

## National Preparatory Consultation on

# Justice with Children

Pakistan, 14 January 2021

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## 2 Acronyms

<b>Cr. C.P</b>	Criminal Code of Procedure
<b>CSO</b>	Civil Society Organisations
<b>GDP</b>	Group Development Pakistan
<b>JJSA</b>	Juvenile Justice System Act 2018
<b>KP</b>	Khyber Pakhtunkhwa
<b>LLB</b>	Legum Baccalaureus
<b>NJPMC</b>	National Judicial Policy Making Committee
<b>PPC</b>	Pakistan Penal Code
<b>SDGs</b>	Sustainable Development Goals
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNICEF</b>	United Nations Children's Fund
<b>UNSRSG</b>	United Nations Special Rapporteur to the Secretary-General
<b>VAC</b>	Violence Against Children

### 3 Executive Summary

The preparatory national consultation in Pakistan for the World Congress on Justice with Children caught a lot of interest: it was viewed live online via facebook by 1200 people and attended by approximately 87 participants via Zoom.

The viewers and participants included Civil Society Organizations (CSOs), lawyers, mental health specialists, judicial officers, children and youth<sup>1</sup> involved in promoting child justice in Pakistan in collaboration with the higher judiciary, the Federal Ministry of Law and Justice, the federal Ministry of Human Rights, the KP Child Protection & Welfare Commission, members of the National Commission on the Rights of the Child, concerned government officers from the Federal Ministry of Law and Justice, Federal Ministry of Human Rights, Khyber Pakhtunkhwa Child Protection and Welfare Commission as well as the Punjab Child Protection and Welfare Bureau, and the police.

The consultation held on 14<sup>th</sup> January 2021 aimed to create links and synergies at regional and national levels.

It mainly focused on two main topics:

- a) equal access to justice for all children; and, related,
- b) the right of the child to non-discrimination.

The panelists presented the context of the consultation, why Justice with Children was so important during the Covid19 pandemic, the legal framework prevailing in Pakistan, the challenges and the examples of good practices.

A question-answers session followed and the way forward was discussed.

Overall, the consultation highlighted that:

- a) The array of laws that Pakistan has enacted pertain to children's rights and processes concerning them present still some challenges in law enforcement that are to be tackled appropriately.
- b) There is an unprecedented agenda and momentum for access to justice for children in Pakistan. The formation of the child courts, the willingness of the government and Civil Society to work on this and the fact that children are engaged in this reformative agenda is really important.

<sup>1</sup> One child panelist was also one of the advisory members for the CovidUnder19 child participatory global survey,

- c) The importance of the direct involvement of children in this Justice with Children reformative agenda. The opinions and insights of the children who participated in the consultation were particularly thanked..
- d) There is room and willingness from all concerned for improvement on the justice for children sector in country.

## 4 Welcome Address

### Welcoming Participants

Ali Abbas, Communication Coordinator, Group Development Pakistan (GDP), welcomed the participants and introduced Barrister Jugnoo Kazmi, who moderated the consultation. He mentioned that Barrister Jugnoo Kazmi was an advocate in the High Court and the head of the Islamabad Chapter, Women in Law (WIL) initiative, a network promoting women's access to the legal profession and the justice sector. Barrister Jugnoo Kazmi then presented all the panellists and declared the consultation opened.

## 5 Introduction of the Consultation Context

Cédric Foussard, Advocacy and Global Learning Advisor, Terre des Hommes (TDH)

"I'm delighted to be here with all of you today for this National Preparatory Meeting in Pakistan, for the next World Congress on Justice with Children. The next World Congress will take place in November 2021 and will be mainly online, co-hosted by the Mexican Supreme Court to give you an update. This event is organized by a consortium of organizations, in particular, the International Association of Youth and Family Judges and Magistrates, Penal Reform International, Institute of Children Rights (IDE) and our friends from United Nations Children's Fund (UNICEF) and from the Office of the UN Special Rapporteur on Violence Against Children (UNSRSG on VAC).

The last World Congress took place in Paris in 2018 and was co-organised by United Nations Educational, Scientific and Cultural Organization (UNESCO). It focused on the topic of children's involvement in violent extremism. This was the first time Civil Society Organisations (CSOs), policymakers and academics met together to speak about this topic. As a result of the Paris World Congress, we developed a Declaration of Paris<sup>2</sup> which feeds reflections of the Committee of the Rights of the Child and contributes to the United Nations global study on Children Deprived of Liberty.

