed and staffed by the provincial prison administrations, and the Prison Rules provide all or part of their internal guidelines. Their incorporation in the prison system has had the effect of replicating many of the abuses prevalent in Pakistani jails. Among them are extortion and narcotics trafficking by lower-level staff in the Karachi facility, and the use of solitary confinement and shackles as punitive measures in Bahawalpur.

Human Rights Watch visited Bahawalpur's Borstal Institute and Juvenile Jail, as it is officially known, and interviewed prison officials and inmates there with the authorization of the Punjab provincial government. We were denied permission to visit Karachi's Youthful Offenders Industrial School by the Government of

¹⁷⁰ Punjab Gazette, 1926, Part. I, pp. 579-580, quoted in Khan, *Laws Relating to Children*, p. 138.

Sindh, but were able to gather extensive information about conditions there from magistrates, lawyers, and physicians who have visited the facility.

Juvenile Institutions

Pakistani laws provide for the establishment of five different types of juvenile institutions: reform schools, industrial and certified schools, remand homes, and borstals. The first of these is governed by the only federal law specifically aimed at the protection of juveniles: the Reformatory Schools Act of 1897. Under this Act, courts can send children who are under fifteen at the time of their conviction to a reform school, instead of a prison, for periods ranging from three to seven years.¹⁷¹ Persons over the age of eighteen cannot be held in a reform school.¹⁷² The schools must be able to provide vocational training to children detained there, although children over fourteen may also “license” to an employer for renewable periods of up to three months.¹⁷³ The act’s practical significance in Pakistan is negligible: there are at present no reform schools in the country.

The Sindh Children Act of 1955 and the Punjab Youthful Offenders Ordinance of 1983 authorize the establishment of industrial schools to accommodate both juvenile offenders as well as destitute or homeless children who have not committed any statutory offense. In either circumstance, the period of commitment is not to exceed the point at which the child turns eighteen. The laws also authorize the provincial governments to certify other educational institutions as being suitable to house juveniles; these institutions are subject to inspection by a Chief Inspector of Certified Schools, and may have their certificates revoked at any time. As with the Reform School Act, which they supplant wherever they have been enforced, the Sindh Children Act and the Punjab Youthful Offenders Ordinance have been diminished by the government’s failure to establish or certify schools for juveniles. Only one institution has been officially designated as an industrial school, in Karachi, and it is administered as part of the prison system, in contravention of the Sindh Children Act.

The Sindh Children Act and the Punjab Youthful Offenders Ordinance additionally provide for the designation of remand homes. Remand homes are

¹⁷¹ Reformatory Schools Act, 1897, Sec. 4(a) and 8(1).

¹⁷² *Ibid.*, Sec. 13(2).

¹⁷³ The term “license” contemplates an arrangement whereby a juvenile is placed under the charge of a private citizen or government officer, who is in turn responsible for providing that juvenile with lodging, maintenance, and employment. *Ibid.*, Sec. 18, 21.

construed under these laws as “places of safety,” where children may be held pending their appearance before a magistrate. There is at present one remand home in Karachi that houses children under the age of fourteen who are awaiting trial or in the process of being tried. The remand home also holds a few convicted children who were below the age of fourteen at the time of their arrest.

Both Punjab and Sindh also have laws governing borstal institutions. Borstals are defined under these laws as places where juveniles may be detained and provided with “industrial training and other instruction” as well as “disciplinary and moral influences” that will encourage their reformation.¹⁷⁴

Under the Punjab Borstal Act of 1926, male convicts under the age of twenty-one, who have exhausted their appeals, may be detained in a borstal for periods ranging from two to seven years.¹⁷⁵ The Punjab Borstal Rules of 1932 contain rules for the administration of borstals. They provide for the appointment of a borstal director with powers and duties equivalent to that of the inspector-general of prisons, set a ceiling of five hundred on the population of each borstal, and require the detention of adolescent and post-adolescent offenders in separate enclosures.¹⁷⁶ In practice, the inspector-general of prisons has authority over Punjab’s only borstal, at Bahawalpur, and the institution is administered in accordance with the Pakistan Prison Rules. The Prison Rules deviate from the Borstal Act in two important respects: they require the transfer to the borstal of all

¹⁷⁴ Punjab Borstal Act, 1926, Sec. 2(1), Sindh Borstal Schools Act, 1955, Sec. 3(a).

¹⁷⁵ Detention periods of four to seven years may only be imposed by a Court of Sessions. Magistrates of the first class may not order detention beyond three years. Punjab Borstal Act, Sec. 5(1).

¹⁷⁶ Adolescent and post-adolescent offenders may associate under supervision for drill, education, work, and games. Punjab Borstal Rules, Rule 12. The Rules do not define the term “adolescent.”

juvenile convicts sentenced to terms of three months or more,¹⁷⁷ and the transfer to adult prisons of all borstal inmates who have reached the age of twenty-one.¹⁷⁸

¹⁷⁷ Pakistan Prison Rules, Rule 291.

¹⁷⁸ *Ibid.*, Rule 300.

The Sindh Borstal Schools Act of 1955 allows courts to detain youthful offenders between the ages of sixteen and twenty-one in borstals, for periods ranging from three to five years.¹⁷⁹ Juveniles may not be held in a borstal beyond the age of twenty-three, or in exceptional cases, twenty-five.¹⁸⁰ In contrast to the requirements of the Punjab Borstal Rules, institutions established under the Sindh Borstal Schools Act fall under the purview of the inspector-general of prisons.¹⁸¹ To date, no borstals have been constructed in Sindh.

Borstal Institute and Juvenile Jail, Bahawalpur

Perched on the edge of the Cholistan Desert, in southeastern Punjab, Bahawalpur is an unlikely site to house the province's sole facility for convicted children. But as the legislative record indicates, the Bahawalpur borstal was envisioned as part of a province-wide system of borstal institutions. In their absence, it houses most children in the province sentenced to terms of two months or more. The facility has also been designated a juvenile jail, and in that capacity holds undertrial children from the vicinity of Bahawalpur. Children who have been sentenced to death are not transferred to Bahawalpur, but are held with adult death-row inmates in prisons.

Accommodations

The Bahawalpur borstal is one of the prison system's few facilities to operate below capacity, a distinction attributable to the low conviction rate of juvenile offenders and the relatively low population density of the area.

	Under trial	Convicted	Total
--	-------------	-----------	-------

¹⁷⁹ Or between the ages of fifteen to twenty-one, where the Sindh Children Act is in force.

¹⁸⁰ Sindh Borstal Schools Act, Sec. 19.

¹⁸¹ The Sindh Borstal Schools Act applies the Prisons Act of 1894 and the Prisoners Act of 1900 to each borstal, "as if it were a prison and the inmates prisoners." Sindh Borstal Schools Act, Sec. 5.

	Under trial	Convicted	Total
Capacity			434
Population	157	121	278

Table 5.1: Statistics for the Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998¹⁸²

¹⁸² Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

The accommodations in the Bahawalpur borstal resemble those in the juvenile wards at Rawalpindi and Lahore, with inmates housed in dormitory-style barracks. According to the superintendent, Chaudhry Afzaal Mehmood, borstal inmates are separated according to status—as convicts or as inmates who are under trial—and age. Mehmood said that the inmates are classified into four age categories: under fourteen, fourteen to sixteen, sixteen to eighteen, and eighteen to twenty-one.¹⁸³ Human Rights Watch visited the compound within the borstal that was reserved for children under the age of fourteen. One of the compound's two barracks housed convicts and the other undertrial inmates.

The Borstal Rules require “proper sanitary arrangement, water-supply, food, clothing and bedding.”¹⁸⁴ The Prison Rules additionally require that bostals have electric fans in all rooms and workshops, and cots for each child.¹⁸⁵ Inside the barrack for inmates below the age of fourteen who were under trial was a water tap and a squat toilet, the latter surrounded by a walled enclosure and a door. Overhead were two fans. The children's mattresses were lined up against the walls, with a tin box in front of each containing the boys' possessions. Outlining the borstal's needs, Mehmood told Human Rights Watch that there was a chronic shortage of water, and that the electric motor used to bring water from the nearby channels was in poor shape. He noted, too, that the borstal had fifty-nine fans, but about half needed repair.¹⁸⁶ In a region where the average daily temperature during the summer exceeds 40 degrees Celsius (105 degrees Fahrenheit), this deficiency poses health concerns.

Medical Care

Under the Borstal Rules, each institute must have an “infirmary, hospital, or proper place for the treatment of prisoners,” and an infectious diseases ward.¹⁸⁷

¹⁸³ Ibid.

¹⁸⁴ Punjab Borstal Rules, Rule 14(1)(c).

¹⁸⁵ Pakistan Prison Rules, Rule 303(J) and 303(v).

¹⁸⁶ Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

¹⁸⁷ Punjab Borstal Rules, Rule 14(1)(g), 14(1)(h).

The Prisons Act and the Prison Rules, as noted in the previous chapter, additionally require the appointment of a medical officer, a junior medical officer, and a dispenser.¹⁸⁸

¹⁸⁸ See Prisons Act, 1894, Sec. 6, and Pakistan Prison Rules, Rule 1063.

The medical facilities in the borstal include a dispensary and two wards. One of the wards, which was empty at the time of our visit, was reserved for patients with infectious diseases; the other had six beds, housing inmates who were being treated variously for jaundice, bronchitis, a head injury sustained in a fight, and a gunshot wound to the head, inflicted before the inmate's transfer to the borstal.¹⁸⁹ The medical equipment in the ward was rudimentary, although the dispenser, Zahid, told us that the supply of medicines provided by the government was sufficient. The superintendent noted that the medical wards lacked air conditioning,¹⁹⁰ and the temperature indeed appeared only marginally lower than that in the barracks.

A more pressing concern, however, was the absence of a medical officer. According to Superintendent Mehmood, the borstal doctor had been transferred in March 1998, two months before our visit, and a physician from Bahawalpur Central Prison was visiting the borstal on a temporary basis. Mehmood told us that he had personally requested the inspector-general of prisons to assign a doctor to the borstal at the earliest opportunity. He also noted that in cases where emergency treatment was required, the borstal was authorized by the government to send juveniles to Bahawalpur Victoria Hospital, less than a mile from the prison.¹⁹¹

Education

Under the Prison Rules, as noted, juvenile convicts sentenced to a prison term of one year or more "shall be brought under a course of instruction, in reading,

¹⁸⁹ Human Rights Watch interview with Zahid, Dispenser, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

¹⁹⁰ Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

¹⁹¹ Ibid.

writing, and arithmetic for two hours daily.”¹⁹² Religious education is compulsory both for convicts and inmates who are under trial.¹⁹³

According to Mehmood, the borstal ensures that children attain an eighth grade education, thereby completing middle school under Pakistan’s educational system.

Upon a child’s entering the jail, the first thing we inquire about is his education ... and the child is placed in the appropriate level class. Up to eighth grade, we make sure everyone studies. After that, it’s on the will and desire of the juvenile.¹⁹⁴

¹⁹² Pakistan Prison Rules, Rule 298.

¹⁹³ Ibid., Rule 679.

¹⁹⁴ Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

However, Mehmood said only about 10 percent of the children in the borstal matriculate.¹⁹⁵ Several factors may account for the low matriculation rate, the most important being the defects in Pakistan's public education system. The great majority of children in the borstal—90 percent, by the estimation of a Bahawalpur lawyer who works for AGHS—are from the poorest segment of Pakistani society.¹⁹⁶ Few have had access to a decent primary education, particularly those hailing from rural areas.¹⁹⁷ Human Rights Watch asked four children in the borstal about their educational backgrounds: one had never been to school, another was a student in a *madrassa*, or Islamic seminary, and a third had dropped out after seventh grade. Only one of the boys was in school and awaiting admission to ninth grade at the time of his arrest.

Although most children detained in the borstal may be handicapped by an inadequate primary or middle school education, the controlled environment of the institute—where their attendance can be ensured and progress monitored—presents an ideal opportunity for them to resume their studies and pursue matriculation or even higher education. Unfortunately, for a population of 278, the borstal has only two teachers of secular subjects and one religious teacher.¹⁹⁸ Because of the shortage of instructors, moreover, the religious instructor teaches first through third grades as well.¹⁹⁹ And here, as elsewhere in the prison system, remissions for memorizing the Quran and the preference of prison officials has led to the prioritization of religious education. The prison offers “very proper classes in hifz,” stressed Superintendent Mehmood, adding, “I take a very personal interest in

¹⁹⁵ Ibid.

¹⁹⁶ Human Rights Watch interview with Rana Muhammad Athar Jamal, Bahawalpur, May 17, 1998.

¹⁹⁷ For a general discussion of primary education in Pakistan, see Fayyazuddin et al, *The State of Pakistan's Children: 1997*, p. 87.

¹⁹⁸ Human Rights Watch interview with Tareen Farooq, Deputy Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

¹⁹⁹ Ibid.

this.²⁰⁰ Of the five undertrial inmates and three convicts interviewed by Human Rights Watch in the borstal, one was pursuing hifz, three others were taking standard religious classes, and none were studying secular subjects.

²⁰⁰ Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

The educational facilities themselves are dismal. The Borstal Rules call for the provision of “barracks or other suitable buildings to be used as a school for imparting education to inmates.”²⁰¹ However, the classes that we observed in progress were held in an open barrack; the students sat on the floor, a few of them with their legs in iron shackles as disciplinary measures. The cell was otherwise bare, with no teaching aids in sight. In addition, the Bahawalpur borstal lacks the “well-stocked library” required of borstals by the Pakistan Prison Rules.²⁰²

A very limited number of the children who have been detained in the borstal since its inception have attained higher education diplomas following their period of confinement. Their names are displayed in a board on the borstal, and are a source of evident pride to the administration.

Vocational Training and Labor

The Borstal Rules state that “[e]very institution will ordinarily have in addition to classes for general education, special industrial classes and workshops for teaching trades and other means of livelihood.”²⁰³ The Prison Rules state that prison industries should be established with a view to “[i]mparting vocational training to the prisoners to enable them to earn a respectable livelihood after their release.”²⁰⁴ The U.N. Rules for the Protection of Juveniles include a similar formulation of these objectives, stating, “Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.”²⁰⁵ All three sets of rules recognize that juveniles should be able to choose the trades in which they receive training.²⁰⁶

²⁰¹ Punjab Borstal Rules, Rule 14(1)(e).

