Written Submission on the initial Report of the State Party-Pakistan to be discussed in 120th Session of Human Rights Committee

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At the outset, we would like to mention that Udisha/India is a national level NGO involved in multifarious activities including Protection of Child Rights and Prevention of Child Abuse. Therefore, we have focussed on article 24 of the initial report of Pakistan submitted to ICCPR, which deals with obligation of the state to protect children and ensure their welfare and development. This article also contains the information about Juvenile Justice System Bill, 2015 drafted by the Government. These are the issues in which we are also active in our country and we are obviously curious about the development in our neighbouring country-Pakistan.

Our organisation-Udisha, NGO has studied the initial Report of Pakistan received by International Covenant on Civil & Political Rights (ICCPR) on 19 October 2015 and published on 24 November 2015. In our Statement, we have referred to the Report of the Committee on the Rights of the Child today after considering the fifth periodic report of Pakistan on its implementation of the Convention on the Rights of the Child because the review had been done much after the Report of the State Parties including Pakistan submitted to the human Rights Committee and many issues which were discussed by the government of Pakistan in its initial report and the issues reviewed are common. We also studied the Reports/ research of various NGOs and other Organizations on these issues so as to update ourselves about the issues and make some positive suggestions in our endeavour to contribute our bit to make this world a better and safe place for all round development of our children, the future of the world.

Here is our submission on the report of one of the State parties, Pakistan, under review.

1. **Obligation of the State to Protect the Children**

The Article 24 of the initial report of Pakistan discusses about the rights of the child in Pakistan. It has been mentioned in the report that the Article 35 of the constitution of the country specifically mandates the State to protect children and Pakistan is also a state party to the Convention on the Rights of the Child (CRC) and its Optional Protocol. Pakistan is also signatory to the “SAARC Convention on Preventing And Combating Trafficking In Women And Children For Prostitution” at the regional level. It has been mentioned in the report that number of initiatives including legislative and policy measures have been taken both at the federal as well as at the provincial levels, to strengthen the mechanisms of child protection in Pakistan prior to as well as subsequent to ratifying the CRC and its Optional Protocol. It has also been mentioned that the details of these measures have been given in the 5th Periodic Report 2008-2013 submitted by Pakistan **1**.

In this context, we have gone through Report of the Committee on the Rights of the Child, which concluded its consideration of the fifth periodic report of Pakistan on its implementation of the Convention on the Rights of the Child, published on 26 May 2016. As per the report, though the Committee Experts took positive note of the progress made in strengthening the policy and legislative framework in Pakistan, they however, raised concerns about the lack of harmonization of the laws with the provisions of the Convention on the Rights of the Child, an inconsistent and conflicting definition of the child throughout the legislation and across provinces, and about regression in the protection of the rights of the child caused by the introduction of new laws, in particular the Anti-Terrorism Act, which affected the definition of the child.

The members also observed that passage of the 18th Constitutional Amendment had led to huge differences in the level of protection of children and growing disparities between provinces and territories.  Girls continued to face systematic and institutionalized discrimination and gender-based violence, as did Dalit children, children from minorities, and children with disabilities who were often denied access to health and education.

**Concern about Death Penalty**

The Experts in the Committee expressed their utmost concern about the death penalty which was legal in Pakistan, and the execution of five minors in 2015 and appealed to the Government of Pakistan to pardon children on death row, commute their sentences, and ensure that children tried on charges of terrorism were tried by juvenile courts.  They were alarmed about the impact of sectarian violence and terrorism on children and by reports of torture and ill-treatment of children in police custody.

As per the Submission**2**, the Amnesty International documented the execution of at least five prisoners whose lawyers asserted they were below the age of 18 at the time of the offense of which they were convicted in the year to December 16, 2015.  In June 2015, the United Nations Office of the High Commissioner for Human Rights (OHCHR) estimated approximately 800 of the more than 8,000 people who remain on death row in Pakistan were reportedly under 18 years at the time of offense.

The [Convention on the Rights of the Child](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx) specifically prohibits capital punishment of anyone who was under 18 at the time of the offense. In July 2000, Pakistan issued an ordinance banning the death penalty for crimes by people under 18 years. However, the ordinance requires the existence of dedicated juvenile courts and other mechanisms not provided for by law in all parts of Pakistan, thus leaving juvenile offenders [at risk](https://www.hrw.org/news/2008/09/11/un-five-countries-responsible-all-executions-juvenile-offenders-2005) of trial as adults in capital cases. It has been rightly pointed in the Submission on Pakistan to the Committee on the Rights of the Child that children should be held accountable for murder and other serious crimes. However, courts should take into account the ways that young people are different from adults, including that they are both less culpable and also uniquely capable of rehabilitation.

**Harmonizing the Juvenile Justice System**

Under the heading-“Legislative Matters- National Level” there is a Para- Juvenile Justice System Bill, 2015, wherein it has been mentioned that to harmonize the Juvenile Justice System in conformity with the international standards, reformation is being undertaken in the Juvenile Justice System. In this regard, the Juvenile Justice System Bill, 2015 has been drafted, which is in the process of finalization.