<sup>2</sup> <https://www.tdh.ch/en/media-library/documents/world-congress-justice-children-2018-final-declaration>

In 2019, with the group of organisations mentioned before, we decided to launch a global initiative on Justice with Children<sup>3</sup>. This initiative aims to create links and synergies at regional and national levels. One of our main achievements was the launch of a global campaign on accelerating the release of children in the time of the Covid-19 pandemic<sup>4</sup>. We developed several recommendations and analysed practices from all over the world on the situation of children in detention during the Covid-19 pandemic.

The main result of the Preparatory Meetings at the international level gives us a strong interest in two main topics:

- a) equal access to justice for all children; and, related,
- b) the right of the child to non-discrimination.

Today, we are expecting your input on these main issues to bring it to the World Congress in November 2021.”

## 6 Importance of Justice for Children in the Current Covid-19 Context

### Dr Najat Maalla M'jid, United Nations Special Rapporteur to the Secretary-General on VAC

“Dear children, Excellencies, Ladies and Gentlemen,

Thank you for this opportunity to join you in this national consultation to strengthen and advance justice for and with children, in preparation of the World Congress on Justice With Children. In my remarks today, I will focus on the importance of ensuring justice for children in the context of Covid 19.

The world is facing an unprecedented global health, humanitarian and socio-economic crisis. The pandemic and its mitigation measures have impacted children worldwide. In the word of the UNSG: what began as a health crisis risks evolving in a broader child rights crisis.

The challenges of ending violence against children were already immense before COVID-19 struck. The direct impact of the pandemic as well as mitigation measures taken are putting us even further behind.

Today, I want to share with you three messages:

The first message is that the pandemic and the responses from States’ are harming children worldwide, with the poorest and vulnerable being affected the hardest.

<sup>3</sup> <https://justicewithchildren.org/>

<sup>4</sup> <https://justicewithchildren.org/covid-19-advocacy/>

- We know that the risk of children being exposed to violence both at home and online has increased.
- We know that children who are already vulnerable – including the poor, minorities/indigenous, refugees, migrants, children living on the street, internally displaced children, disabled children, children deprived of family care and deprived of liberty, children living in conflict-affected areas and humanitarian settings are more at risk to have no access to basic services and /or to be victims of violence, discrimination, and exploitation
- We know that children are arrested and detained because they are living/and working on streets because they are migrants, refugees because they are participating to unrest and social movements calling for governments to address inequality, injustice.
- We know that this pandemic is creating added family stresses related to job loss, isolation, and anxieties over health and finances.
- We know that this pandemic is having significant negative effects on children’s mental health and wellbeing.
- We know that the mid and longer-term socio-economic crisis caused by COVID-19 will increase poverty and the risks of children experiencing violence and exploitation, with the most vulnerable being hit hardest.

Secondly, the pandemic and its mitigation measures are impacting the functioning of justice systems globally.

- The pandemic and its mitigation measures are impacting the timely, fair, and effective access to child-sensitive justice. Many justice institutions are already struggling to function as growing numbers of staff are forced to take time off work, courts are closing and reducing their operations which contributes to increased case backlogs and increasingly lengthy judicial and administrative proceedings.
- The rise in violence against children and GBV puts further demand on justice systems already limited and disrupted. And, the economic impacts of the pandemic will increase the burden on justice systems.

- The difficulty to access to justice services, in many countries, acutely affect children at risk or victims of violence, undocumented migrants, refugees and asylum seekers, children in detention including migrants and pretrial detainees.
- Additionally, the lack of functioning judicial oversight reduces monitoring and preventing torture and other ill-treatment in detention facilities.
- In conflict and crisis contexts, justice and security-related concerns are even more acute in the context of COVID-19. While specific guidance exists to address protection issues in humanitarian contexts during the pandemic, there is a need to review how justice and security institutions are functioning across the humanitarian-development nexus.

My third message is that the COVID-19 crisis is significantly affecting progress on the 2030 Agenda for Sustainable Development and calls for a renewed and sustainable investment on SDG 16 to achieve more peaceful, just and inclusive societies.