²⁰² Pakistan Prison Rules, Rule 298(ii).

²⁰³ Punjab Borstal Rules, Rule 20(1).

²⁰⁴ Pakistan Prison Rules, Rule 810.

²⁰⁵ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 42.

²⁰⁶ Pakistan Prison Rules, Rule 297, Punjab Borstal Rules, Rule 20(3), U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rule 43.

The Prison Rules also assign prison industries a punitive function. Under the Rules, labor in jail industries or at other tasks is mandatory for convicts sentenced to “rigorous” imprisonment.²⁰⁷ And as noted earlier, assignment to hard labor may be imposed as a disciplinary measure on convicts by the prison superintendent.²⁰⁸ The U.N. Rules for the Protection of Juveniles, by contrast, permit inmates to perform labor only with remuneration and as a complement to their vocational training.²⁰⁹ According to the U.N. Rules, “labor should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community....”²¹⁰

In our interviews with children in the borstal, we did not encounter any inmates who were under trial who had exercised their right to receive vocational training. As the Human Rights Commission of Pakistan has observed, the industries and trades available within Pakistan’s prison system are mostly labor-intensive.²¹¹ In the Bahawalpur borstal, they include tailoring, carpet-weaving, making sandals and boots, carpentry, and gardening. Some of the products, such as officers’ uniforms, are produced for consumption within the borstal. Others, including carpets, are sold at an outlet store that the borstal maintains in Lahore. According to Superintendent Mehmood, the proceeds from the sale of these goods are deposited in the borstal’s bank account.²¹² Borstal inmates do not receive remuneration for their labor, in contravention of the U.N. Rules for the Protection of Juveniles.

With regard to convicted children in the borstal, no distinction appears to be made between the provision of training and assignment to labor. According to the deputy superintendent, Tareen Farooq, the children work in six-hour shifts, beginning at 8:00 a.m. each day²¹³—the maximum length of time that juvenile convicts can be required to work under the Prison Rules.²¹⁴ The facilities that we

²⁰⁷ Pakistan Prison Rules, Rule 810. Labor is elective for undertrial inmates and convicts sentenced to “simple” imprisonment. *Ibid.*, Rules 277, 381.

²⁰⁸ *Ibid.*, Rule 594(1).

²⁰⁹ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, Rules 45, 46.

²¹⁰ *Ibid.*, Rule 67.

²¹¹ Human Rights Commission of Pakistan, “A Penal System Long Overdue for Change,” p. 35.

²¹² Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

²¹³ Human Rights Watch interview with Tareen Farooq, Deputy Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

²¹⁴ “The tasks imposed on...juvenile prisoners shall not exceed two-thirds of the

observed were bleak. The barrack reserved for carpet-weaving was dimly lit and equipped with antiquated looms, and one of the boys assigned there told us that the work was very hard.²¹⁵

tasks fixed for hard or medium labor for adult male convicted prisoners." Pakistan Prison Rules, Rule 816(ii). Under Rule 812, adult male convicts cannot ordinarily be required to work for more than nine hours each day.

²¹⁵ Human Rights Watch interview with Altaf Ahmad, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

Carpet weaving under such conditions presents a range of occupational health hazards to children, as Human Rights Watch has found in earlier studies on bonded child labor in Pakistan and India. Prolonged periods spent in crouched positions damage children's backs and legs, causing backaches and severe joint pain, while the lack of blood supply to the lower body often retards their growth. In addition, poor lighting frequently results in eye damage to carpet workers, and the constant inhalation of tiny wool fibers makes them particularly vulnerable to tuberculosis and other lung diseases.²¹⁶

Disciplinary Measures

The Prison Rules require officials to read a "summary of the rules relating to the conduct and treatment of prisoners" to every child upon admission, and to conspicuously post a copy of that summary in each barrack.²¹⁷ No such summary was posted in either of the barracks that Human Rights Watch visited. According to Mehmood, children in the borstal are "verbally informed of the conduct rules through lectures or visits by officials." They had not been provided copies of the rules, he said, because "the majority are not educated."²¹⁸

The Borstal Rules make the punishments provided for in the Punjab Jail Manual (superseded by the Pakistan Prison Rules in 1978) applicable to borstal inmates, except for the imposition of handcuffs, fetters, and cellular confinement. Separate confinement is limited to a period of one month.²¹⁹ The Borstal Rules state that "[n]o punishment shall be awarded to any inmate by any official of the

²¹⁶ See Human Rights Watch, *Contemporary Forms of Slavery in Pakistan* (New York: Human Rights Watch, 1995), p. 53, and Human Rights Watch, *The Small Hands of Slavery: Bonded Child Labor in India* (New York: Human Rights Watch, 1996), p. 108.

²¹⁷ Pakistan Prison Rules, Rule 64.

²¹⁸ Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

²¹⁹ Punjab Borstal Rules, Rule 27(1)(iv).

Institution except the Superintendent.”²²⁰ Mehmood told us that for offenses that were “not of an extraordinary nature,” children were placed in a cell for fifteen days “more or less.” If the offense was of a severe nature, he said, their confinement would be extended by a further four days. Unlike their counterparts in Lahore District Jail, children in the borstal are allowed visits by family and friends while in confinement. “We bear in mind that people travel a long distance,” Mehmood said.²²¹

Shahid Alam, a seventeen-year-old convict, told Human Rights Watch that borstal authorities are liberal in their use of solitary confinement, and lower-level staff enjoy considerable latitude in disciplining juveniles.

²²⁰ Ibid., Rule 27(2).

²²¹ Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

We are not treated properly here. The present superintendent is a nice man, and cooperative, but the staff isn't good. We have been confined to cells over minor and petty offenses.²²²

As noted previously, Human Rights Watch observed several convicts attending classes while wearing iron chain links on their legs. This practice clearly contravenes the Borstal Rules, which forbid the use of any form of fetters as a disciplinary measure.

Grievance Mechanisms

The absence of an impartial grievance mechanism prevents children from seeking amelioration or redress when unwarranted or unlawful punishments or conditions are imposed on them. The only forum available in such cases is the borstal administration itself—very often the same authorities whose actions or decisions may have led to the grievance in question. “I visit the barracks every day,” Superintendent Mehmood said. “The prisoners are allowed to communicate with me directly, which they do. Or they can tell the warden in charge.”²²³

The Borstal Act and the Borstal Rules provide for an alternate mechanism, which if implemented, would go a long way toward ensuring inmates fair hearings. The Borstal Act requires the provincial government to appoint a Visiting Committee for each borstal.²²⁴ The Borstal Rules state that the committee shall, on a monthly basis:

1. visit the institution to see every inmate, to hear complaints and see that the management of the institution is proper in all respects;
2. examine the Punishment Book and the Log...or Journal;
3. bring any special cases to the notice of the Director; and

²²² Human Rights Watch interview with Shahid Alam, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

²²³ Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

²²⁴ Punjab Borstal Act, Sec. 4(3).

4. see that no person is illegally detained in the institution.²²⁵

²²⁵ Punjab Borstal Rules, Rule 32.

The Rules go through considerable lengths in detailing the composition of the committee. They are to consist of either ten or eleven members, including the borstal superintendent, other specified government office holders, and two “non-officials.”²²⁶ The Rules explicitly state that they should be selected on the basis of professional qualifications or commitment to children’s interests.²²⁷

Unfortunately, the Government of Punjab has entirely disregarded its obligation to appoint a Visiting Committee for the borstal. According to the superintendent, only three of the officials designated by the Borstal Rules—the Deputy Commissioner, the Sessions Judge, and the Senior Superintendent of Police—actually inspect the facility, doing so just once every three months.²²⁸

In a statement to the press on December 8, 1998, the Prime Minister’s adviser on human rights, Ijaz Hashmi, said the federal government planned to establish committees that consisted of district magistrates, superintendents of police, office-bearers of bar associations, and representatives of NGOs to inspect jails at regular intervals.²²⁹ While this would be a welcome step, any committee appointed

²²⁶ Ibid., Rule 31. The Rules provide for a ten-member committee, except in the likely circumstance that the Borstal Superintendent is not a “medical man.” In that case, the Rules state, “the District Medical Officer of Health should be added to the Visiting Committee.” Ibid., Rule 31(9).

²²⁷ “[N]on-official members...will be chosen as far as possible on the ground of definite qualifications and special fitness such as taking an active interest in Borstal Institution matters and Prison Reform or other social work, or ability, enthusiasm, and willingness to assist in finding work for Borstal lads and other prisoners on discharge and not merely and solely on the ground of social position, wealth and political influence. Ibid., Rule 31(3).

²²⁸ Human Rights Watch interview with Chaudhry Afzaal Mehmood, Superintendent, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

²²⁹ “Human rights cells next year in all districts,” *Dawn*, December 9, 1998.

to inspect the borstal should also minimally comply with the requirements of the Borstal Rules, with regard to its composition, mandate, and frequency of visits.

Visits by Family Members

A large majority of the borstal's convicted children come from towns in the heart of Punjab, such as Faisalabad, Gujranwala, or Sheikhpura. The costs entailed in travel and accommodation present formidable obstacles to their family members, few of whom are able to visit with any regularity. One convict told Human Rights Watch that his parents visited him only once a year because of the distance.²³⁰ Another, who was arrested and tried in Punjab, but is originally from another province, had given up communicating with his family. "My parents know I'm here," Altaf Ahmad said, "I've sent letters to them. But nobody has come to visit me, so I don't write anymore."²³¹

Punjab government officials candidly acknowledged the difficulties posed by the borstal's location, and spoke of plans to build additional facilities for juveniles. These are discussed in Chapter VII of this report.

Youthful Offenders Industrial School, Karachi

In late October 1998, a Senate committee on human rights issued a series of observations and recommendations concerning the treatment of juveniles in Pakistan's prisons. The committee commented favorably on the Government of Sindh's efforts "to better the lot of juvenile prisoners" and made special mention of "the Youthful Offenders Industrial School (YOIS) in Karachi, which was providing model facilities to juvenile offenders towards their treatment and rehabilitation."²³² Although Human Rights Watch was denied permission to visit the industrial school, independent observers and data gathered by the Pakistani NGO Society for the Protection of the Rights of the Child (SPARC) bear witness to a different story, one that incorporates the familiar elements of overcrowding, inadequate health care, and harsh disciplinary measures. Such facilities as have been provided appear to be not so much a result of government initiative, but of personal effort and expense by concerned judicial authorities, legal aid lawyers, and private donors.

Governing Legislation

²³⁰ Human Rights Watch interview with Shahid Alam, Borstal Institute and Juvenile Jail, Bahawalpur, November 25, 1998.

²³¹ Human Rights Watch interview with Altaf Ahmad, Borstal Institute and Juvenile Jail, Bahawalpur, May 18, 1998.

²³² "Senate panel suggests reforms in country's jails," *Dawn*, October 27, 1998.

The name “Youthful Offenders Industrial School” is of recent vintage; until January, 1997, the facility was known as the Juvenile Jail, Karachi.²³³ Its renaming by the provincial Home Department was more than a semantic exercise, however, for it implicitly removed the institution from the purview of the prison administration and the Prison Rules, and placed it under the jurisdiction of the Sindh Children Act of 1995.²³⁴

²³³ Maisoon Hussein, “Juvenile jail to be called industrial school,” *Dawn*, January 16, 1997, p. 15.

²³⁴ The jail’s renaming followed the filing of a court petition by Zia Awan, president of the Karachi NGO Lawyers for Human Rights and Legal Aid, as well as written appeals to two successive chief ministers of Sindh and the provincial home department by Z.A. Channa, a retired justice of the Sindh High Court. See Constitutional Petition No. 743/93, High Court of Sindh, Karachi, *Zia Ahmed Awan v. the Government of Sindh et. al.*; and Hussein, “Juvenile jail to be called industrial school,” *Dawn*.

The Sindh Children Act authorizes the provincial government to “establish and maintain industrial schools for the reception of children and youthful offenders.”²³⁵ Courts may order convicted children, who were under the age of sixteen at the time of their arrest,²³⁶ to be committed to such schools until they reach the age of eighteen years, or exceptionally, for a shorter period.²³⁷ During the time that a child is in its care, an industrial school “shall be bound to teach, train, lodge, clothe, and feed him.”²³⁸ The government may also license private institutions, known as “certified schools,” to serve the same function.²³⁹

The government is required to appoint a superintendent and a committee of visitors for each industrial school established under the Act.²⁴⁰ Another government appointee, the Chief Inspector of Certified Schools, is responsible for overseeing all of the industrial and certified schools in the province.²⁴¹ Along with other inspectors under his or her authority, the Chief Inspector may visit a school at any time, and each school must be visited by an inspector at least once a year.²⁴² In the two years since it renamed the juvenile jail, the Government of Sindh has failed to appoint either a Chief Inspector of Certified Schools or a committee of visitors.

²³⁵ Sindh Children Act, Sec. 25(1).

²³⁶ “For the purpose of this Act, a person shall be deemed to be a child, if at the time of the initiation of proceedings against him under this Act or at the time of his arrest ... such person has not attained the age of sixteen years.” *Ibid.*, Sec. 5.

²³⁷ *Ibid.*, Sec. 45(1).

²³⁸ *Ibid.*, Sec. 29(2).

²³⁹ *Ibid.*, Sec. 25(2).

²⁴⁰ *Ibid.*, Sec. 28(1).

²⁴¹ *Ibid.*, Sec. 37(1)(a).

²⁴² *Ibid.*, Sec. 36(1).

Instead, the facility continues to be managed and staffed by the provincial prison administration, and governed in accordance with the Prison Rules.²⁴³

Accommodations

²⁴³ Human Rights Watch interview with Neelofar Shahnawaz, Judicial Magistrate, Juvenile Court (Karachi Division), Karachi, May 23, 1998.

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,” she told Human Rights Watch. “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.”²⁴⁴

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.²⁴⁵ 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.²⁴⁶

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

²⁴⁴ Ibid.

²⁴⁵ The move followed a court petition by Ajmal Mian, now the Chief Justice of Pakistan, who found during a visit to Landhi that children there were exposed to hardened criminals and that there were numerous reports of sexual abuse. Human Rights Watch interview with Zia Awan, President, Lawyers for Human Rights and Legal Aid, Karachi, May 22, 1998.