At present, the Juvenile Justice System Ordinance (JJSO) 2000 has been implemented in Pakistan pending enactment of a legislation, to bring its current juvenile justice framework into conformity with its international obligations. The law was meant to shield children who came into conflict with the law from the rigours of the formal judicial system. This included right of legal aid, expedited trials held in separate courts, access to services for rehabilitation and reintegration with their families. The law also provided protection to accused children from corporal punishments, torture and the death penalty.

Despite the existence of such a comprehensive legal framework (and being one of the earliest countries in the world to ratify the 1998 UN Convention on the Rights of the Child), the Government has failed to demonstrate much interest in implementing a comprehensive Juvenile Justice System. The JJSO was not enacted retroactively. A significant proportion of the population of juvenile prisoners, therefore, fell outside the ambit of the protections accorded by the law, including protection from the death penalty. However, the Pakistani President issued a Notification in 2001, in exercise of his powers under Article 45 of the Constitution (i.e. the power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court).

Under the notification, juvenile offenders sentenced to death prior to the enactment of the JJSO were to be accorded remission following an inquiry into their juvenility. A report by Justice Project Pakistan, Death Row’s Children**3**, however, reveals that such inquiries hardly ever took place; when they did they were marred by arbitrariness and inefficiency.

The Justice Pakistan Project has asked the Government to reinstate the moratorium in the first instance, especially for those prisoners who were juveniles or can avail the benefit of reasonable doubt of juvenility at the time of offence committed. The report additionally asks for the enforcement of the solid age determination protocols, in compliance with international legal and policy standards.

Some more shortcomings in Pakistan’s Juvenile Justice System, which result in the government’s unlawful, arbitrary implementation of the death penalty against juvenile offenders have been highlighted in the report. The research analyses individual cases of juvenile offenders who have been executed or are awaiting executions to highlight the many junctures at which violations occur, starting from the arrest to the juvenile’s unlawful march to the gallows.

**Attacks on Schools: Impediment in Free and compulsory Education**

The Experts welcomed the introduction of free and compulsory education for children aged 5 to 16 and inquired about the resources to fund this commitment, particularly as in some provinces the primary school completion rates were as low as 41 per cent.  The attacks on schools and military use of schools continue to occur in Pakistan, which is a cause of concern and also reason of low rate of enrolment in schools. The attacks on schools and military use of schools place children at risk of injury or death and affect students’ ability to obtain an education, a fundamental right under international human rights law and domestic law.

The Government should take steps to investigate and appropriately prosecute individuals responsible for involvement in the range of violations of international law that constitute attacks on education, including as a matter of command responsibility. It should also respond to attacks on schools by promptly repairing damaging and ensuring that students can safely return to class. The Government should also take concrete measures to protect education from attack and deter the military use of schools, following the relevant UN Security Council Resolutions.

It has been also mentioned in the Report that a full-fledged Ministry of Human Rights had been established in November 2015, while the Bill for the establishment of an independent National Commission on the Rights of the Child was under consideration by Parliament.  Under the Bill, the Commission would be empowered to examine existing laws relating to children’s rights, recommend future legislation, monitor the situation of children’s rights in the country, and coordinate with provincial governments and civil society organizations.

In the mean while, the long awaited enactment of “National Commission on the Rights of Children Bill" (NCRC Bill) by the National Assembly of Pakistan on the 1st of February 2017, comes as a potential refuge for the children of Pakistan, a country that has been ranked third in the world for having the largest children’s workforce by the International Labour Organization (ILO).

**Recommendations**

The Committee should urge upon the government of Pakistan to:

1. Have a consistent and non-conflicting definition of the child throughout the legislation and across provinces. Take necessary steps to curb the regression in the protection of the rights of the child caused by the introduction of new laws, in particular the Anti-Terrorism Act, which affected the definition of the child.
2. Re-impose a moratorium on executions, until the death penalty is abolished. The existing ban should be fully enforced on the death penalty for all child offenders regardless of the nature of their crimes, and immediately commute pending death sentences against child offenders.
3. Implement the Notification issued in the year 2001 in letter and spirit and expedite the process of consideration and passage of the Juvenile Justice System Bill, 2015 so that the Juvenile justice System could be harmonized.
4. To effectively implementing the existing laws, strengthening law enforcement agencies and introducing new and dynamic policies under the National Commission on the Rights of Children to create a child-friendly nation in all ways possible. The emphasis should also be there to enact stringent laws to stop attacks on schools so that the right to free and compulsory education may be protected.

References:

1. Fifth periodic by Pakistan to the Committee on the Rights of the Child (CRC) CRC Country Report (5th Periodic Report 2008-2013)
2. Submission of Human Rights Watch on Pakistan in the Plenary Session of the Committee on the Rights of the Child
3. Report- “Death Row’s Children –Pakistan’s Unlawful Executions of Juvenile Offenders” by Justice Pakistan Project

The fifth report report can be reviewed at http://tbinternet.ohchr.org/\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=29&DocTypeCategoryID=4 - See more at: http://www.isj.org.pk/isj-welcomes-submission-of-the-5th-periodic-crc-report-by-pakistan/#sthash.tI2jOE5p.dpuf