- The pandemic has revealed and exacerbated inequalities and injustices around the globe. It has given rise to justice challenges faced by vulnerable and marginalized children
- At the same time, the current situation has also spurred innovation, such as strengthening child helplines, solving cases online or over the phone instead of in court, releasing children who were deprived of liberty.
- I would like to commend the ongoing work in Pakistan in advancing justice for children, especially with piloting the 'child-friendly court' even during this pandemic. As the government of Pakistan prepares its second Voluntary National Review during the upcoming High-level Political Forum in July, I hope that these good examples will be shared in the report with the other Member States.
- This crisis provides an opportunity to rethink and invest in new ways of building with and for children peaceful, just and inclusive societies.
- As we take stock of responses to the pandemic so far and look ahead to building back better afterwards, we can make justice systems more gender and child-sensitive and accessible to all children.



- We must start by learning the lessons from the first phase of the pandemic and integrating them into emergency preparedness plans now, including protocols for inter-agency cooperation and for how the administration of justice can continue to operate under such challenging conditions.
- We must ensure that justice and child protection services are identified as essential and life-saving – along with physical health, mental health, education– as part of a multisectoral and child rights-based response built on a solid and sustainable social protection system that will protect children and their caregivers from economic risks.
- We must recognize that strengthening justice for and with children is an investment and will be key to the recovery phase as we build back.
- More broadly, every State requires sustained and high levels of political commitment to implement justice for children at the national and local level. This needs to be underpinned by the establishment of a comprehensive and child-centred justice framework, including: securing and defending rights of children left behind; equal access to a child- and gender-sensitive social and justice services and remedies; deprivation of liberty only used as a matter of last resort, in exceptional circumstances and for the shortest possible period; priority given to alternatives to detention and institutionalization; tackling structural injustices and corruption; ending impunity, and empowering communities and children through access to appropriate information, legal aid and increasing participation within the +justice system.
- Justice sector actors – from judges to police to legal aid providers – need to work together and with key actors of child protection and social systems.
- Justice sector actors can help change attitudes and behaviours, through promoting a switch from approaches that are quick to stigmatize and criminalize children – especially children from marginalized or poor backgrounds – to an approach where their rights are respected and their voices are heard.
- Empowering children and their families and enhancing their capacities to seek out redress for grievances is also critical to achieving access to justice for all children.

As a conclusion, this year the HLPF will review Sustainable Development Goal 16. It is a key moment for advocating and mobilizing all key stakeholders to ensure that all children without discrimination have equal access to justice and that justice in all its forms (penal, civil, social) meets the rights and needs of children, as enshrined in international human rights standards

As the UN Secretary-General has reminded us, the seriousness of the threats the world faces should not prevent us from seizing this “watershed moment for investment in critical public services and global public goods.”

## 7 Pakistan's Legal Framework for Justice with Children

### Syed Miqdad Mehdi, Advocate High Court, Child Rights Specialist

“If we talk about the child protection system in Pakistan, unfortunately, we don't have a very comprehensive one. We have some laws and provisions so we will discuss these briefly.

If we look at the constitution, there are only a few provisions which are on fundamental rights. These concern slavery, children in hazardous places, and the right to education. There is no standard definition of a child.

In the Pakistan Penal Code, we have some provisions which protect children from abuse and exploitation. Offences against children include child pornography, cruelty to children, and sexual abuse. Again, there is no definition of the child in the Penal Code, which is unfortunate. A standard definition is necessary for both clarity and justice.

Although the Juvenile Justice System Act 2018 (JJSA 2018) has certain shortcomings, it is a very comprehensive law. It was developed after a long consultative process and has provisions to protect children who are in conflict with the law. Its special feature is that it provides for free legal aid to the victim and the accused child, both at the expense of the state. It also requests exclusive criminal courts, juvenile justice committees, a system of diversion, and the establishment of observation homes and rehabilitation centres. Some pilot child courts have been established as a result. The JJSA 2018 has provided a mechanism for the expedition of cases involving children in conflict with the law and allows for rapid justice.

In 2020, we passed the Zainab Alert Response and Recovery Act to protect children who go missing. It aims to expedite the process of complaint and early recovery of the child.

We also passed the Prevention of Trafficking in Persons Act 2018. This has a very good definition of trafficking and covers both internal and external trafficking.