²⁴⁶ Report of Ghous Bux, Member, Inspection Team, High Court of Sindh, Karachi, December 19, 1993, regarding Constitutional Petition No. 901/89.

Hashmi, established a computer center. “There are also many private, corporate donors,” she added.²⁴⁷

In a speech given in October 1994, Qamar Hussain Shah, the superintendent responsible for the juvenile jail, acknowledged the role played by the private sector in upgrading the facilities. “[W]ith the help of different philanthropists,” he said, each of the juvenile jail’s fourteen barracks had been provided a television set, an electric water cooler, ceiling fans, wall clocks, and sufficient bedding.²⁴⁸

²⁴⁷ Ibid.

²⁴⁸ “State of Juvenile Jails: Reformatory or Deformatory,” address by Qamar Hussain Shah, Superintendent, East Jail, Karachi, during the Independent Communications Network (ICN) Seminar on Juvenile Delinquency, Karachi, October 22, 1994, reprinted in *News International*, October 29, 1994, p. 11.

Unfortunately, the efforts of Shahnawaz and others to improve conditions in the industrial school have been outstripped by a rapid increase in its population. On December 5, 1993, the number of children in the facility stood at 419,²⁴⁹ a reasonable figure for a facility that was designed to accommodate 500.²⁵⁰ 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.²⁵¹

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 percent 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.”²⁵² In addition, 11 percent of the children had chest infections.²⁵³ The team also found that psychiatric disorders were widespread. According to the study, 55.8 percent of the children suffered

²⁴⁹ Report of Ghous Bux, Member, Inspection Team, High Court of Sindh, Karachi, December 19, 1993, regarding Constitutional Petition No. D-901/89.

²⁵⁰ Figure provided by Qamar Hussain Shah during the ICN Seminar on Juvenile Delinquency, quoted in “Interactivity,” *News International*, October 29, 1994, p. 11.

²⁵¹ Wasseem Ahmad, Abid Hassan, Zafar Iqbal, and Mohammad Shakeel, *The State of Juvenile Prisoners in Pakistan 1997* (Islamabad: Society for the Protection of the Rights of the Child (SPARC), 1998), p. xiii, Table 3.

²⁵² Amin A. Gadit, Ahsan A. Vahidy, and Najib Khalid, “Children of the Corn: A Study Conducted at Juvenile Prison in Karachi - Overview I,” *Pakistan Pediatric Journal* 21, no. 1(7-12) (1997): 11.

²⁵³ *Ibid.*, p. 10.

from mild to moderate depression and 65 percent displayed mild anxieties, conditions that the physicians attributed to “the circumstances leading to incarceration and the agony of the non-conducive custody environment.”²⁵⁴

Dr. Amin A. Gadit, the leader of the team, told Human Rights Watch that a physician was assigned to the industrial school, but was “very irregular” in his visits.²⁵⁵ The lack of adequate medical and psychological attention was especially critical in light of his team’s assessments. Fifty-two percent of the children were in need of psychotherapy, the study concluded, while 17 percent “were in need of psychotropic medication in addition to psychotherapy.”²⁵⁶

Education and Vocational Training

²⁵⁴ Ibid., p. 7. The study also showed that 4 percent of the children “suffered from severe depression with suicidal urges,” while 9 percent exhibited psychopathic personality traits. Ibid., p. 10.

²⁵⁵ Human Rights Watch interview with Dr. Amin A. Gadit, Associate Professor of Psychiatry, Hamdard College of Medicine, Karachi, May 22, 1998.

²⁵⁶ Gadit et al, “Children of the Corn,” p. 11.

The Karachi daily *Dawn* reported in January 1998 that the industrial school was providing education up to the matriculation standard, as well as training in electrical wiring, tailoring, carpentry, and hair cutting.²⁵⁷ In his speech, Superintendent Shah appealed for further assistance from the private sector to introduce “modern technologies like radio and T.V. assembling, refrigeration and air conditioning, motor repairing, and handling of power looms.”²⁵⁸

Abuses by Jail Staff

The study by Gadit and his colleagues indicated that 17.4 percent of the industrial school’s inmates had been tortured or otherwise ill-treated during their confinement in the facility.²⁵⁹ Such treatment was typically inflicted as punishment for disciplinary infractions, and according to Gadit included food deprivation, being forced to stand in the hot sun or maintain uncomfortable positions, and manual labor assignments, such as cleaning eight barracks. Until Shahnawaz ended the use of solitary confinement, Gadit said, children were also kept in cells without food or light for up to two days.²⁶⁰ Gadit’s report stated that 2.5 percent of the children had been subjected to what he termed “major torture,” a category that included severe physical beatings, electric shocks, hanging, *cheera*,²⁶¹ cuts, and burns.²⁶²

²⁵⁷ Maisoon Hussein, “Drugs menace at juvenile prison,” *Dawn*, January 5, 1998, p. 4.

²⁵⁸ “State of Juvenile Jails: Reformatory or Deformatory,” *News International*, Oct. 29, 1994, p. 11.

²⁵⁹ Gadit et al, “Children of the Corn,” p. 9.

²⁶⁰ Human Rights Watch interview with Dr. Amin A. Gadit, Associate Professor of Psychiatry, Hamdard College of Medicine, Karachi, May 22, 1998.

²⁶¹ “Forced stretching apart of the victim’s legs, sometimes in combination with kicks to the genitalia.” Report of the Special Rapporteur on Torture, para. 14.

²⁶² Gadit et al, “Children of the Corn,” p. 9.

Extortion and narcotics trafficking appear to be widespread among lower-level staff. "The jail police extort money from the parents to have visits, bring food to their children, or use the facilities," Shahnawaz said, adding, "The lockup police and night-duty police are involved in selling drugs."²⁶³ Although some of the children in the industrial school have acquired drug habits during the course of their confinement, a majority of the institutions's addicts were reportedly drug users before their arrest. Gadit told Human Rights Watch that visitors often supply inmates with drugs, including heroin, hashish, and opium. The children then either hide their drugs or bribe warders to overlook their consumption. Gadit noted that there were no facilities in the industrial school to treat addicted children.²⁶⁴

The involvement of jail staff in narcotics trafficking is by no means unique to the industrial school, and children in prisons elsewhere in Pakistan are vulnerable to the same risks. "If it is hard to get drugs in the city people actually head for the prisons," Jan Nisar, a senior defense lawyer in Lahore, told the *London Independent*. "In my experience everything is available there—heroin, hashish, whatever you want. If the inmates don't have it then the staff will."²⁶⁵ The ready availability of narcotics to juveniles makes light of Pakistan's obligation under article 33 of the Convention on the Rights of the Child "to take all appropriate measures...to protect children from the illicit use of narcotic drugs and psychotropic substances...."

In order to minimize the abuses sustained by children in the industrial school, and to comply with the Sindh Children Act, concerned activists and authorities in Karachi have argued that the school should be removed from the prison administration's purview. "I've suggested that the police be removed from

²⁶³ Human Rights Watch interview with Neelofar Shahnawaz, Judicial Magistrate, Juvenile Court (Karachi Division), Karachi, May 23, 1998.

²⁶⁴ Human Rights Watch interview with Dr. Amin Gadit, Associate Professor of Psychiatry, Hamdard College of Medicine, Karachi, May 22, 1998.

²⁶⁵ Jason Burke, "Pakistan: Childhood Lost in Pakistan Jails," *Independent*, October 8, 1998, p. 10.

the juvenile jail, and the [Social] Welfare Department administer it [instead],” Shahnawaz told Human Rights Watch.²⁶⁶

Remand Home, Karachi

²⁶⁶ Human Rights Watch interview with Neelofar Shahnawaz, Judicial Magistrate, Juvenile Court (Karachi Division), Karachi, May 23, 1998.

The Sindh Children Act provides for the temporary detention of children in remand homes and other “places of safety.”²⁶⁷ Following their arrest, children may be held in a place of safety for no more than twenty-four hours, by which time they must be brought before a court.²⁶⁸ If the court determines that their cases warrant further investigation, it may remand them to a place of safety for renewable periods of up to fourteen days.²⁶⁹ Although the act provides little in the way of guidelines for the management of these institutions, it clearly distinguishes them from police lockups by assigning them a protective, as well as custodial function. Under the act, places of safety are meant not only for the detention of children suspected of involvement in criminal activity, but also to shelter children “in respect of whom there is reason to believe an offence has been, or is likely to be committed.”²⁷⁰

Karachi presently has one officially designated remand home, in the Nazimabad area. Rather than performing the protective or temporary custodial functions assigned to it by the Sindh Children Act, the Nazimabad home essentially serves as a pre-trial, and sometimes post-trial, detention facility for juveniles who were under the age of fourteen at the time of their arrest. Housed in a two-story residential building rented by the government, the remand home suffers, according to a February 1998 article in the Karachi daily *Dawn*, from “an acute shortage of space.” *Dawn* found children studying secular and religious subjects in tiny rooms that lacked desks or chairs, and noted the absence of an open area for recreation.

²⁶⁷ The term “place of safety” encompasses remand homes and “any other suitable place or institution, the occupier or manager of which is willing temporarily to receive a child.” Where such facilities are unavailable and “in the case of a male child only,” the term also includes police stations where children can be held separately from adult offenders. Sindh Children Act, Sec. 4(1).

²⁶⁸ *Ibid.*, Sec. 78(2).

²⁶⁹ *Ibid.*, Sec. 88(3).

²⁷⁰ *Ibid.*, Sec. 78(1).

Under similarly cramped conditions, it said, children were receiving rudimentary training in tailoring and carpentry.²⁷¹

²⁷¹ Maisoon Hussein, "Young Offenders in Remand Home," *Dawn*, February 2, 1998, p. 8.

VI. CHILDREN IN THE CRIMINAL JUSTICE SYSTEM

Criminal cases in which children appear as defendants are generally adjudicated in the same manner and by the same courts as those involving adult offenders. Children consequently suffer from the vagaries of an overstressed and inefficient criminal justice system, with frequent and prolonged delays in their trials and appeals. The limited application of Pakistan's juvenile laws and the lack of familiarity with them on the part of many judicial authorities also leads to the frequent imposition of harsh and sometimes unlawful sentences—a situation that is exacerbated where tribal or anti-terrorism courts hold sway.

Defects in the Criminal Justice System

The massive overcrowding in Pakistan's prisons, and the preponderance of inmates who are under trial, stems from a number of fundamental flaws in the criminal justice system. These include the failure of police to complete investigations within the time periods prescribed by law, the restrictive application of bail laws, the frequent adjournment of hearings, understaffed and underutilized parole and probation departments, and a dearth of free legal representation.

Delayed Investigation Reports

Police routinely fail to submit criminal investigation reports, or *challans*, to magistrates within fourteen days of registering a First Information Report, as prescribed by law. If the police are unable to complete an investigation within this time, they are allowed a further three days in which to file an interim report, pending submission of the complete report.²⁷² 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].”²⁷³ This practice, and the resulting delay in the adjudication of children's cases, infringes on

²⁷² Criminal Procedure Code, Sec. 173(b).

²⁷³ Human Rights Watch interview with Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Lahore, May 16, 1998.

the right of detained children to a prompt hearing under Convention on the Rights of the Child.²⁷⁴

²⁷⁴ “Every child alleged as or accused of having infringed the penal law has ... [the right to] have the matter determined without delay by a competent, independent, impartial authority or judicial body in a fair hearing according to law....” Convention on the Rights of the Child, Art. 40(2)(b)(iii).

In a 1997 report on the criminal justice system, the Pakistan Law Commission identified several reasons for the delays in submitting *challans*. These included “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....”²⁷⁵ M.A.K. Chaudhry, a former Interior Secretary, pointed out a more insidious practice implicating higher-ranking police officials as well as investigating staff. “There are scores of cases in which ‘challans’ have been withdrawn and cases reinvestigated in order to obtain desired results,” he said, during a 1991 seminar organized by the Human Rights Commission of Pakistan.²⁷⁶

Restrictive Application of Bail Laws

Children face several obstacles in securing release on bail, including restrictions in the bail laws themselves, the reluctance of judges to grant bail, and the setting of bail amounts well beyond the reach of most of their families.

Pakistani law divides criminal offenses into two broad categories: bailable and non-bailable. However, the Criminal Procedure Code gives the court discretion

²⁷⁵ Pakistan Law Commission, “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 disfavour someone.” Ibid.

²⁷⁶ M.A.K. Chaudhry, former Secretary, Interior Division, Government of Pakistan, “Procedure in Criminal Cases,” paper presented at HRCP seminar on Delays in Courts, 1991, reprinted in Human Rights Commission of Pakistan, “A Penal System Long Overdue for Change,” p. 61.

to release on bail children under the age of sixteen years, or women, who are charged with the commission of a non-bailable offense. In addition, criminal defendants have a right to bail if they are charged with an offense that is not punishable by death and have spent over one year in custody without a conclusion to their trial, or if they are charged with a capital offense and have spent more than two years in custody without their trial concluding.²⁷⁷

²⁷⁷ Code of Criminal Procedure, Sec. 497. Where the Sindh Children Act and the Punjab Youthful Offenders Ordinance are in force, officers-in-charge of police stations may (and in Punjab, must) release children accused of a non-bailable offense when "they cannot be brought forthwith before a Court competent to try the case." Sindh Children Act, Sec. 64, Punjab Youthful Offenders Ordinance, Sec. 41.

During March 1998, there were ten children in the Bahawalpur borstal who remained under trial despite the passage of more than two years since their arrest.²⁷⁸ Under the Criminal Procedure Code, they were entitled to release on bail. But according to Bahawalpur legal aid lawyer Rana Muhammad Athar Jamal, the bail amounts set by judges presents a great obstacle to the release of most children. "Ninety percent of the children [in the borstal] belong to the very poor, and have no one to post surety bonds," he said.²⁷⁹ Section 498 of the Criminal Procedure Code states that bail "shall be fixed with due regard for the circumstances of the case, and shall not be excessive." However, that discretion is rarely exercised in favor of accused children. "Judges don't cooperate with us in bail," said Jamal. "They regard the accused as habitual offenders, and usually won't reduce surety."²⁸⁰

The experience of Sher Ali, a nine-year-old boy in Rawalpindi Central Prison, illustrates both the difficulty in securing release on bail and the setting of bail bonds that poor families cannot afford. Ali and his brother, who was about thirty years old, were stopped in January 1998 at a checkpoint at Margalla Pass, near the northern border of Punjab, while traveling from Peshawar to visit relatives. "My elder brother is an addict of hash," Ali said. "He put some in my hands. I was holding it, but didn't know what it was." Both brothers were arrested and charged with drug possession. A magistrate in Taxila denied Ali bail, and sent him to the Central Prison pending his trial. About three months after his arrest, a chance encounter in the jail resulted in a second, impromptu hearing.

