

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	759
Land:	Pakistan
Kilde:	Conscience and peace tax international
Titel:	Submission to the 142 nd Session of the Human Rights Committee. Pakistan (Military service, conscientious objection and related issues)
Udgivet:	september 2024
Optaget på baggrundsmaterialet:	6. januar 2025

CONSCIENCE AND PEACE TAX INTERNATIONAL (CPTI)

Submission to the 142nd Session of the Human Rights Committee

PAKISTAN

(Military service, conscientious objection and related issues)

Updated September 2024.

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CPTI aims to supply information on all States with armed forces which report under the International Covenant on Civil and Political Rights (ICCPR) with regard to their military recruitment legislation and their recognition of the right of conscientious objection, even when there appear to be no urgent questions arising.

In association with the Child Rights International Network, CPTI also reports to the Committee on the Rights of the Child on States where there appear to be issues under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and although these issues do not necessarily have implications for the ICCPR, such concerns are also reported in these submissions.

Summary

Pakistan has never acknowledged a right of conscientious objection to military service. However although the military has a dominant role in national affairs, Pakistan inherited from the British Indian Empire a system of voluntary recruitment and the question has never arisen in practice despite a provision in the 1952 Pakistan Army Act that would have authorised the imposition of obligatory service in time of national emergency.. It is of course always possible that a person who had enlisted voluntarily might subsequently develop conscientious objections, and be driven to seek release from military service on such grounds, but no such cases have been reported

Latest statistics¹

POPULATION (November 2023, estimated)	274,654,000
proportion of males aged 15-19	5.2%
thus annually reaching recruitment age (approx):	2,575,602
ARMED FORCES: Active strength, November 2023	660,000
compared to the male population reaching recruitment age	25.6%
MILITARY EXPENDITURE: US \$ equivalent, estimated 2023	\$63,301m
Per capita	\$947
As % of GDP	2.1%

1 Sources: For military expenditure, Stockholm International Peace Research Institute – SIPRI, April 2024. Otherwise, The Military Balance 2024 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.

Historical Background

Pakistan was created as part of the on the ending of British rule in India, comprising the four Muslim majority provinces of the former Raj in the North-West, plus the detached area of East Bengal. The initial partition was accompanied by much violence and the displacement of over ten million persons. A further major conflict in 1971 saw the secession, supported by India, of East Pakistan, which became the independent state of Bangladesh. Estimates of the death toll in 1947 and 1971 vary enormously, but in aggregate it is almost certainly well in excess of a million.

Meanwhile, the inclusion in India of the province of Jammu and Kashmir was opposed by Pakistan, which occupied the northern part of Kashmir. This led to open war between the two countries in 1947-8, 1965 and 1999, and the ongoing tensions were a major incentive to the development of nuclear weapons, in defiance of the non-proliferation treaty, by both India and Pakistan during the 1970s. The dispute over the status of this territory continues, with occasional lethal skirmishes on the cease-fire line. A number of armed opposition groups operate from Pakistan against the area in Indian control.

Pakistan has also been embroiled in the conflict in neighbouring Afghanistan, with various warring factions at different times establishing bases among Afghan refugees in the North-West of Pakistan and receiving varying measures of overt or covert encouragement and assistance from the Pakistani security forces.

The history of Pakistan has been marked by political violence, which has seen the assassination of one prime minister and attempts on the lives of others, and conflict between the security services and numerous insurgent groups, principally the “Pakistani Taliban” in the north-western Khyber-Pakhtunwa Province, but also Baluchi separatist in the south-west and at times smaller Sindhi and Punjabi insurgent or sectarian groups.

In 2018 it was estimated that over 65,000 persons had died in Pakistan in the “War on Terror” launched in response to the Al Quaida attacks on New York in September 2001, half of them “terrorists” but over 23,000 civilians.² Deaths of terrorists and security forces personnel are believed to have peaked in 2009 at about 9,000, over 8,000 of which were “terrorists”; Civilian deaths were however highest between 2011 and 2013 at about 3,000 per annum. In 2022 the number of deaths was estimated as 971 – 229 civilians, 379 security force personnel and 363 “terrorists”.³ Even allowing for the very large population this represents an alarming rate of between three and four persons per million.