Cyber-crimes and pornography:

- a) We have the Prevention of Electronic Crimes Act 2016. This deals with cyber-crimes and pornography communicated through any medium.
- b) Child pornography is also covered in the Pakistan Penal Code which holds liable those creating and those in possession of such material.

Our provinces have also come up with laws which are related to child protection:

- a) The Punjab Destitute and Neglected Children Act 2004;
- b) The Khyber Pakhtunkhwa Child Protection and Welfare Act 2010;
- c) The Sindh Child Protection Authority Act 2011;
- d) The Sindh Children Act 1955;
- e) The Balochistan Child Protection Act 2016; and
- f) The Islamabad Capital Territory Child Protection Act 2018.

Child labour and domestic issues:

- a) Employment of Children Act 1991, recently amended to deal with child domestic labour; and
- b) Provincial laws such as The Punjab Domestic Workers Act 2019 and The Sindh Prohibition of Employment of Children Act 2017. But in three provinces - Sindh, KP, Balochistan and Islamabad - we don't have any laws to specifically deal with child domestic labour. This is a relevant issue to be addressed.

Child marriage and corporal punishment:

- a) The Child Marriage Restraint Act 1929 - this is an old piece of legislation. It has a difficult complaint process, light penalties and conviction under this law are rare. Sindh has, however, made more progressive laws.
- b) Sindh is the only province with legislation dealing with the issue of corporal punishment. This issue has been linked with the high dropout rate from school systems."

## 8 Challenges related to Justice with Children

**Ahmar Majeed, Advocate High Court, Child Rights Specialist**

"I will be mostly discussing the practical side - the issues and challenges children face in the criminal justice system when they come to court and interact with police.

We now have the fantastic Juvenile Justice System Act 2018 which covers many issues. However, this Act poses issues of practicality because we do not have the necessary tools at federal or provincial government levels for the implementation of the Act. As a result, most of the law is not implemented.

- a)** The law provides a legal aid mechanism for juveniles but there are no tools to do this so legal aid is not being provided to children or victims as it should.
- b)** The law says that, within 24 hours of a child's arrest, a lawyer has to share the rights of the juvenile with him when he/she is in detention. However, we have no mechanism for doing so and lawyers have not been appointed for this purpose.
- c)** The law requires exclusive juvenile courts to be established. However, we do not have many of such courts and usually existing courts have been given additional power to act as juvenile courts. This does not provide the exclusivity which is required under the law.
- d)** The law requires the implementation of diversion. However, we only have a few juvenile justice committees notified in the provinces which means that diversion proceedings cannot take place and the justice system fails to implement the law.
- e)** The structures required under the law have not been established thus far. For example, the law says that a child cannot be kept inside a police station when he is arrested and must be sent to an observation room. Since we do not have a single observation room established in Pakistan, every arrested child is usually sent to the same police station as adults and there are no separate cells for juveniles.
- f)** The law requires juvenile rehabilitation centres to be established for convicted children. Unfortunately, none have been established so far.
- g)** The law is strict about the disclosure of the identity of the juvenile but the courts fail to take action when the identity of the juvenile is revealed in the media. Social media poses a serious problem because, although the intentions may be good, pictures of the juvenile are spread. This puts the juvenile at risk.
- h)** The role of probation officers has been enhanced under the law. They have also been given an additional role allowing for their participation during the investigation process. They are also able to provide a comprehensive report on the juvenile at the request of the judge. However, probation officers are very far and few with very limited resources.

- i) With regard to the victims, we have recently had the Anti-Rape (Investigation and Trial) Ordinance 2020 and a criminal amendment Act in which rape has been redefined as gender-neutral. But, unfortunately, the law has been passed through an ordinance, so the life of the law is only 120 days. Parliament has to pass an Act, otherwise, the law will lapse. Under this law, a lot of structures and systems have been introduced but nothing has been established. Special courts, anti-rape crisis cells and designated medical officers are required for immediate and speedy examinations, but none of these has been established.
- j) Legal aid is to be provided under The Legal Aid and Justice Authority Act 2020. But this Act has not taken off yet.
- k) Witness Protection, Security and Benefit Act 2017 provides for witness protection, but we have not seen any major programmes being run.
- l) The medico-legal investigation is required for any sexual offence and rape offence. Though they are trying to address the issue under the new rape ordinance, medico-legal officers aren't always available around the clock in designated medical hospitals. Balochistan also does not have a DNA forensics lab.
- m) The police investigation is a problem. They are not trained on how to handle cases relating to juveniles or how to get statements from a minor that has been sexually abused. They are not aware of the legislative developments happening in Pakistan. The police department does not have a system to regularly train their investigators."