A High Court judge ordered my release. He visited the jail and granted me bail there and then. I was ordered to be released on April 20, but I don't have any bail bonds; my bail was set at Rs.

²⁷⁸ Figure obtained from "Up to [Date] Statement of Undertrial Prisoners in Respect of B.I. & J.J. Jail, Bahawalpur," signed by the Superintendent on March 16, 1998.

²⁷⁹ Human Rights Watch interview with Rana Muhammad Athar Jamal, Bahawalpur, May 17, 1998.

²⁸⁰ Ibid.

5,000 (\$98). My family is trying hard to arrange surety, but have not yet been able to do so.²⁸¹

Frequent Adjournment of Hearings

²⁸¹ Human Rights Watch interview with Sher Ali, Central Prison, Rawalpindi, May 15, 1998.

Trials in Pakistan often seem interminable, with adjournments frequently requested by counsel or ordered by magistrates. One boy in Lahore District Jail told us that in the fifteen months since his arrest for dacoity, he had been summoned to sixteen or seventeen hearings, most of which were promptly adjourned.²⁸² Another boy, held on murder charges in Rawalpindi Central Prison, told us that there had been several hearing dates in his case since his arrest nine months earlier, but that “nothing had happened on them.”²⁸³

There are two major reasons for the adjournment of hearings. A veteran magistrate in Lahore identified one of them. “Circumstances now are so much deteriorated that no one comes to depose as witnesses,” he said.²⁸⁴ In its report on the criminal justice system, the Pakistan Law Commission examined the factors deterring witnesses from appearing in court. These included “[witnesses] waiting for long hours outside the court, non-provision of adequate travel allowance and diet money, no proper arrangements for their seating, [and] lack of courtesy being shown to them.”²⁸⁵ The report also cited a lack of security arrangements for witnesses as a deterring factor. According to the Human Rights Commission of Pakistan, police officers themselves are the “worst culprits” with regard to ignoring summons. “Courts have been constrained to issue warrants of arrest for such police officers and to penalize them, but to no avail,” the commission noted.²⁸⁶

²⁸² Human Rights Watch interview with Imtiaz Ahmad, District Jail, Lahore, May 21, 1998.

²⁸³ Human Rights Watch interview with Amir Khan, Central Prison, Rawalpindi, May 15, 1998.

²⁸⁴ Human Rights Watch interview with Mohammed Aslam, Judicial Magistrate, Lahore, May 5, 1998.

²⁸⁵ Pakistan Law Commission, “Report on the Criminal Justice System, 1997,” p. 24.

²⁸⁶ Human Rights Commission of Pakistan, “A Penal System Long Overdue for Change,” p. 55.

A second common reason for the adjournment of hearings is the failure of jail officials to produce the defendants themselves. According to Rana Muhammad Athar Jamal, there have been many cases in which children in the borstal have not been brought to court on the date of their hearing. The reasons given in such cases, he said, include the alleged ill health of the child in question or the unavailability of police personnel to guard the child during transit. "Jail authorities have failed to produce children even when directed to by magistrates," he said, noting that there were no punishments imposed for their refusal to comply with court orders.²⁸⁷ The Pakistan Law Commission offered a similar assessment, noting the "non-provision of security arrangements for bringing the prisoners from jails to courts" and the "non-availability of transport."²⁸⁸

Administrative incompetence in scheduling hearings also appears to play a significant role in adjournments. Human Rights Watch encountered two children in Bahawalpur, and two in Lahore, whose hearing dates had coincided with public holidays. In one case, a boy's hearing was scheduled during Ashura, a holiday that commemorates the martyrdom of the Prophet Muhammad's grandson Hussain.

Limited Use of Probation and Parole

²⁸⁷ Human Rights Watch interview with Rana Muhammad Athar Jamal, Bahawalpur, May 17, 1998.

²⁸⁸ Human Rights Commission of Pakistan, "A Penal System Long Overdue for Change," p. 24.

Both the Sindh Children Act and the Punjab Youthful Offenders Ordinance authorize courts to release children on probation, as an alternative to placement in a juvenile institution.²⁸⁹ The laws mandate the immediate notification of a probation officer following a child's arrest, so that the officer can obtain information about the child's "family history and other material circumstances,"²⁹⁰ and require courts to take probation officers' reports into consideration when passing orders.²⁹¹ Both laws also establish a liberal parole system. A child who has spent six months in a certified or industrial school is eligible for release, either on recommendation by visitors or managers of the school, or on application by a family member or guardian, supported by "local inquiries made by the probation officer."²⁹² In areas where neither of these laws are in force, convicted children may be granted release under Pakistan's general laws governing probation and parole. The Probation of Offenders Ordinance, 1960, provides for the probational release of first time offenders who have been convicted of an offense punishable by no more than two years of imprisonment.²⁹³ The Good Conduct Prisoners Probational Release Act, 1926, authorizes the release on parole of prisoners who have already served a portion of their sentence, if it appears from their conduct in prison that they are "likely to abstain from crime and lead useful and industrious" lives. In such cases, the parolee is to be placed under the supervision or authority of a state officer or private citizen for the duration of their sentence.²⁹⁴

The U.N. Standard Minimum Rules for the Administration of Juvenile Justice call for the preparation of social inquiry reports, prior to sentencing that detail the "background and circumstances in which the juvenile is living or the conditions under which the offense has been committed."²⁹⁵ The Standard

²⁸⁹ In cases of probational release, the parent or guardian of the child must provide a personal bond to be responsible for the child's "good behavior and well-being" for a period of up to three years, and if required by the court, must provide surety as well. Sindh Children Act, Sec. 72(ii), Punjab Youthful Offenders Ordinance, Sec. 49(ii).

²⁹⁰ Sindh Children Act, Sec. 66, Punjab Youthful Offenders Ordinance Sec. 43

²⁹¹ Sindh Children Act, Sec. 21(c), Punjab Youthful Offenders Ordinance, Sec. 18(c).

²⁹² Sindh Children Act Sec. 92(1), Punjab Youthful Offenders Ordinance, Sec. 57(1).

²⁹³ In determining eligibility for release, the court is to consider the offender's age and character, among other factors. If probation is granted, the offender enters into a bond, with or without sureties, to commit no offense for one year. Maisoon Hussein, "Benign law may reduce overcrowding in jails," *Dawn*, July 25, 1998.

²⁹⁴ Good Conduct Prisoners' Probational Release Act, 1926, Sec. 2.

²⁹⁵ U.N. Standard Minimum Rules for the Administration of Juvenile Justice, G.A.

Minimum Rules further state that “[t]he placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period,” and recommend the use of alternative sentencing measures, including release on probation.²⁹⁶

All of these laws contemplate the existence of functioning reclamation and probation departments—something that Pakistan presently lacks. “We don’t have social welfare workers who can visit families and prepare information about social conditions,” said Captain Sarfraz Mufti, deputy inspector-general of prisons for Punjab. “We don’t have the resources.”²⁹⁷

Res. 40/33, 40 U.N. GAOR Supp. (No. 53) p. 207, U.N. Doc. A/40/53 (1985), Sec. 16.1.

²⁹⁶ *Ibid.*, Secs. 18.1, 19.1.

²⁹⁷ Human Rights Watch interview with Captain Sarfraz Mufti, Deputy Inspector-General of Prisons, Government of Punjab, Lahore, May 8, 1998.

Given the volume of cases that pass through the criminal justice system each year, the level of staffing in the provincial reclamation and probation departments is far from adequate. The Sindh Reclamation and Probation Department is staffed by a director, three assistant directors, eleven probation officers, and three parole officers.²⁹⁸ The entire city of Karachi is served by just one probation officer.²⁹⁹ In Punjab, the situation is somewhat better, though still insufficient in light of the courts' caseload. Each division of the province has an assistant director of Reclamation and Probation, with two or three officers serving under him. In addition, one probation officer is assigned to each district court. These figures, which were provided to the Karachi daily *Dawn* by Anjum Parvez, the assistant director of Reclamation and Probation for Punjab's Lahore division, yield a province-wide total of between fifty and fifty-eight probation officers.³⁰⁰

Staffing of the reclamation and probation departments appears to be inadequate not only with regard to numbers, but in terms of specialization and commitment as well. According to Anees Jillani, an Islamabad-based lawyer and children's rights activist, probation officers are "mainly low-ranking civil servants" performing several functions, of which probation work is generally accorded low priority.³⁰¹ Rana Muhammad Athar Jamal, who has represented children in the Bahawalpur borstal for several years, said he had never encountered a probation officer during that time.³⁰²

During a period in which the prison population has grown exponentially, there has been an absolute decline in the number of persons on parole or probation. According to Abdul Majeed Ahmed Auolakh, principal of the Central Jail Staff

²⁹⁸ Human Rights Watch interviews with Kamran Dost, Deputy Secretary (General), Home Department, Government of Sindh, Karachi, September 21, 1999, and Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Lahore, May 16, 1998.

²⁹⁹ Human Rights Watch interviews with Zia Awan, President, Lawyers for Human Rights and Legal Aid, Karachi, May 22, 1998, and Neelofar Shah Nawaz, Judicial Magistrate, Juvenile Court (Karachi Division), Karachi, May 23, 1998.

³⁰⁰ Hussein, "Benign law," quoting Anjum Parvez, Assistant Director of Reclamation and Probation, Lahore, Government of Punjab. A similar figure was provided to Human Rights Watch by Abdul Majeed Ahmed Auolakh of the Central Jail Staff Training Institute, who estimated a total of sixty probation officers for the province. Human Rights Watch interview with Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Lahore, May 16, 1998.

³⁰¹ Human Rights Watch interview with Anees Jillani, Society for the Protection of the Rights of the Child (SPARC), Islamabad, May 14, 1998.

³⁰² Human Rights Watch interview with Rana Muhammad Athar Jamal, Bahawalpur, May 17, 1998.

Training Institute, there were some 3,500 people on parole throughout Pakistan in 1977.³⁰³ Twenty years later, the Pakistan Law Commission found a total of just 239 persons on parole nationwide.³⁰⁴ Similarly, until 1985, Auolakh said there was an average of 15,000 people on probation at any given time, but by 1998 that number had shrunk to about 4,000.³⁰⁵

Lack of Counsel

³⁰³ Human Rights Watch interview with Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Lahore, May 16, 1998.

³⁰⁴ The breakdown of parole cases by province was as follows: 225 in Punjab, 7 in Sindh, 5 in the North-West Frontier Province, and 2 in Baluchistan. Pakistan Law Commission, Report on Jail Reform, 1997, p. 17.

³⁰⁵ Human Rights Watch interview with Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Lahore, May 16, 1998.

In his survey of 200 children in Karachi's industrial school, Amin Gadit found that 108 were represented by lawyers whom their families had engaged. Of the remainder, six had been provided with lawyers by nonprofit organizations, while eighty-six lacked counsel.³⁰⁶ There are very few sources of free legal assistance to juvenile prisoners. Among them are AGHS, which represents indigent children in Lahore and Bahawalpur, and Lawyers for Human Rights and Legal Aid, which does the same in Karachi. According to AGHS, the state only provides counsel to persons who are appealing sentences to death, life imprisonment, or hadd punishments.³⁰⁷

Criminal Courts

The judicial magistrate is the court of first instance in cases where the offense is punishable by no more than three years of imprisonment. Judicial magistrates are divided into three classes, based on the maximum sentence that they are authorized to impose. A magistrate of the first class may impose a prison term of up to three years, and fines of up to Rs. 15,000 (\$294). Second and third class magistrates can impose sentences of up to one year and Rs. 5,000 (\$98), and one month and Rs. 1,000 (\$20) respectively.³⁰⁸ Appeals against decisions by magistrates are heard by the Sessions Courts.

Sessions Courts are the courts of first instance whenever a defendant is charged with an offense punishable by more than three years of imprisonment. Appeals against decisions by the Sessions Courts are filed with the provincial High Court,³⁰⁹ unless they involve a conviction and sentence under one of the Hudood Ordinances. In the latter case, appeals are lodged with the Federal Shariat Court.³¹⁰

³⁰⁶ Gadit et. al., "Children of the Corn," p. 9.

³⁰⁷ Jahangir and Doucet, *Child Prisoners of Pakistan*, p. 26.

³⁰⁸ Criminal Procedure Code, Sec. 32.

³⁰⁹ *Ibid.*, Sec. 410.

³¹⁰ The Federal Shariat Court has the authority to review any conviction under "any law relating to the enforcement of Hudood." Constitution of the Islamic Republic of Pakistan, Article 203DD(1).

Sentencing

The U.N. Convention on the Rights of the Child unequivocally prohibits the imposition of the death penalty for “offenses committed by persons below the age of eighteen years.”³¹¹ But according to Punjab prison department statistics, there were fifty-five children in the province’s prisons during February 1998 who had been sentenced to death.³¹² With one exception—identified by AGHS as Wali Badshah, a sixteen-year-old sentenced to death for drug trafficking—all had been convicted of murder.³¹³ 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.³¹⁴ The most recent case 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.³¹⁵

³¹¹ U.N. Convention on the Rights of the Child, Art. 37(a).

³¹² Prisons Department, Government of Punjab, “Crime-Wise/Section-Wise Monthly Population Statement for the Month of February 1998, as stood on 28-02-98.”

³¹³ AGHS Child Rights Cell, “Children in Prisons: Punjab Report,” December 1997, pp. 7-8 and Annex VI. See also Prisons Department, Government of Punjab, “Crime-Wise/Section-Wise Monthly Population Statement....”

³¹⁴ The other five countries are Iran, Nigeria, Saudi Arabia, the United States, and Yemen. Human Rights Watch, *Human Rights Watch World Report 1999* (New York: Human Rights Watch, 1998), p. 419.

³¹⁵ “Pakistan: Juvenile Offender Executed,” *Death Penalty News*, December 1997, Amnesty International, AI Index: ACT 53/01/98.

