

Criminal Law and the Rights of the Child

Training Workshop Summary¹

On 28-29 June 2010, a training workshop was held in London to bring together law professionals (including lawyers, judges, prosecutors and human rights defenders) from the UK and from a number of Muslim countries to consider the rights of children in their criminal justice systems. Through this workshop, law professionals from countries such as Iran, Lebanon, Egypt, the United Arab Emirates, Turkey and Pakistan, shared their views on the current criminal justice processes applicable to young offenders. This two day session was organized as part of the Institute's "Criminal Law and the Rights of the Child in Muslim States" project, which aims to enhance the implementation of non-discriminatory laws relating to children in the criminal justice system of Muslim States.

In order to set the scene, the workshop started with a panel which put into perspective the rights of the child within the international human rights framework and discussed specific international human rights standards relating to juvenile justice. The instruments presented include the UN Convention on the Rights of the Child (CRC) and also soft law texts, such as the UN Rules for the Protection of Juveniles Deprived of their Liberty, the UN Standard Minimum Rules for the Administration of Juvenile Justice (known as the 'Beijing Rules'), the Guidelines for action on Children in the Criminal Justice System and the UN Guidelines for the Prevention of Juvenile Delinquency (known as the 'Riyadh Guidelines'). The regional mechanisms promoting and protecting human rights were also analysed, including Europe with the Council of Europe, the Americas with the Organization of American States and Africa with the African Union.

Once, the general context of the workshop was debated, the Organization of the Islamic Conference (the 'OIC') and its Covenant on the Rights of the Child in

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Islam, adopted in 2004, was discussed in detail. Given the fact that this Covenant applies to children living in Muslim societies, it was a topic of particular interest for the delegates in attendance. While this Covenant recognises international instruments such as the CRC, some gaps were identified. For example, according to Article 1 of the Covenant, a child is defined as “every human being who, according to the law applicable to him/her, has not attained maturity”. Without a clear indication of an age indicating when ‘maturity’ starts, this definition is difficult to apply in a legal context. Furthermore, while the Covenant is based on highly ambitious objectives as provided in its Article 2, the Islamic *Sharia* has to be respected. For example, the Covenant recognizes that every child can express his or her own views to the condition that these views are not contrary to the *Sharia*.

The discussion on the OIC Convention was followed by a comparative presentation of international human rights law and Islamic criminal law aspects. While the CRC provides that the age of majority applicable in most States is 18 years of age, it does not prescribe an age for criminal responsibility. According to Rule 4 of the Beijing Rules: “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”. However, by only mentioning “too low an age”, the Beijing Rules do not give a specific definition of such age, thus leaving room for interpretation to the courts, which may be of concern where a young offender is accused of a serious crime. Under Islamic criminal law, various stages of development are differentiated. The first stage, known as *sabiy ghar mumayyiz* (meaning a child incapable to understand), spans from birth until the age of seven. The second stage, known as *sabiyy mummayyiz* (meaning a child with weak understanding), applies to individuals aged seven to 15. Thereafter, a person is in the third stage and is considered an adult with full understanding, i.e. *balig wa rashid*. Therefore the age of criminal responsibility under Islamic law is associated with a child’s attainment of puberty, along with his or her capability of complete understanding. This definition relates to the *hadith* of the Prophet which states that “three persons are not accountable: a child until he or she reaches the age of puberty, a person in sleep until awake and an insane person until becomes normal”. This comparative presentation led to the conclusion that children who do not have an understanding of the gravity of their actions should not be held criminally liable.

Following the comparative perspective, the workshop continued with a detailed presentation of the ways young offenders are dealt with in the criminal justice system in various States. These sessions included presentations on the situation in Egypt, Iran, Lebanon, Turkey and the United Arab Emirates. For example, there was a presentation on the protection measures applicable in Lebanon, in particular the ones contained in law 422/2002 entitled “[P]rotection of children in violation of the law or exposed to danger”. This law addresses the functioning of juvenile courts with an emphasis on educational and rehabilitative measures

rather than punishment. Its implementation requires the application of principles such as the primacy of the interest of the child, the guarantee of support to enable the child to play a role in society and the adoption of procedures that are softer than regular criminal ones. This can be achieved through an amicable settlement or the application of measures such as public blame, placement under probation, supervised freedom, work of general interest or reparation for the victim. Furthermore, according to Article 25 of this law, the right to protection is also guaranteed through the judicial authority which has the power to interfere *sua sponte* whenever the interest of a child is at risk. Thus the juvenile justice system in Lebanon is not only concerned with children in conflict with the law but it also takes into account the roots of young offenders' problematic behaviours. Finally, it was underlined that the interest of the child prevails over any religious law on custody. Despite the fact that each religious community enjoys legislative and judicial autonomy on matters regarding the personal status of individuals in Lebanon, the juvenile courts provide for the protective measures which are in the best interest of the child, independently of the religious decision designating the legal tutor.