## 9 Example of Good Practices

### Valerie Khan, Executive Director, Group Development Pakistan

"In May 2018 a major law was enacted: the Juvenile Justice System Act. This legal reform set the tune for further taking into consideration the need of the children in conflict and in contact with the law.

In December 2017, the then Chief Justice of the Lahore High Court, Mr Mansoor Ali Shah, decided to pilot a juvenile court. To do that, he requested our support, and we asked for the help of schools. Roots IVY was the first school to respond. On 19 December 2019, the first juvenile court and the child-sensitive court under the JJSA 2018 was established in Lahore session court. Based on the performance assessment of that court - which was a positive one -, the National Judicial Policymaking Committee, in June 2019, decided to further establish and pilot child courts. Till date, we have so far seven pilot child courts that are established in the country and two more will be established in Karachi this month.

In addition to establishing those courts, the higher judiciary also decided that judicial officials should be trained on child rights, child protection and child justice, which we did. The result of this is that we really had a state-led process which was initially bolstered by the government through the introduction of legislation, and then by the judiciary through the enforcement of this legislation. Judges, lawyers, prosecutors, magistrates, police and child probation officers were trained. The result is that when we look at how those courts are functioning, there is a shift and we look at existing structures where secondary victimisation of the children does not occur. We see that practices within the court are in line with international child safeguarding standards. We are aware of the fact that those positive results are limited largely to the structures we have piloted in collaboration with the judiciary. But it has set up a model that is currently being studied by provincial governments to be improved upon and replicated further.

We see that the three pillars of democracy have worked together to improve the awareness of the population and decision-makers on child justice, the relevant legislation and its enforcement. To do this, we had the KP government synergise with us to make awareness messages against child abuse, how to report child abuse and what the relevant courts are. This allows for the provision of a kind of guide for both parents and children. We had musicians and celebrities who helped us guide parents on do's and don'ts. We also had the Federal Minister of Law and Justice partnering to listen to children's requests and to use arts such as movies, music or painting to discuss how to improve child justice. That has had a tangible effect as, when the children met the Federal Minister of Law and Justice in October 2019, they requested him to establish a child court in their city. We now have one approved by the Federal Cabinet.

There has been an unprecedented historical momentum from the judiciary and the government at a federal and provincial level to promote justice with children and to respond to cases of child abuse in a child and gender-sensitive manner in collaboration with the CSOs. Before this, no child rights organisation had been invited to sit in a meeting of the NJPMC and neither had they attempted to use arts for youth input on the topic. This ongoing training and capacity-building programme with the judicial academies is also critical to not only increase the level of knowledge among actors of justice but also to transform behaviour. To give you a tangible example, the judges that have been trained are issuing court orders demanding diversion, juvenile justice committees, observation homes and rehabilitation centres. KP has stated establishing child protection institutions and child courts, including virtual ones to ensure access to justice during the COVID-19 pandemic. The proactiveness exhibited by the state and judiciary and their communication with the executive, a tripartite synergy, for the development of domestic legislation and the enforcement of child rights in line with international commitments, is historical.

The government and the judiciary and the parliament have agreed to collaborate with the Civil Society and allow data collection. We have information to assess the performance of the piloted child courts and to assess the impact of the training. Based on that data, on scientific evidence, we can identify what is working well and what needs further improvement. This is called evidence-based and informed legal and policy reform. This is the only way forward.

Finally, the judiciary and the government have agreed to follow a child-participatory approach, which the children will tell you more about.”

## 10 Child Participatory Processes to Establish Child Courts

### Child & Youth Delegates

**Ali Hassan, 17.** “I was involved in the process of the making of child courts in KP. Our job was to find child-friendly spaces for a child court, to select a suitable colour scheme for it and to select play areas. The aim was to provide a child-friendly space in line with international standards. There are seven child courts all over Pakistan. One was established in a newly revived area. Before its inauguration, these courts were in a miserable condition. Now they have been made so that children do not feel fearful and receive speedy justice. I also participated in an activism activity to which children and the Minister of Law and Justice were invited. This gave children an opportunity to ask questions and present concerns to the Minister with regards to child justice. I observed that the comments were appreciated, and we received a positive response as our suggestions were truly heard. I am determined to persevere in the struggle for child justice.”