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,”³¹⁶ and prohibits the imposition of “life imprisonment without possibility of release.”³¹⁷ However, the prison terms imposed on children in Pakistan are remarkably consistent in their severity. Eighty-seven 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.³¹⁸ In addition, two of the nineteen convicts housed in Karachi’s Youthful Offenders Industrial School during December 1997 were serving life terms.³¹⁹

³¹⁶ U.N. Convention on the Rights of the Child, Art. 39(b).

³¹⁷ *Ibid.*, Art. 37(a).

³¹⁸ Figures cited from an official list of convicted juvenile prisoners in the Bahawalpur Borstal, signed by the Superintendent on March 3, 1998.

³¹⁹ Ahmad et al., *The State of Juvenile Prisoners in Pakistan 1997*, p. 246.

Prison terms are usually accompanied by fines that range from Rs. 1,000 (\$20) to about Rs. 200,000 (\$3,922). Nearly half of the convicted children in Bahawalpur had fines of Rs. 20,000 (\$392) or more imposed on them.³²⁰ That amount should be viewed against the economic background of children in Pakistani prisons. In his survey of children in Karachi's Youthful Offenders Industrial School, Amin Gadit noted that the average family income of the children was about Rs. 4,350 (\$85) per month, a sum that usually represented the aggregate of three family members' earnings and supported an average of eight persons.³²¹ 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.³²²

³²⁰ Figures cited from an official list of convicted juvenile prisoners in the Bahawalpur Borstal, signed by the Superintendent on March 3, 1998.

³²¹ Gadit et. al., "Children of the Corn," p. 9.

³²² Sindh Children Act, Sec. 21(b), Punjab Youthful Offenders Ordinance, Sec. 18(b).

The largest fines imposed on children in the Bahawalpur borstal entail payment of *diyat*, a form of cash compensation to a murder victim's heirs. *Diyat* was first proposed in the early 1980s as part of General Zia's Islamization campaign, but was not actually incorporated into Pakistan's Penal Code until the promulgation of the Criminal Law (Second Amendment) Ordinance, in 1990.³²³ The ordinance replaced the Penal Code's sections governing murder with provisions derived from Islamic law. These provisions made murder (*qatl-i-amd*) punishable by retribution (*qisas*) or compensation (*diyat*), of which only the latter could be imposed on minors.³²⁴ In awarding *diyat*, courts are to take into account the financial position of the convict and the victim's heirs, but the amount fixed must not be less than the value of 30,630 grams of silver—a value that the federal

³²³ *Double Jeopardy: Police Abuse of Women in Pakistan*, Asia Watch and the Women's Rights Project (now the Asia and Women's Rights divisions of Human Rights Watch) (New York: 1992), p. 46. The Criminal Law (Second Amendment) Ordinance was subsequently enacted by Parliament as Act II of 1997.

³²⁴ Pakistan Penal Code, Sec. 306(a). The Criminal Law (Second Amendment) Ordinance defined an adult as "a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty, whichever is earlier." On the Ordinance's reintroduction in 1995, the definition was truncated to "a persons who has attained, being a male, the age of eighteen years," leaving undetermined the age of majority for females. See M. Mahmood, ed., *The Major Acts* (Lahore: Pakistan Law Times Publications, 1998), p. 91.

government must declare at the start of each fiscal year.³²⁵ For the fiscal year 1994-1995, that value was set at Rs. 202,923.75 (\$3,979).³²⁶

Convicts whose sentences include diyat will only be released upon its payment, even if they have otherwise completed their prison term.³²⁷ Although courts have infrequently imposed diyat, the sums involved and the limited resources of much of the prison population ensure that many remain incarcerated well beyond their provisional date of release. During 1998, there were at least fifty-eight prisoners in Pakistan, of all ages, who had completed their prison terms and were being held solely because of their inability to pay the diyat amount imposed on them.³²⁸

³²⁵ Pakistan Penal Code, Sec. 323.

³²⁶ Notification No. SRO 647(1)/94, dated July 1, 1994, cited in Mahmood, ed., *The Major Acts*, p. 107.

³²⁷ Pakistan Penal Code., Sec. 331(2).

³²⁸ Human Rights Commission of Pakistan, "State of Human Rights in 1998: Highlights," <http://www.hrcp.8m.com/cgi-bin/framed/1976/highlights.htm>.

The Abolition of the Punishment of Whipping Act, passed in 1996, specifically exempts from its provisions the imposition of whipping as a hadd punishment.³²⁹ Ten of the children in Bahawalpur who were convicted under the Zina Ordinance, which criminalizes sexual acts outside of marriage, received sentences that included whipping—fifteen lashes in one case, and thirty in each of the others.³³⁰ In practice, whipping and other hadd punishments have consistently been overturned on appeal by the Federal Shariat Court or the Shariat bench of the Supreme Court.³³¹ The availability of lashes as a form of punishment, and its imposition in sentencing by sessions courts, nevertheless 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.”³³² Having withdrawn a reservation made at the time of ratification, which allowed it to interpret the convention’s provisions “in light of the principles of Islamic laws and values,” Pakistan has no legal basis to derogate from its obligations in this regard.³³³

Tribal Courts

Nearly a third of the North-West Frontier Province consists of areas that are not administered by the provincial government, but are instead ruled indirectly by federally-appointed political agents.³³⁴ Encompassing seven administrative units, or “agencies,” that span the border with Afghanistan,³³⁵ the Federally

³²⁹ Abolition of the Punishment of Whipping Act (1996), Sec. 3.

³³⁰ Official list of convicted juvenile prisoners in the Bahawalpur Borstal, March 3, 1998.

³³¹ Human Rights Watch telephone interview with Mohammad Hamza, AGHS Child Rights Cell, Lahore, May 6, 1999.

³³² U.N. Convention on the Rights of the Child, Art. 37(a).

³³³ Pakistan formally withdrew its reservation on July 23, 1997. The move followed the lodging of objections with the secretary-general by the governments of Denmark, on November 16, 1995, and the Netherlands, on February 6, 1995. See Convention on the Rights of the Child, Declarations and Reservations, notes 14, 19 at http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_11.html#gBC1aePatr

³³⁴ The political agents are appointed by the governor of the province, who in turn an appointee of the Prime Minister. The duration of each political agent’s term is determined by the governor. Human Rights Watch interview with Afrasiab Khattak, then Vice-Chairperson (NWFP), Human Rights Commission of Pakistan, May 12, 1998. Khattak is presently chairperson of the Commission.

³³⁵ The seven agencies are Bajour, Mohmand, Khyber, Orakzai, Kurram, and North and South Waziristan. FATA also includes tribal areas adjoining the districts of Peshawar, Kohat, Bannu, and Dera Ismail Khan. Constitution of the Islamic Republic of Pakistan,

Administered Tribal Areas (FATA) bear one of the more onerous legacies of colonial rule in the subcontinent. Criminal law and procedure for the areas are defined by the Frontier Crimes Regulation (FCR), a draconian law introduced by British authorities in 1901 with the aim of securing a restive region on the empire's margins. Accused parties under the FCR are denied due process of law, including the right to counsel, to present evidence, and to examine and cross-examine witnesses.³³⁶ Their cases are presided over by a tribal council, known as a *jirga*, whose members are appointed by the political agent for that Agency. Decisions are countersigned by the political agent, and are not subject to appeal to the provincial High Court or the Supreme Court of Pakistan.³³⁷

Article 246(c).

³³⁶ Shaheen Sardar Ali and Kamran Arif, "Blind justice for all—Parallel judicial systems in Pakistan: implications and consequences for human rights," *Shirkat Gah*, Lahore, 1994, pp. 18-19.

³³⁷ Human Rights Watch interview with Afrasiab Khattak, Vice-Chairperson (NWFP), Human Rights Commission of Pakistan, May 12, 1998.

Prior to conviction, prisoners are held in judicial lockups located in their respective agencies. The lockups are maintained by political agents, and staffed by irregular forces under the agents' command, known as "levy forces." Upon conviction, prisoners are transferred to districts jails or central prisons within the provincial prison system.³³⁸

Ruman Ali was thirteen years old at the time of his arrest on murder charges, in December 1993. A resident of the town of Jamrud, in the Khyber Agency, he was tried and convicted by a jirga, and sentenced on February 14, 1994, to forty-three years in prison. After learning of the case, the Human Rights Commission of Pakistan filed a writ petition with the Peshawar High Court under Article 199 of the Constitution.³³⁹ The High Court, however, dismissed the case on the grounds that it did not have appellate jurisdiction.³⁴⁰

According to Afrasiab Khattak, then vice-chairperson of the commission and presently its chairperson, jirga trials do not impinge solely on the civil rights of persons living in the Tribal Areas. "People are sent to FATA [from other parts of the North-West Frontier Province] when there is no evidence to convict them," Khattak told Human Rights Watch. "This happens especially with Afghan refugees."³⁴¹

³³⁸ Ibid.

³³⁹ A High Court, on application by an aggrieved party, may declare "that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect." Constitution of the Islamic Republic of Pakistan, Article 199(1)(a)(ii).

³⁴⁰ As of May 1998, the commission was awaiting a requested meeting with the governor of the province, with the intent of seeking a pardon for Ruman Ali. Human Rights Watch interview with Afrasiab Khattak, Vice-Chairperson (NWFP), Human Rights Commission of Pakistan, May 12, 1998.

³⁴¹ Ibid.

Anti-Terrorism Courts

The federal government's attempts to control ethnic, sectarian, and factional strife have on several occasions entailed the establishment of parallel judiciaries. The enabling laws, whether introduced by executive ordinance or act of parliament, have often derogated from fundamental due process rights under Pakistan's constitution as well as special protections afforded children by international and domestic law. Among the most recent and expansive attempts in this regard is the Anti-Terrorism Act, which was passed by the parliament on August 16, 1997 and amended by an ordinance of the federal government on April 29, 1999.

The act provides for the establishment of anti-terrorism courts to try persons charged with committing terrorist acts, and stipulates special procedures for the conduct of their trials. As defined in the amended law, terrorist acts include crimes such as using lethal weapons or committing rape to "strike terror or create a sense of fear and insecurity in the people, or any section of the people,"³⁴² as well as causing "civil commotion"—a term defined so broadly as to violate fundamental rights of free expression and assembly.³⁴³

Section 32 of the act states that it overrides all other laws currently in force. As a result, children may be charged and tried under the act without regard to the substantive laws and procedures governing the trial of children under domestic law. The Sindh Children Act, for example, states that children may only be tried by juvenile courts and ordinary criminal courts exercising juvenile court powers;³⁴⁴ the overriding clause of the Anti-Terrorism Act, however, would allow children to be tried by anti-terrorism courts.

Trial by anti-terrorism courts, in turn, entails expedited proceedings: courts established under the act are to conduct trials within seven days.³⁴⁵ Convicted persons have only seven days in which to file appeals, and these too must be heard and decided within a seven-day period.³⁴⁶ These provisions contravene article

³⁴² Anti-Terrorism Act, 1997, Sec. 6, as amended by the Anti-Terrorism (Amendment) Ordinance, 1999.

³⁴³ The term "civil commotion" includes creating "internal disturbances in violation of law or intended to violate law"; engaging in illegal strikes; and "distributing, publishing, or pasting of a handbill or making graffiti or wall-chalking intended to create unrest or fear or create a threat to the security of law and order or to incite the commission of an offense...." Anti-Terrorism Act, Sec. 7A.

³⁴⁴ Sindh Children Act, Sec. 9.

³⁴⁵ Anti-Terrorism Act, Sec. 19(7).

³⁴⁶ *Ibid.*, Sec. 25.

14(3)(b) of the International Covenant on Civil and Political Rights, which entitles any person charged with committing criminal offenses “to have adequate time and facilities for the preparation of his defence.” And while both the Convention on the Rights of the Child and the Sindh Children Act prohibit the imposition of the death penalty on children,³⁴⁷ the Anti-Terrorism Act makes capital punishment mandatory for persons found to have committed a terrorist act that resulted in one or more deaths.³⁴⁸

³⁴⁷ Convention on the Rights of the Child, Art. 37(a), Sindh Children Act, Sec. 68(1).

³⁴⁸ Anti-Terrorism Act, Sec. 7(I)(a).

The Anti-Terrorism Act's amendment was prompted in part by a landmark Supreme Court ruling on the constitutionality of the Armed Forces (Acting in Aid of the Civil Power) Ordinance, 1998, under which military courts had been set up in Karachi and Hyderabad to try civilian offenders. The Supreme Court held on February 17, 1999 that the use of military courts to try civilians was unconstitutional, and struck down sections of the ordinance providing for the courts' establishment. The court directed the transfer of all cases that had been tried by the military courts, and whose sentences had not yet been executed, to courts constituted under the Anti-Terrorism Act.³⁴⁹ Section 39A of the amended Anti-Terrorism Act provides for the transfer to anti-terrorism courts of cases that were pending before the military courts, and stipulates that their trials are to continue "from the stage which the cases had reached." Among the cases transferred to the anti-terrorism courts was that of Taha, a Karachi teenager who was being held with adults in the city's Central Prison.

Taha, son of Naeem Ahmed Khan, was arrested on August 6, 1998, in the Liaquatabad area of Karachi. On December 16, 1998, he and four other detainees were charged with murder, attempt to commit murder, and assault on a public servant. In addition, all five were charged with committing a terrorist act under the Anti-Terrorism Act.³⁵⁰ The charges stemmed from a July 2, 1998 incident in which a group of alleged party activists from the opposition Muttahida Qaumi Movement (MQM) fired on a paramilitary rangers patrol in Liaquatabad.³⁵¹ One member of

³⁴⁹ "Supreme Court holds military courts unconstitutional," *Business Recorder*, February 18, 1999, judgment annexed.

³⁵⁰ Human Rights Watch telephone interview with Mahmood Qureishi, lawyer for Taha, Karachi, February 13, 1999.

³⁵¹ The MQM is a political party based in Karachi and other urban areas of Sindh that draws support among Urdu-speaking immigrants from India and their Pakistani-born descendants. Its activists, many of whom have been involved in violent confrontations with law enforcement officials and breakaway MQM factions, were conspicuous targets of the

the patrol, sepoy Dildar Hussein, died of injuries sustained in the attack, while another, Mumtaz Ali, was wounded. Taha himself was not named as a suspect in the First Information Report.³⁵²

military courts.