In Egypt, the juvenile justice system operates with a specific set of rules and procedures intended to reflect the child's limited responsibility, with the recently reformed child law now setting the minimum age of criminal responsibility at 12. In addition, the law stipulates that children who commit a crime between the ages of seven and 12 shall have their case considered by the child court. Thus, although the age of criminal responsibility is 12 according to the law, children can be tried at the age of seven already. A weak point of the criminal justice system in Egypt which was highlighted is the situation with judges, who may sit at a child court without any specific training. The sentences given to offenders aged 12 to 15 are usually amount to social measures, such as reprimands and community service. Offenders between the age of 15 and 18 are given reduced penalties. As a result, where the crime committed is punishable with the death penalty, imprisonment for life or rigorous imprisonment, a child accused of such serious crime may be sentenced to prison for a maximum of 15 years. In general, detention has been used as a constant sentencing, mainly in the absence of alternatives. However, the recent amendments to the child law have also introduced mechanisms to support children who are considered 'at risk' of becoming criminal offenders. The changes seek to avoid the treatment of these children within the criminal system by providing support at various levels, including local and national, through the implementation of prevention measures.

In Turkey, children under the age of 12 are not criminally liable and so they cannot be prosecuted. However, specific security measures can be imposed on them. Between the age of 12 and 15, a child may be exempt from liability if she or he is incapable of comprehending the legal meaning and consequences of his or her act or if he or she lacks capability to control his or her behaviour. With regard to sentences, they are usually reduced by half for children aged 12 to 15 and by one third for minors between the age of 15 and 18. Furthermore, this

presentation detailed some of the measures in place which help to protect the interest of a child during court proceedings such as a separate detention from adult detainees and limitations applicable to the hearing of child witness.

In Iran, article 49 of the Islamic Penal Code states that children are immune from prosecution for committing a crime. While it does not determine the age for criminal responsibility, the Code states that a child is a person who has not reached the age of puberty (known as '*bolooagh*'). It is article 1210 of the Civil Code which provides that the age of puberty is 9 for girls and 15 for boys. As a result, this is the age when young girls and boys can respectively be held criminally responsible in Iran at present. However, there is currently a proposed bill on children protection which seeks to raise the age of criminal responsibility to 13 for both girls and boys. It was also mentioned that there are a number of measures ensuring the protection of children's rights, including through procedural means like confidentiality of court proceedings involving children and limitations on the person able to investigate crimes allegedly committed by a child. In fact, the parliament passed a law nine years ago on the protection of youth and juveniles which contains rigorous protective measures for children, including against their parents if they use violence, force them into labour or limit their access to education.

The workshop also included a session on the youth justice system in the United Kingdom. It was noted that the current age for criminal responsibility, set at 10 in England and Wales, is too low according to the Committee on the Rights of the Child, which has indicated that 12 is the lowest acceptable age for criminal responsibility. Reforms in the 1990s provided for more mechanisms supporting rehabilitation, including alternatives to custody. Further reforms, such as the Criminal Justice and Immigration Act 2008 introduced new alternative measures as well as a new sentencing guideline focused on prevention and welfare.

In conclusion, there are still many gaps to be filled in the area of child protection both in the Islamic and non-Islamic countries. With regard to Islamic countries, it was said that Islamic countries could amend or reform their laws by adopting an 'objective interpretation' of Sharia to make their laws entirely compatible with international standards, notably by increasing the age of criminal responsibility and by drawing a distinction between that age and the age of mental maturity. While criminal responsibility of young offenders cannot be abolished entirely, justice systems must ensure that a special treatment is given to children as they cannot be submitted to the same procedures as adults. Finally, capital sentences should never be given for a crime committed by someone who was under 18 at the time of the crime.

The Institute was particularly pleased with this workshop, which was considered successful not only because of the quality of the presentations given but also because of the high level of participation and interest demonstrated by the forty delegates throughout this two day session.