**Khadija Malik, 20.** “I am a student of LLB Honours at Roots IVY. Back in December 2017, the first-ever specific juvenile court was established in Lahore in collaboration with the Lahore High Court. Back in 2017, we had arranged a collection of toys, books and food and sent them to Lahore. In 2018, we got invited to a human rights conference. After attending that, I realised that we needed to look for the most vulnerable members of society. I started looking after 5 orphan families. I got them admitted to schools and visited them every week. When I started working with them, I saw the problems. One girl was working at someone's house and she was being tortured. I took action against this and solved it and registered an FIR<sup>5</sup>. The Civil Society and the Pakistan government need to join hands in order to protect children.”

<sup>5</sup> First Information Report: this is the first piece of information recorded and documented by the Investigation Officer of the concerned police station whenever a citizen wants to file a complaint for an alleged offense. It also constitutes a critical piece of evidence.

**Asad Ullah**,<sup>19</sup> "I am a student of Roots IVY. A fully positive environment can be made for children. Trained teachers should be appointed to help children in every phase. We should present real-life examples of people who were once involved in crime, living a happy and prosperous life now."

## 11 Interactive Session, Way Forward

### Questions/Answers session

- a) What efforts are being made to expand participatory processes in order to represent the voices of such children, so that the laws affecting them are passed based on their reality?

*Valerie Khan:* Currently, the state is following an evidence-based policy for legal reform with regards to justice with children. This entails the child courts performance assessment as well as interviewing children to assess their experience in courts. Community sessions have also been organized to collect feedback. This feedback is to be compiled as a report and a kind of technical brief to be shared with the policy and law-makers to improve and enforce the necessary changes.

- b) What efforts are being taken to ensure basic rights to children who are stateless? Due to the lack of identity, they are not enrolled in educational institutions; their families live in a dire situation; health and safety is an issue for them as well. Are there any measures to integrate them in a way they can access fundamental rights?

*Sharafat Ali:* Pakistan does not have an answer to this issue. This issue existed even in 2009 when a report on CRC was being written, and in 2016 as well. This has been one of the toughest questions because there is no clear answer. Another pertinent question related to this is of the third generation of Afghan refugees who are still refugees despite having been born here. And, so, the question is wider than one of the stateless individuals.

- c) How do you plan to address the lack of special treatment or attention with regards to the unavailability of special funds for child courts and the lack of stationary or separate staff employed?

*Dr Tariq Hassan:* Countries develop legislation consistently. It starts with having legislation and then building upon that. The problems you have mentioned are rooted in a resource issue. However, a lot of work is being done. as per Valerie and a lot more does, of course, need to be done. Research, manpower and other resources are required for this purpose?

- d) Dr Hassan's opinion was requested on restorative justice practices with child victims and offenders.

*Dr Hassan:* I cannot give a clear answer to Pakistan because I do not have enough knowledge of the local situation. However, there is a need to monitor practices on an ongoing-basis and



perhaps select a number of cases on a 6 monthly basis. Judicial exams should require higher awareness on child justice by including more questions on juvenile laws and cases on issues such as the capacity to plead etc. Law conferences must have psychiatrists and other speakers present.

- e) "I want to share my experience. I have been working at Camp Jail with juveniles for the last 15 years. Their documents never mention the true age of children when they are clearly minors. This causes them to lose all their rights under the JJSA. They have no liaison with probation officers and most children are street children with no support systems. They are usually arrested based on unknown FIRs. The issue in the system is that police officer are not penalized for any of this. As a result, courts do not consider their juvenile status, especially since the prosecutors do not discuss this issue in court when they do bother showing up. The judges also lack seriousness in their responses. This issue related to age is still being faced despite the JJSA".

*Sharafat Ali:* We must understand that the JJSA is new and that the obligatory window of release or arrest for a juvenile is very limited. Almost every child below the age of 16 can get away from detention before the trial. Children between 16 and 18 years of age have a very small chance of being denied bail unless a major offence is in question.