³⁵² Human Rights Watch telephone interview with Mahmood Qureishi, lawyer for Taha, Karachi, February 13, 1999, citing FIR No. 212/98.

Upon commencement of the defendants' joint trial by Military Trial Court No. 6, on January 12, 1999, the defense counsel, Mahmood Qureishi, submitted a school-leaving certificate attesting to Taha's minority. The court promptly ordered the constitution of a medical board to examine him, with a view to determining his age. The board's report, prepared by the medicolegal officer of Karachi's Civil Hospital and submitted to the court on January 14, 1999, stated that he was between the ages of fifteen and sixteen when the attack took place, and therefore a child for the purposes of the Sindh Children Act. Despite this finding, the president of the court, Lt. Col. Syed Mehmood Gilani, invoked section 13 of the Armed Forces Ordinance—an overriding clause similar to that contained in the Anti-Terrorism Act—and ordered Taha's trial together with the other defendants in the case. The proceedings continued for a further twelve days, concluding on January 24, 1999.³⁵³

The Supreme Court decision on the constitutionality of the military courts preempted the issuance of a verdict in Taha's case. Following the federal law ministry's designation of eleven anti-terrorism judges for Sindh, his case was transferred to Anti-Terrorism Court No. 2, presided over by Judge Hussain Bukhsh Khoso.³⁵⁴ At a May 19 sentencing hearing, Khoso imposed the death penalty on the four adults who had been tried with Taha, but ordered the preparation of a separate charge sheet for him and his retrial in accordance with the Sindh Children Act. Khoso himself was to preside over Taha's trial, as a sessions court judge exercising juvenile court powers.³⁵⁵

³⁵³ Ibid.

³⁵⁴ "Four Muttahida men awarded death penalty," *News International*, May 20, 1999.

³⁵⁵ Human Rights Watch telephone interview with Mahmood Qureishi, lawyer for Taha, Karachi, May 20, 1999.

A similar standard was applied by an Anti-Terrorism Court in the case of Mohammad Saleem, a carpet weaver who claimed to have been thirteen years old at the time of his arrest, although with a dramatically different outcome. Saleem was sentenced to death by Military Trial Court No. 2 on December 19, 1998, after having been convicted along with three adult men of murdering three police officers from Karachi's Ibrahim Hyderi police station. A military appellate court acquitted Saleem on January 6, 1999, after failing to establish a motive or find substantial evidence linking him to the crime.³⁵⁶ However, police again arrested Saleem on May 13, 1999, and brought him before Anti-Terrorism Court No. 1 to face a second trial on the same charges. At an initial hearing on May 14, presiding judge Rehmat Hussain Jafri held that if Saleem could be shown to be a child for the purposes of the Sindh Children Act, he would be tried separately in accordance with that act.³⁵⁷ After a court-ordered medical examination found Saleem to be between the ages of twenty and twenty-one, and after his birth certificate was declared to be false by the issuing agency, Jafri ordered Saleem to be shifted from Karachi's Youthful Offenders Industrial School to the city's Central Prison.³⁵⁸ On June 11, 1999, Saleem was convicted and sentenced to death.

³⁵⁶ "Pakistan: Juveniles sentenced to death," Amnesty International Report, ASA 33/08/99, May 1999. The defense counsel noted during the appeal hearing that Saleem had not been named in the First Information Report. "Military court acquits 13 year old boy," *Dawn*, January 7, 1999.

³⁵⁷ "Karachi: Boy freed by military court re-arrested," *Dawn*, May 16, 1999.

³⁵⁸ According to his lawyer, Saleem was escorted to the Civil Surgeons Services Hospital by the officers from the Ibrahim Hyderi Police station, the complainant in the case, rather than the staff of the Youthful Offenders Industrial School, as had been directed by the presiding judge. The court rejected the defense counsel's request for the establishment of a constitutional medical board to reexamine Saleem. Letter from Zia Awan, President,

Saleem's rearrest violates his fundamental right under Pakistan's constitution to be protected from double jeopardy.³⁵⁹ Nevertheless, the decisions by judges Khoso and Jafri to uphold the Sindh Children Act establish important precedents regarding the adjudication of terrorism cases that involve juveniles. But because the Anti-Terrorism Act's overriding clause remains in place, the decision to try such cases in accordance with the Sindh Children Act or Punjab Youthful Offenders Ordinance remains subject to judicial discretion. And in areas of the country where no juvenile law is in force, children charged with the commission of terrorist acts will continue to face the prospect of expedited proceedings and capital punishment.

Lawyers for Human Rights and Legal Aid, to Human Rights Watch, dated June 18, 1999.

³⁵⁹ "No person shall be prosecuted or punished for the same offence more than once...." Constitution of the Islamic Republic of Pakistan, Article 13(a).

VII. JUVENILE JUSTICE SYSTEMS

Pakistan's Senate—the upper house of the country's parliament—was scheduled to debate during 1999 the Child Offenders Act, a bill that has been pending before it for the past four years. Although the bill has significant defects, which are described at length below, it marks the parliament's first attempt to adopt a federal juvenile justice law. As noted earlier, both Sindh and Punjab have enacted provincial juvenile justice laws. The Sindh Children Act is officially in force throughout Sindh, but its implementation has until recently been limited to the city of Karachi. The Punjab Youthful Offenders Ordinance is nominally in force in just one district of Punjab, and the provincial government and judiciary are only now taking the first steps toward establishing a province-wide juvenile justice system.

Juvenile Justice in Sindh

The Sindh Children Act governs children who were under the age of sixteen when the offense in question was committed.³⁶⁰ The act authorizes the provincial government to “establish one or more Juvenile Courts for any local area,” but allows any court from the level of a magistrate of the first class up to the provincial high court to exercise the powers of a juvenile court.³⁶¹ It grants juvenile courts—where they have been established—exclusive jurisdiction over children's cases, except where a sessions court has exclusive jurisdiction over the offense committed.³⁶² Each juvenile court should hold its sessions in a different building or room, or on different days or at different times, from ordinary sessions of court.³⁶³ Joint trials of adults and children are prohibited.³⁶⁴

³⁶⁰ Sindh Children Act, Sec. 5.

³⁶¹ *Ibid.*, Sec. 5, 8.

³⁶² *Ibid.*, Sec. 9(3).

³⁶³ *Ibid.*, Sec. 12.

³⁶⁴ *Ibid.*, Sec. 10.

The act includes special protections for children during trial, including in camera proceedings, authorizing the removal of persons from the courtroom when a child is being examined as a witness, and requiring the presence of parents or guardians wherever practicable.³⁶⁵ Other provisions of the act prohibit imposition of the death penalty and abolish the terms “conviction” and “sentence” with respect to children.³⁶⁶ The act limits dispositions to placement in a “certified school or recognised institution,” release on probation, imposition of a fine, or discharge “with due admonition.”³⁶⁷ Crucially, it makes no provision for the detention of a child in prison.

Under order from the Sindh High Court,³⁶⁸ the provincial government established a juvenile court in Karachi on December 18, 1993, with Neelofar

³⁶⁵ Ibid., Sec. 15, 18, 19.

³⁶⁶ Ibid., Sec. 64, 68(1), 69.

³⁶⁷ Ibid., Sec. 71, 72.

³⁶⁸ “Legal Constraints,” address by Zia Awan, President, Lawyers for Human Rights and Legal Aid (LHRLA), during the Independent Communications Network (ICN) Seminar on Juvenile Delinquency, Karachi, October 22, 1994, reprinted in *News International*, October 29, 1994, p. 11. The designation of a juvenile court followed sustained appeals by concerned NGOs and private citizens, including the filing of a petition in the Sindh High Court by LHRLA in March 1993. The petition called, among other things, for the establishment of juvenile courts for each district of Karachi and other parts of Sindh. Constitutional Petition No. D-743 of 1993, High Court of Sindh at Karachi, March 14, 1993.

Shahnawaz as its presiding magistrate.³⁶⁹ Shahnawaz had been appointed a judicial magistrate three months earlier, in September 1993. As such, her jurisdiction is limited to cases punishable by up to three years of imprisonment. Other, more egregious offenses must be tried by a sessions court.³⁷⁰

Shahnawaz hears juvenile cases from all five districts of Karachi. Between twenty-five and forty children appear in her court on an average day, and the number sometimes reaches fifty or sixty. Her caseload is aggravated by a scarcity of support staff. "There are only two clerks and one peon [office assistant]," she said. "Staff don't have access to corruption or money-making in this court, so they transfer or leave."³⁷¹

Despite its limited resources, the juvenile court under Shahnawaz appears to uphold international and domestic juvenile justice standards more effectively than most criminal courts in Pakistan, by conducting inquiries into the child's background, attempting to ensure the presence of parents at trial, and employing alternative sentencing measures, such as release on probation.

³⁶⁹ Notification No. PRS/9-69/91, Home Department, Government of Sindh, December 18, 1988.

³⁷⁰ Human Rights Watch interview with Neelofar Shahnawaz, Judicial Magistrate, Juvenile Court (Karachi Division), Karachi, May 23, 1998.

³⁷¹ *Ibid.*

Shahnawaz said she contacts and interviews children's parents herself to learn about their circumstances, and that parents regularly attend trials in the juvenile court.³⁷² Parents were in fact present during a proceeding observed by Human Rights Watch on May 23, 1998, involving two boys who were arrested for throwing stones at private vehicles, and thereby causing several injuries. Shahnawaz released both children on probation, without requiring the posting of bail bonds. The bond signed by the father of one of the boys stated that he would ensure his son's "good behavior and good conduct to all citizens" for a period of one year, and that in the event of any default by his son during that time, would pay a penalty to the government of Rs. 10,000 (\$196). Breach of the bond's conditions would also entitle the court to suspend or revoke the bond itself.

In a subsequent case, however, Shahnawaz ordered two thirteen-year-old girls, Samreen and Shameen, to be detained in Karachi's Women's Jail, pending their trial on theft charges. Bail was granted in the amount of Rs 40,000 (\$784) and Rs. 20,000 (\$392), respectively, which neither girl—both of whom were employed as domestics—was able to provide. The detention orders were challenged by Zia Awan, president of the Karachi-based NGO Lawyers for Human Rights and Legal Aid, and led to a landmark ruling by a division bench of the Sindh High Court on July 14, 1999. The court declared the detention of children in adult prisons, whether pending trial or upon conviction, to be violative of the Sindh Children Act, and ordered the Secretaries of the provincial Home and Law Departments to delete provisions in the Pakistan Prison Rules that allowed children to be detained in adult prisons in Sindh. In the absence of a detention center for female juveniles, the court ordered the release of Samreen and Shameen upon the provision of Rs. 20,000 (\$392) through their guardians or next of kin.³⁷³

The court's ruling closely followed the designation of juvenile courts for each of Sindh's twenty-two districts by the provincial Home Department. According to Deputy Home Secretary Kamran Dost, the Home Department issued a notification order designating a judicial magistrate and a sessions court judge in each district to hear juvenile cases triable under their respective jurisdictions. An exception was made for the city of Karachi, which consists of three districts;

³⁷² Ibid.

³⁷³ Zabe Azkar Hussain, "SHC rules children cannot be held in adult prisons," *News International*, July 19, 1999.

juvenile cases in all three districts will continue to be tried by one judicial magistrate as well as a newly-designated sessions court judge for juveniles. Special training in juvenile justice, however, is not being provided to any of the magistrates or sessions court judges.³⁷⁴

³⁷⁴ Human Rights Watch telephone interview with Kamran Dost, Deputy Secretary (General), Home Department, Government of Sindh, Karachi, September 21, 1999.

Dost said that while the Home Department had no plans to build additional juvenile institutions, it had instructed the provincial Inspector-General of Prisons to establish separate juvenile wards in each district jail—a development that would prevent the commingling of adults and children in prisons in the interior of the province.³⁷⁵

Juvenile Justice in Punjab

The Punjab Youthful Offenders Ordinance mirrors the juvenile justice provisions of the Sindh Children Act, with two noteworthy exceptions. First, the ordinance only covers children who were under fifteen years of age when the offense in question was committed, while the Sindh Children Act applies to those who were below the age of sixteen. Second, the ordinance requires police officers to release children on bail when they are arrested in connection with a non-bailable offence and cannot promptly be brought before a court. Under the same circumstances, the Sindh Children Act merely grants police discretion to release children on bail.³⁷⁶

Although promulgated in 1983, the ordinance remained inoperative until 1994, when the provincial government enforced it in the district of Sahiwal as part of an experiment in juvenile justice administration.³⁷⁷ The experiment remained unrealized, however, as the government failed to allocate the resources necessary for the law's enforcement. At the time of Human Rights Watch's visit to Pakistan, in May 1998, Sahiwal had neither a juvenile court nor a functioning industrial school for juveniles. A senior government official told Human Rights Watch that a facility had been built for the latter purpose, but remained without a staff and basic amenities such as a kitchen and a meeting area for visitors.³⁷⁸ Recent measures adopted by the government of Punjab and the provincial high court may provide the

³⁷⁵ Ibid.

³⁷⁶ Punjab Youthful Offenders Ordinance, Sec. 41, Sindh Children Act, Sec. 64.

³⁷⁷ Letter to members of parliament, from Hina Jilani, Director, AGHS Child Rights Cell, December 5, 1998.

³⁷⁸ Human Rights Watch telephone interview with a senior government official, Pakistan, March 1999.

groundwork for the law's enforcement throughout the province, but their implementation so far has been half-hearted.

The Lahore High Court on November 11, 1998 designated all sessions court judges in the province as juvenile courts. As of early March 1999, however, no juvenile cases had been transferred to the sessions courts—apparently due to the government's failure to communicate the order to police station house officers and magistrates. The provincial Home Department subsequently issued directions for all station house officers to prepare separate police reports for children and submit them to the sessions courts in their respective districts. At the time of this writing, however, the Inspector-General of Police had yet to implement the Home Department's directive. In addition, the Law Department had failed to order the transfer of juvenile cases from magistrates to sessions court judges.³⁷⁹

Equally critical is the government's failure, as in Sindh, to provide special training for sessions court judges in juvenile justice administration.³⁸⁰ In view of the sentencing patterns noted in the previous chapter, there remains a strong likelihood that individual sessions court judges will continue to impose harsh, retributive sentences.

