



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

FOR THE ATTENTION OF:

Yousuf Raza Gilani, Prime Minister
Rehman Malik, Interior Minister
Farooq Hamid Naek, Ministry of Law & Justice
Fehmida Mirza, Speaker of the National Assembly

London, 21th May 2012

Statement on the Age of Criminal Responsibility in Pakistan

Bar Human Rights Committee

The Bar Human Rights Committee of England and Wales (BHRC) would like to express its concern at the position of Pakistan's Ministry of Interior, which is blocking plans to raise the age of criminal responsibility in the Islamic Republic of Pakistan from 7 to 12 years.

The BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with protecting the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards pertaining to the right to a fair trial.

The Pakistani Ministry of Interior has claimed that children in Pakistan grow up faster than children elsewhere because of the country's hot climate and spicy food. Furthermore, in a written submission, the Ministry of Law and Justice of Pakistan has claimed that:

It can be well understood that attainment of maturity of understanding depends on social, economic, climatic, dietary and environmental factors, that's why a child in our subcontinent starts understanding nature and consequences of his/her conduct much earlier than a child in the west specially because of general poverty, hot climate, exotic and spicy food which contribute towards speedy physical and mental growth of the child.

The BHRC respectfully submits that this position has no scientific basis and is not supported by any professional body of opinion. The Protection of Children Bill 2006, which proposes that the age of criminal responsibility be set to 12, was drafted almost three years ago but has yet to gain cabinet approval because of the above objections.

The official commentary to the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") states that:

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no age limit at all, the notion of responsibility would become meaningless.

Pakistan ratified the United Nations Convention on the Rights of the Child (UNCRC) on 12 November 1990. Article 40 (1) of the UNCRC requires that:

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.

Article 40 (3) stipulates:

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:

- 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. A variety of dispositions, such as care, guidance and supervision orders; counselling; 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 offence.*

Whilst the UNCRC does not specify any particular minimum age of criminal responsibility, the United Nations Committee on the Rights of the Child, responsible

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for monitoring compliance with the UNCRC, has criticised jurisdictions in which the minimum age is 12 or less.

By international standards Pakistan currently has one of the lowest age thresholds for criminal responsibility at just 7 years old. The BHRC respectfully submits that the current position of the Interior Ministry and the Ministry of Law represents a fundamental breach of the basic human rights of children in Pakistan. The BHRC calls upon the Pakistani authorities to amend the current law to allow the age of criminal responsibility in Pakistan to be raised to 12 years of age.

Children represent one of the most vulnerable groups in society. The BHRC also calls upon Pakistani authorities to introduce legislation criminalising child pornography and child trafficking, matters not currently covered by Pakistan's criminal law.



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