Secondly, the police are certainly generally inclined towards penning down a majority age for children in order to avoid the procedures pertaining to juveniles. However, the JJSA keeps this issue in check as it imposes a duty on the police and on courts to assess the juvenile's age under court supervision within 24 hours.

Thirdly, the JJSA provides for up to 3 years of imprisonment for a faulty investigation. There are penalties for police and public officers in cases of sexual offences as well.

So, even if the JJSA does not cover everything, it certainly addresses the issue of faulty investigations.

- f) Dr Hassan mentioned adverse childhood experiences. What exactly does the rehabilitation process for such experiences entail?

*Dr Hassan:* It is a matter of attempting to stabilize the individual. This includes the involvement of a social worker as well as educating the family on the issue and process. This becomes the government's duty. Families usually may not be aware of certain issues that can cause destabilization and how to help juveniles manage that trauma. It is above the ages of 3 or 4 that you can predict difficulties developing in children.

- g) This participant had 3 points to make:

- a) An unjust law is no law at all. The minimum age for crime is 7 and some say that it is the age of 14. But what does a 7-year-old child know about the nature of the act and the

consequences? In Pakistan where some kids are not able to prove their ages because of the lack of documentation, children must go through trials.

- b) No specific time limit is given to courts for these cases.
- c) Education is limited so why has the government not made laws for children to be able to raise their voices and be aware of their rights?

*Valerie Khan:* As per the JJSA, and PPC, the minimum age for criminal responsibility is 10 years and then the second threshold is 10-14 years of age at the discretion of the judge based on the child's ability to have knowledge of the consequences of the act. There is a plan to suggest a change of the minimum age to 14 as per international standards laid down in the general comment 24 of the UNCRC. In Mardan, for example, a child's case was not heard because he was less than 10 years of age. This shows that a change in judicial behaviour is slowly coming about.

Now, any document can be used to prove a child's age, it is not limited to a birth certificate anymore and Pakistan is working with UNICEF to improve birth registrations.

Attempts are being made to add child rights and child protection to the curriculum. The state, different education departments and the Ministry of Education must work together for this. Initiatives have been organised in schools where booklets and curricular from different child rights organizations have been distributed to teach children about their rights and the justice system.

- h) Does the JJSA include penalties for a person who incites a child to commit a crime?

*Sharafat Ali:* The JJSA only includes the punishment for a faulty investigation but otherwise it is meant to provide procedural information.

## Way Forward

### *Dr Tariq Hassan, Forensic Psychiatrist*

"My job is to be the liaison between mental health and the justice system. My job is to provide opinions to the court in relation to people who have a mental health issue, who are in conflict with the law, and interpret that mental health issue and the offence in relation to legislation so that the judges can make an informed disposition. My job is to understand the law and psychiatry.

I've been working with the Pakistan Psychiatric Society for the last seven to eight years and we have recently created a forensic section. I've been also working with the Islamabad High Court Bar Association and the Federal Judicial Academy in capacity-building with regards to forensic psychiatry and its application.

The issues around adverse childhood experiences are something which does not require too much science but there is plenty of evidence that physical, emotional, sexual abuse, neglect, household dysfunction, and substance abuse can all have a negative effect on the developing child. The formative years between 12-17 are the most seriously affected as it is the period during which the identity is formed. Hence, when you are looking at reformatory justice, it is important that the justice system is there to reduce and stabilise childhood adverse experiences, as opposed to aggravating them. This is necessary to ensure that children become healthy members of society.

The Juvenile Justice System Act 2018 lays a good framework. You are looking at rehabilitation, reintegration; you want fair and proportionate accountability, timely intervention and prompt enforcement. But even though we are looking at the needs of the child, we also need to keep in mind the victims in this process. When you are looking at any disposition, the jail has to always be a last resort. We use other extrajudicial measures to try and divert children away from the criminal justice system. The measures proposed in the JJSA 2018 are the kind of diversion frameworks needed to allow the child to develop the relevant positive education through rehabilitation, as opposed to getting them within the justice system. Managing this properly in their youth is an important investment for them to become productive members of society."