A parallel development is the provincial government's decision in 1998 to establish four Youthful Offenders Industrial Schools, beginning with the long dormant facility at Sahiwal, and with new institutions at Rawalpindi, Bahawalpur, and Faisalabad to follow. The schools are to be administered by the provincial reclamation and probation department, an arrangement that would remove juveniles from the authority of the prisons department. A senior government official told Human Rights Watch that the Sahiwal industrial school had been due to open in July 1999, but that as of May 1999, the provincial home and finance departments had not allocated the funds necessary to complete its infrastructure. In its present state, he said, the facility had been declared unfit for operation by the sessions court judge for Sahiwal. The facility intended for juveniles at Faisalabad, meanwhile, has been converted to a maximum-security adult prison, according to the same official.³⁸¹

³⁷⁹ Human Rights Watch telephone interview with a senior government official, Pakistan, May 1999.

³⁸⁰ Ibid.

³⁸¹ Ibid.

The Child Offenders Act (Bill), 1995

Attempts to introduce a uniform juvenile justice law, in force throughout Pakistan, only began in earnest in 1994. Several factors provided the impetus. In April 1994, the U.N. Committee on the Rights of the Child considered Pakistan's first periodic report on its compliance with the Convention on the Rights of the Child. The committee noted in its concluding observations that it was "very much concerned about the system of administration of juvenile justice and its non-compatibility with the provisions of the Convention...and other relevant United Nations standards in this field."³⁸² The committee requested a progress report to be submitted before the end of 1996,³⁸³ while a second periodic report was due on December 11, 1997. As of this writing, neither had been submitted.³⁸⁴

Also in 1994, the AGHS Legal Aid Cell submitted to Pakistan's Senate a draft federal juvenile justice bill that sought to harmonize the existing juvenile laws of Sindh and Punjab with United Nations standards. Benazir Bhutto, who was then prime minister, had also voiced a strong interest in the drafting and passage of a federal juvenile justice law.³⁸⁵ The Senate, however, was disinclined to endorse the AGHS draft as submitted. A senior government official who was involved with the bill described the ensuing series of events:

The chairman of the Senate, in a negligent way, sent the [AGHS] bill to a Senate sub-committee. The sub-committee asked the Interior Ministry whether the bill was acceptable. The Interior Ministry [in turn] delegated it to the Bureau of Police Research and Development, which totally changed the bill and made it fallacious.³⁸⁶

³⁸² Committee on the Rights of the Child, Sixth Session, Consideration of Reports Submitted by States Parties, Concluding Observations: Pakistan, U.N. Doc. C/15/Add.18, 25 April 1994, para. 20. The committee called particular attention to "the punishment of flogging and the death penalty and life imprisonment for children below the age of 18." *Ibid.*, para. 12.

³⁸³ *Ibid.*, para. 35.

³⁸⁴ United Nations High Commissioner for Human Rights, State Parties Reporting Status Entry Form, Convention on the Rights of the Child, Pakistan's reporting rounds: 1 and 2, <http://www.unhchr.ch/tbs/doc.nsf>.

³⁸⁵ Human Rights Watch interview with Faqir Hussain, Joint Secretary, Pakistan Law Commission, Government of Pakistan, Islamabad, May 14, 1998.

³⁸⁶ Human Rights Watch interview with a senior government official, Pakistan, May 1998.

What emerged from these deliberations was a bill known as the Child Offenders Act, 1995. However, the bill lay dormant after its approval by the Senate sub-committee, and only recently emerged as an item scheduled for discussion by the full Senate. Human Rights Watch wrote to the Chairman of Pakistan's Senate, Senator Wasim Sajjad, on March 3, 1999, welcoming the placement of the bill on the Senate's agenda, but calling for its redrafting in accordance with the juvenile justice provisions of the Convention on the Rights of the Child and other applicable international standards.

Human Rights Watch also submitted a commentary on the bill to Senator Sajjad as well as the chairpersons of the relevant Senate committees and government officials charged with promoting law reform and child welfare. We received responses from Senator Chaudhry Muhammad Anwar Bhinder, Chairman of the Senate Standing Committee on Law, Justice and Parliamentary Affairs, and Shahid Masood, Joint Secretary of the National Commission for Child Welfare and Development (NCCWD).³⁸⁷ Both Senator Bhinder and Joint Secretary Masood expressed appreciation for our comments, and indicated that they would draw upon them in suggesting revisions to the bill.³⁸⁸ Human Rights Watch's commentary on the bill follows below, while our recommendations for its revision appear in Chapter I of this report.

Although deficient in certain critical areas, the bill incorporates several provisions that add to the protections afforded children under domestic law. These provisions include:

- Requiring provincial governments to establish one or more juvenile courts for each local area, with exclusive jurisdiction over cases involving children.
- Granting children a right to counsel at government expense, and providing that court-appointed counsel have "at least three years of standing in the profession."

³⁸⁷ The NCCWD is a branch of the Ministry of Women Development, Social Welfare and Special Education. Its tasks include drafting Pakistan's reports to the Committee on the Rights of the Child, although the reports themselves must be approved by the Foreign Ministry prior to their release.

³⁸⁸ Letters to Human Rights Watch from Senator Chaudhry Muhammad Anwar Bhinder, Chairman, Standing Committee on Law, Justice and Parliamentary Affairs, Senate of Pakistan, May 12, 1999, and Shahid Masood, Joint Secretary, National Commission for Child Welfare and Development (NCCWD), April 23, 1999.

- Requiring the release of children on bail if their trial does not begin within three months of their arrest or does not conclude within a period of one year.
- Prohibiting the imposition of the death sentence, amputation, or whipping on children, or assignment to hard labor while in a “borstal or other such institution.”
- Prohibiting the imposition of handcuffs, fetters, or corporal punishment on children “at any time while in custody.”
- Prohibiting the arrest of children below the age of twelve under laws relating to preventive detention or vagrancy.

In other respects, the bill echoes the Sindh Children Act and the Punjab Youthful Offenders Ordinance. It requires juvenile courts to sit in different places, and on different days and times, from ordinary criminal courts. It specifies the persons who may be present during a juvenile trial, and prohibits publication of the proceedings of a trial without the juvenile court’s authorization. Immediately upon the arrest of a child, police must notify his or her guardian as well as a probation officer, who is to prepare “a report on the child’s character, education, social, and economic background.”

There are, however, several critical areas in which revision of the bill is necessary in order to ensure consistency with international standards.

Definition of a Child

Section 2(b) of the bill defines a child as a person who “at the time of the commission of an offence” had “not attained the age of sixteen years.” Although the bill is consistent in this respect with the Sindh Children Act, it does not comport with the trend suggested by international standards. The U.N. Rules for the Protection of Juveniles Deprived of their Liberty states, at rule 11(a), that a “juvenile is every person under the age of 18.” Article 1 of the Convention on the Rights of the Child, to which Pakistan is a party, defines a child as a person below the age of eighteen years, unless majority is attained earlier under national legislation.” Article 37(a) of the convention also prohibits the imposition of capital punishment, or life imprisonment without possibility of release, for offenses committed by persons below eighteen years of age. The bill, in violation of the convention, only bars the execution of children who were under sixteen when they committed a capital offense and includes no provision preventing the imposition of life terms without possibility of parole. To ensure consistency with the convention

and other applicable international standards, the bill's protections should be extended to all persons who were below the age of eighteen when the offense in question was committed.

Arrest and Bail

Section 9(3) requires the release on bail, "with or without surety," of children charged with committing bailable offenses. The court may deny a child bail only if it believes that release would expose a child to danger. In such cases, the bill requires the child's placement in the custody of a parent or guardian, if present, or otherwise with a probation officer or other "fit person." Section 9(3) states that a child denied bail out of concern for his or her safety "shall not under any circumstances be kept in a police station or jail."

There are three major drawbacks to this provision:

First, section 9(3) fails to specify where and under what conditions children may be held prior to their appearance before a magistrate. As drafted, it would permit children to be held for up to twenty-four hours in police lockups, where segregation from adults is rare and custodial torture routine. The Sindh Children Act provides for the detention of children in "places of safety" such as remand homes or any other "suitable place or institution" that is willing to temporarily house them. Article 37(b) of the Convention on the Rights of the Child states that the detention of a child "shall be a measure of last resort." For cases in which it is not possible to leave children in the custody of their parents or guardians, the bill should require arrangements to house children in an appropriate setting, pending their appearance before a magistrate.

Second, the provision bars remand to police stations or jails only of those children who have been denied bail with a view to ensuring their personal safety. The proscription against remand to police stations and jails should accordingly be extended to children who have been granted bail, but for whom surety is not immediately available.

Third, the bill should direct courts to take into account the social and economic circumstances of the child in setting bail. This would be consistent with section 498 of the Criminal Procedure Code, which states that bail bonds "shall be fixed with due regard for the circumstances of the case, and shall not be excessive." In addition, Article 40(4) of the Convention on the Rights of the Child states that children are to be "dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

Finally, section 9(3) should be redrafted to avoid an apparent contradiction in its language. The provision requires courts to release on bail children accused of bailable offenses, if they have not already been released under section 497 of the

Criminal Procedure Code. However, section 497 of the Code governs the release of persons charged with *non-bailable*, rather than bailable, offenses.³⁸⁹

Disposal of Cases

The U.N. Standard Minimum Rules for the Administration of Juvenile Justice provides, in section 19.1, that “the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.” A similar provision appears in article 37(b) of the Convention on the Rights of the Child. Article 40(4) of the convention requires states to offer a variety of alternatives to institutional care, including “guidance and supervision orders; counseling; probation; foster care; [and] education and vocational training programmes.”

³⁸⁹ Another commentary on the bill suggests that the reference to “bailable” offenses in section 9(3) was erroneous. See Khan, *Laws Relating to Children*, p. 219.

The bill, in section 10, presents just two options for the disposal of juvenile cases. One is probational release to the custody of a guardian or other “fit person” who can provide a bond to ensure the child’s good conduct. The other is commitment to a borstal institution. Human Rights Watch favors the least possible use of institutional placement. However, in those cases where children are committed to the care of an institution, proper rules for its establishment and governance should be in place. The bill, as drafted, does not provide for the establishment of borstal institutions, nor does any existing federal law.³⁹⁰ Of Pakistan’s four provinces, only Sindh and Punjab have passed Borstal Acts. And unlike the Sindh Children Act and the Punjab Youthful Offenders Ordinance, the bill makes no provision for the placement of children in industrial training schools established or certified by the state.

The bill also fails to include guidelines for the disposal of juvenile cases. The Convention on the Rights of the Child imposes several guidelines for disposition. Article 3 states that in “all actions concerning children,” including those taken by courts of law and administrative authorities, “the best interests of the child shall be a primary consideration.” Article 40(1) requires children accused of committing a penal offense 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.” And Article 40(4), as noted above, states that children are to be “dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the offence.”

³⁹⁰ The Reformatory Schools Act, 1897, provides for the establishment of reform schools. As noted in Chapter V of this report, however, reform schools differ in fundamental respects from borstal institutions. The Pakistan Prison Rules include several provisions governing the administration of borstals, but provides no authority for their establishment.

In addition, the U.N. Standard Minimum Rules for the Administration of Juvenile Justice require the completion of a social inquiry report prior to the disposition of all cases other than those involving minor offenses.³⁹¹ The Sindh and Punjab juvenile laws include a nonexhaustive list of factors that the court must take into account when passing orders, including the character, age and circumstances of the child, as well as the report of the probation officer.³⁹²

Training of Personnel

The U.N. Standard Minimum Rules for the Administration of Juvenile Justice, section 22.1, calls for the utilization of “professional education, in-service training, refresher courses, and other appropriate modes of instruction...to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.” The bill, by contrast, makes no provision for the training of personnel handling juvenile cases. Such education may be provided by the relevant training institutes already established by law, as well as by non-governmental and intergovernmental organizations.

Conflicts With Provincial Laws

In two areas, the bill substantially weakens protections afforded children by the Sindh Children Act and the Punjab Youthful Offenders Ordinance. These protections comport with international standards, and should form the basis for provisions in a federal juvenile justice law. In its present form, however, the bill:

- *Requires the joint trial of an adult and child, in an ordinary criminal court, when a child is charged in a case along with “an adult who is the*

³⁹¹ Social inquiry reports must reflect a proper investigation of the “background and circumstances in which the juvenile is living or the conditions under which the offense has been committed.” U.N. Standard Minimum Rules for the Administration of Juvenile Justice, Sec. 16.1.

³⁹² Punjab Youthful Offenders Ordinance, Sec. 18(c), Sindh Children Act, Sec. 21(c).

*principle accused therein.*³⁹³ The Sindh Children Act and the Punjab Youthful Offenders Ordinance prohibit the joint trial of children and adults in any area where a juvenile court exists.³⁹⁴ Their provisions in this regard are consistent with article 40(3) of the Convention on the Rights of the Child, which obligates states to promote the establishment of “procedures, authorities, and institutions specifically applicable to children.”

³⁹³ Child Offenders Act (Bill), 1995, Sec. 4(3).

³⁹⁴ Punjab Youthful Offenders Ordinance, Sec. 7, Sindh Children Act, Sec. 10.

- *Requires the transfer from a borstal to a prison of children who have attained the age of sixteen years, to serve the balance of their sentences.*³⁹⁵ Neither of the provincial juvenile laws authorize the detention of children in prisons, while Rule 300 of the Pakistan Prison Rules only requires the transfer of children who have attained the age of twenty-one years. In addition, the Convention on the Rights of the Child contains provisions that favor keeping children in the least restrictive environment possible and minimizing the possibility of their contact with adults. Article 37(b) states that the imprisonment of a child shall only be used as a matter of last resort, while Article 37(c) requires the separation of children and adults except where it is in the best interests of the child.

Although section 13 of the bill states that its provisions shall “be in addition to and not in derogation of any other law for the time being in force,” courts may resolve any conflict between the bill’s provisions and those of the Sindh and Punjab laws in light of Article 143 of the constitution. Under Article 143, “[i]f any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of [Parliament]...then the Act of [Parliament]...shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.” To ensure that the rights of accused children under the provincial laws are upheld, and to afford children elsewhere in Pakistan the same protections, it would be necessary at a minimum to modify the aforementioned provisions so as to bring them into conformity with the Sindh Children Act and the Punjab Youthful Offenders Ordinance.

Recommendations of the Pakistan Law Commission

The Pakistan Law Commission, whose observations and recommendations on the criminal justice system and prisons have been cited elsewhere in this report, convened on December 19, 1998 and March 14, 1999, to address the issue of juvenile justice.³⁹⁶ At its March meeting, the commission adopted a series of

³⁹⁵ Child Offenders Act (Bill), 1995, Sec. 10(b).

³⁹⁶ Pakistan Law Commission, “Reforming the Juvenile Justice System,” Government of Pakistan, Islamabad, 1999, p. 5

recommendations that were then submitted to the federal government in a June 1999 report.³⁹⁷ The recommendations include:

- designating juvenile courts in all provinces, with exclusive jurisdiction over children under the age of sixteen.
- establishing separate juvenile institutions, with facilities for health care, education, and training.
- detaining children only as a measure of last resort and for the shortest possible period of time.
- minimizing custodial sentences, and employing alternative disposition measures such as assignment to community service or placement under the care, supervision, or guardianship of a family member or probation officer.
- organizing and developing the probation system so that children in detention may be entrusted to the care and protection of probation officers, under the court's supervision.

³⁹⁷ Human Rights Watch telephone interview with Dr. Faqir Hussain, Joint-Secretary, Pakistan Law Commission, Government of Pakistan, Islamabad, September 21, 1999.

- providing training for staff and personnel responsible for managing the juvenile justice system, including police, judges, probation officers, prison staff, court personnel and lawyers, “so that they are sensitised to and educated about the manners and methods of handling children.”³⁹⁸

These recommendations provide the basis for a comprehensive and holistic approach to juvenile justice administration that is consistent with international standards. They should be reflected in an amended or redrafted federal juvenile justice bill.

³⁹⁸ Pakistan Law Commission, “Reforming the Juvenile Justice System,” pp. 3-5.

VIII. CONCLUSION

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.

Many of the officials whom Human Rights Watch interviewed for this report were acutely aware both of the problems faced by children in the criminal justice system, as well as the remedial measures that are required. Recent developments, such as the designation of juvenile courts in Punjab and Sindh and the Punjab provincial government's stated intention to establish separate juvenile institutions, signal a renewed interest in improving the administration of juvenile justice. But the administrative enforcement of such plans has proved wanting in the past, and there are troubling indications that this remains the case.

The adoption of a federal juvenile justice law is a matter of urgent necessity. However any such law should be consistent with standards set forth in the Convention on the Rights of the Child and other international instruments. The draft Child Offenders Act currently before the Senate falls appreciably short of those requirements and omits certain protections afforded children by the juvenile justice laws of Punjab and Sindh. The bill in its present form should therefore be withdrawn and redrafted in consultation with concerned local NGOs, taking into account the recent recommendations of the Pakistan Law Commission on juvenile justice reform, as well as the recommendations proposed at the beginning of this report.

In a few of the cases documented in this report, police and prison authorities faced administrative action or judicial proceedings for the torture, sexual abuse, or illegal detention of children in their custody. However, these measures were prompted either by the public disclosure of the abuses, or in one case, by a violent protest in a prison's juvenile ward. Far more often, such cases go unreported and unpunished. The absence of impartial grievance mechanisms and independent investigative bodies allows police and prison staff who torture and ill treat children to do so with impunity.

Institutional reform is critical. Independent complaints mechanisms should be established with the authority to initiate and conduct investigations of police abuses; such bodies should be organized at the district level, and be directly accessible to children and their families. Similar complaints mechanisms should be established for each detention facility. Police or prison officers found to have

tortured or ill treated children in their custody should be subject to strict disciplinary action and, where warranted, criminal prosecution. The government should require and provide for the specialized training of all law enforcement officials and judicial authorities coming into contact with children. And existing institutions with responsibility for juveniles should receive additional resources and staffing, most urgently the provincial reclamation and probation departments.

By making arrangements for the temporary custody of detained children, designating specialized juvenile courts, and developing alternative dispositions to institutional confinement, the government can both minimize the prospect of custodial abuse of juveniles and also foster their rehabilitation and reintegration into their communities. Civil society can play a significant role in this process.

APPENDICES

APPENDIX A: Excerpts from the U.N. Convention on the Rights of the Child

U.N. Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989).

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, '

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,"

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic

society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of

prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;

- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offense.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

APPENDIX B: U.N. Standard Minimum Rules For The Administration of Juvenile Justice

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

PART ONE

General Principles

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavor to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

- (a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offense in a manner which is different from an adult;
- (b) An offense is any behavior (act or omission) that is punishable by law under the respective legal system;
- (c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offense.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

- (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
- (b) To meet the needs of society;
- (c) To implement the following rules thoroughly and fairly.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behavior that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

4. *Age of criminal responsibility*

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

5. *Aims of juvenile justice*

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offense.

6. *Scope of discretion*

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

7. *Rights of juveniles*

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

8. *Protection of privacy*

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

PART TWO**Investigation and Prosecution****10. Initial contact**

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

12. Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

13. Detention pending trial

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

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

PART THREE

Adjudication and Disposition

14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

16. Social inquiry reports

16.1 In all cases except those involving minor offenses, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offense has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offense but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offenses and unless there is no other appropriate response;
- (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counseling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

PART FOUR

Non-Institutional Treatment

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

PART FIVE

Institutional Treatment

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible

extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centers and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

PART SIX

Research, Planning, Policy Formulation and Evaluation

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyze relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

APPENDIX C: U.N. Rules For The Protection of Juveniles Deprived of Their Liberty

U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).

I. Fundamental perspectives

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the

personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. Scope and application of the rules

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster

their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. Juveniles under arrest or awaiting trial

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

- (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;
- (b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;
- (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. The management of juvenile facilities

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;

- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for

purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offense, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as

to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labor and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labor, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the

juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offense or to send it to his or her family or other persons outside the detention facility.

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counseling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testers in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return

to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defense counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. 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. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labor should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offense;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defense, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counselors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. Personnel

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counselors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to

fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favorable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and

exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

APPENDIX D: Child Offenders Act 1995

**Bill
Child Offenders Act 1995**

**To Provide for Protection of the Rights of the
Children Involved in Criminal Litigation**

WHEREAS it is expedient to provide for protection of children involved in criminal litigation, their rehabilitation in society, reorganization of Juvenile Courts and matters connected therewith and incidental thereto;

It is hereby enacted as follows:-

1. Short title, extent and commencement.— (1) This Act may be called the Child Offenders Act, 1995.

- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,-

- (a) "borstal" means a place where child offenders may be detained and given education and training for their mental, moral and psychological development;
- (b) "child" means a person who at the time of commission of an offence has not attained the age of sixteen years;
- (c) "child offender" means a child who has been held by a court of competent jurisdiction to have committed any offence which is punishable under any law for the time being in force;
- (d) "Code" means the Code of Criminal Procedure, 1898 (V of 1898);
- (e) "Juvenile Court" means a court established under section 4 for trial of children;
- (f) "guardian" means a parent or a person who has actual care of the child and shall include such relative who should bear the responsibility of the child;
- (g) "offence" means any act punishable with a fine, imprisonment, whipping, death or any other punishment for contravening any provision of law;
- (h) "prescribed" means prescribed by rules made under this Act; and

- (1) "Probation Officer" means a person appointed under the Probation of Offenders Ordinance, 1960 (XLV of 1960), or such persons as the Provincial Government may appoint to perform the functions of Probation Officers under this Act.

3. Legal assistance.— (1) Every child who is accused of any offence or is a victim in a penal offence shall have the right of legal assistance at the expense of the State.

(2) A legal practitioner appointed by the State for providing legal assistance to a child accused of any offence or victim in an offence shall have at least three years of standing in the profession.

4. Juvenile Courts.— (1) The Provincial Government shall, by notification in the official Gazette, establish one or more Juvenile Courts for any local area within its jurisdiction.

(2) The provincial Government may confer powers of a Juvenile Court on-

- (a) the High Court;
- (b) Court of Sessions; or
- (c) Magistrate of the first class.

(3) The Juvenile Court shall have the exclusive jurisdiction to try cases in which a child is accused for commission of an offence.

Provided that where a child is accused for commission of an offence alongwith an adult who is the principle accused therein, the child shall be tried alongwith such adult in the ordinary court having jurisdiction to try such offence.

(4) Subject to sub-section (3), on commencement of this Act, all pending cases in which only a child is accused of an offence, such cases shall stand transferred to the Juvenile Court having jurisdiction from such commencement.

(5) The Juvenile Court shall not, merely be reason of a change of its composition or transfer of a case under sub-section (4), be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded.

5. Procedure of Juvenile Courts.— (1) A Juvenile Court shall, unless provided otherwise in this Act, follow the procedure provided for in the Code for the trial of cases in which children are accused of commission of any offence.

(2) A Juvenile Court shall, as far as practicable, hold its sittings at a place other than in which the sittings of the court in respect of other cases are held and fix different days and different time for such sittings than the trial of other cases.

(3) No person shall be present at any sitting of a Juvenile Court except-

- (a) members and officers of the Juvenile Court;
- (b) parties to the case before the Juvenile Court and such other persons who are directly concerned with the proceedings, including the police officers;
- (c) such other persons as the Juvenile Court directs to be present; and
- (d) guardian of the child;

(4) If at any stage during the course of a trial of a case under this Act in which a child is an accused or a victim or a witness, the Juvenile Court considers it expedient in the interest of such child or a conduct contrary to decency and morality, it may direct any person, including the guardian of the child or the child himself to withdraw, and thereupon such person shall withdraw for such period as the Juvenile Court directs.

(5) Where at any stage during the course of the trial of a case, the Juvenile Court is satisfied that the attendance of the child is not essential for the purposes of the trial, the Juvenile Court may dispense with his attendance and proceed with the trial of the case in absence of the child.

(6) When a child who has been brought before a court and is found to be suffering from serious illness, whether physical or mental, and requires treatment, the court shall send such child to a hospital or to such suitable place where treatment could be given to the child at the expense of the State.

6. Determination of age.— If a question arises as to whether a person before it is a child, for the purposes of this Act, the Juvenile Court shall make a finding after such inquiry as it may deem fit and such finding shall be presumed to be final for determination of the age of the child.

7. Prohibition to publish reporting of cases.— (1) Unless the Juvenile Court specifically authorizes for the purposes of research or the welfare of the child or for any other reason, no report of the case of proceedings in which a child is being tried or is a victim shall be published in any newspaper, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child, nor shall any picture of the child be published.

(2) Notwithstanding anything contained in any other law for the time being force, a child who is tried under this Act for commission of an offence under that law shall not suffer disqualification, if any, attached to a conviction for such offence.

8. Probation officer.— (1) The Provincial Government shall assist the Juvenile Court by making a report on the child's character, education, social and economic background.

(2) The report of the probation officer submitted to the Juvenile Court shall be treated as confidential:

Provided, the Juvenile Court may, if it so thinks fit, communicate the substance thereof to the child or his guardian and, where anyone of them dispute the contents or views contained therein, the Juvenile Court may give such child or, as the case may be, guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

9. Arrest and bail.— (1) Where a child is arrested for commission of any offence, the officer incharge of the police station to which the child is confined shall, as soon as may be, inform-

- (a) the guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the child shall be produced; and
- (b) the concerned probation officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the Juvenile Court for making inquiry.

(2) Where a child accused of a non-bailable offence is arrested, he shall, without any delay and in no case later than twenty-four hours from such arrest, be produced before the Juvenile Court.

(3) Without prejudice to the provisions of the code, a child accused of a bailable offence shall, if already not released under section 497 of code, be released by the Juvenile Court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal, or expose the child to any danger, in which case, the child shall be placed under the custody of a probation officer or a fit person, if the parents or guardian of the child are not present, but shall not under any circumstances be kept in a police station or jail.

(4) The Juvenile Court shall, in a case where a child is not released on bail under sub-section (3), direct for tracing the guardian of such a child and where the guardian of the child is traced out, the Juvenile Court may immediately release the child on bail.

(5) Where a child of the age of twelve years or below, is arrested or detained for an offence which is punishable with an imprisonment of ten years or more, shall be treated as if he was accused of commission of a bailable offence.

(6) No child under the age of twelve years shall be arrested under any of the laws dealing with preventive detention, prohibiting vagrancy or under the provisions of chapter VIII of the Code.

(7) Notwithstanding anything contained in the Code, every child who for commission of an offence, is in custody, shall be released on bail, if the trial in the case does not commence within three months of his arrest or is not concluded within a period of one year therefrom.

10. Release on probation.— Where on conclusion of an inquiry or trial., the Juvenile Court finds that a child has committed an offence, then notwithstanding anything to the contrary contained in any law for time being in force, the Juvenile Court may, if it thinks fit:

(a) direct the child offender to be released on probation for good conduct and placed under the care of guardian or any fit person executing a bond, with or without sureties, as the court may require, for the good behaviour and well-

being of the child for any period not exceeding the period of imprisonment awarded to such child;

Provided that the child released on probation be produced before the Juvenile Court periodically on such dates and time as it may direct;

- (b) make an order directing the child offender to be sent to a borstal school until he attains the age of sixteen years, whereafter the child offender shall be sent to an ordinary prison to undergo the remaining period of imprisonment; and
- (c) reduce the period of imprisonment or probation in the case where the court is satisfied that further imprisonment or probation shall be unnecessary.

11. Prohibition of death penalty, etc.— (1) Notwithstanding anything contrary contained in any law for the time being in force, no child shall be awarded punishment of death, whipping, amputation or ordered to labour during the time spent in any borstal or such other institution.

(2) Notwithstanding anything contained in any other law for the time being in force, no child shall be handcuffed, put in fetters or given any corporal punishment at any time while in custody.

12. Appeals, etc.— A child offender or any other person on his behalf aggrieved by an order made by a Juvenile Court may, within thirty days from the date of such order, prefer an appeal to the next higher court in accordance with the provisions of the Code:

Provided that if the appeal is made after the expiry of thirty days and if the appellate court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time, it may condone the delay.

13. Act not to be in derogation of other laws.— The provisions of the Act, shall, for the benefit of children, be in addition to and not in derogation of any other law for the time being in force.