***Waleed Mahmood, Roots Child Rights Society***

"I would like to talk about child incarceration. According to a report published by UNICEF in 2016, there were over one million children imprisoned around the world. The biggest reason for this is the low age of criminal responsibility set across justice systems around the world. Furthermore, in many countries, many children are thrown into the labour force, are underpaid, overworked and often neglected. This leads to many of them joining gangs and criminal organisations as they do not have a support system. I would like to propose that youth correction institutions around the world need serious reform. There is not enough focus on rehabilitation and too much on punishment. These institutions should focus more on enlightenment and education, to make these children aware of their responsibilities as the youth of their respective nations."

***Waheed Ahmad, Advocate High Court, Child Justice Specialist***

"I want to share my experience because for the last 15 years I have been working with juveniles. I have seen that in most cases, the police never mention the right age of the children in their identification papers. The juveniles are always stated to be older - usually 19-20. For this reason, they lose all their rights mentioned in the Juvenile Justice System Act. So, there is a big problem in our system as there is no penalty where the police do not mention the age of juveniles and do not inform probation officers. Even the courts are not going to consider the rights of juveniles as they do not see a child."

***Sharafat Ali, Advocate High Court, child rights and child justice expert***

“I would differ with the previous speaker on a few points. Firstly, the window for not releasing a juvenile or arresting a juvenile is actually very limited. Below the age of 16, there are chances for every juvenile to get bail. Between the ages of 16 and 18, you would only not get bail in serious offences like murder, rape or terrorism. So, the law does allow for children to not be kept in remand.

Secondly, police are generally inclined towards stating juveniles as older so they do not have to go through all the processes required for a juvenile. But, at the same time, the Juvenile Justice System Act does have a check on the police. For instance, the Act empowers the court to give its findings on the age of a juvenile.

Finally, I would like to comment that the Act clearly provides for up to three years' imprisonment for faulty investigation. “

***Barrister Jugnoo Kazmi***

“I can summarise the recommendations for the way forward:

- a) Resource allocation;
- b) More capacity-building;
- c) More legal and policy reforms;
- d) Investment in mental health; and
- e) Strengthening children's participation.”

**12 Child Justice and Rule of Law**

***Angela Vigil, Pro-Bono Partner and Executive Director of Pro-Bono Practice, Baker McKenzie***

“I come from a law firm that is focused on business, but our pro-bono work is very much focused on children. My purpose today is to talk about the connection between child rights and the rule of law.

I assume the following is very obvious: the improvement of the child rights system and the implementation of what we've been talking about all day, directly improve the rule of law for any country and contributes to the path towards meeting sustainable development goals that all nations have pledged to meet. That seems obvious, but when you look into how it is such a clear and easy way for all nations to improve their rule of law, it seems a really important statement to make.

The rights enshrined in the Convention of the Rights of the Child signed by Pakistan run through all the sustainable development goals. They all work together in building a strong, transparent and meaningful child rights system that does what it promises.

When you look at the rule of law indexes that examine all nations around the world, the number one factor that affects whether or not the rule of law goes up or down is fundamental rights. We are talking about basic statements of equal treatment, the absence of discrimination and access to justice. Sustainable development goals talk about due process, speedy trials, properly identifying the age of children and keeping them in youth justice systems. When rule of law indexes evaluate all of our systems, they look at criminal systems generally and that includes juvenile justice systems.

Here is our challenge. In child rights, it is not just laws, it is also evidentiary-based, multi-disciplinary work. It is not just laws and lawyers - you need the voice of children and youth; you need to look at the disciplines of psychology, medicine and others that need to be part of an active and positive juvenile justice system. So, better child rights systems, more evidence-based child rights systems, improve our fundamental rights and therefore the rule of law. Improvements in Pakistan are going in that direction."

### 13 Vote of Thanks

#### ***Marta Gil, MENA Regional Programme Coordinator – Access to Justice (A2J), Terre des Hommes***

"A thank you to everyone. I would like to share some of the highlights from each of the panellists.

- a) One advocate highlighted the array of laws that Pakistan has for children. It was highlighted by our lawyer panellist that there are still some challenges in law enforcement.
- b) There is an unprecedented agenda and momentum for access to justice for children. The formation of the child courts, the willingness of the government and Civil Society to work on this and the fact that children are engaged in this reformative agenda are really important.
- c) A special thanks to the children for their opinions and insights, without them, justice with children won't make any sense.
- d) There are room and willingness for improvement. There are children and youth committed to working on access to justice."