The armed forces have always been prominent in Pakistani politics. From 1977 to 1988 the country was under the direct military rule of General Zia-ul-Haq, and from 1999 to 2008 by General Pervez Musharraf. The survival of civilian governments has also been widely seen as dependent on the support of the military.,

2 The Nation, 9th November 2018 <https://www.nation.com.pk/09-Nov-2018/us-war-on-terror-killed-at-least-65-000-people-in-pakistan-study>

3 <https://www.satp.org/terrorism-assessment/pakistan>

Juvenile Recruitment

Pakistan ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) in 2016, but has yet to deliver its Report. In the Declaration made on ratification:

“The Islamic Republic of Pakistan, pursuant to article 3 (2) of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, declares that:

- i. The minimum age of recruitment of personnel into the armed forces of Pakistan is 16 years.
- ii. The armed forces personnel are sent to combatant areas only after they attain eighteen years of age.
- iii. The recruitment into the armed forces of Pakistan is purely voluntary, and made through open competition on merit without any force or coercion.
- iv. The recruit is required to present B-Form issued by the National Database and Registration Authority as a token of proof of having attained minimum age prescribed under the law for recruitment.”

The Pakistan National Service Ordinance of 1970 stated that officers and jawans (other ranks) could be recruited between the ages of 17 and 23 but were required to have at least one year’s training before entering service, meaning that the possibility of deployment before the age of 18 should not arise. However some doubt is cast by the report that according to the recruitment website the age limit could be reduced between three and six months for “special deserving cases”, and a later source is quoted for a recruitment age of 16 for other ranks,⁴ consistently with the subsequent OPAC Declaration. It has however been reported that in the past the air force website stated that technicians can be recruited from age 15.⁵

A number of cadet schools admit children from the age of ten, but it is believed that pupils were free not to opt for a military career. The Military College in Jhelum has about 500 cadets, most of whom proceed at the age of 17 for two years’ officer training at the renowned Pakistan Military Academy – it is not known whether they have a free choice.⁶

4 Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2008, London, 2008, p.66

5 Child Soldiers International (formerly Coalition to Stop the Use of Child Soldiers), Louder than words: an agenda for action to end state use of child soldiers London, September 2012, p.255

6 Child Soldiers Global Report 2008, op cit.

Juveniles in armed opposition and terrorist groups

Religious madrasas form an alternative to the inadequate national education system in a number of regions, and some gained a reputation for inciting militant versions of Islam in their pupils; Pakistani madrasas were credited as a breeding ground for the Afghan Taliban, and also for radicalising foreign students, including some of those involved in the 2005 terrorist attacks in the United Kingdom. A number of juveniles have been associated with armed opposition groups in Afghanistan operating from Pakistani territory, and some instances have been recorded of juveniles carrying out suicide bombings.

In its concluding observations on Pakistan's Fifth Periodic Report under the Convention on the Rights of the Child, the Committee on the Rights of the Child expressed concern "that private madrasas are often used for child recruitment and military training by non-State armed groups." and urged Pakistan "to ensure that the curricula of madrasas follow the overall State curriculum and do not teach religious or sectarian intolerance, are designed in the spirit of human rights and include subjects on children's rights and international human rights instruments to which the State is a party. It also urges the State party to monitor non-State armed Groups and prohibit them from accessing educational facilities and to protect children from being exposed to recruitment and given military training by armed groups."⁷

More generally, the Committee was "gravely concerned that children continue to be targeted for recruitment and training by armed groups for military activities, which include suicide bombing and detonating landmines, and are transferred to the front lines of conflict areas, where they are exposed to mortal danger and risk of physical harm, and that insufficient measures have been taken by the State party to prevent such recruitment." and urged "the State party to take all necessary measures to prevent and prohibit non-State armed groups from recruiting children and using them in armed campaigns and terrorist activities, in particular suicide bombings."⁸

In response, the State Party has indicated that 235. "in 2019, the Government initiated an effort to register and monitor madrassas to prevent the possibility of abuse, exploitation, and incitement of violence, following which 295 madrassahs applied for Government registration."⁹ It is not indicated what proportion of the total this represents.

The State party reports that all activities of non-governmental armed groups are illegal under the Private Military Organizations (Abolition and Prohibition) Act 1973, and refers to strenuous efforts by the National Counter Terrorism Authority to eliminate such groups.¹⁰ Like many other States it has not specifically criminalised the recruitment and use of children by such groups as an additional or aggravating offence. Otherwise it gives no details of efforts to prevent such recruitment. The efficacy of these initiatives has however not yet been assessed; information on the recent involvement of children in armed opposition and terrorist activity being piecemeal - Pakistan has not featured in reports from the Special Representative of the Secretary General on the involvement of children in armed conflict.

In its Concluding Observations on Pakistan's Initial Report under the ICCPR, the Human Rights Committee expressed concern over "the very broad definition of terrorism laid down in the Anti-Terrorism Act; [and] by the Act's supremacy over other laws, including the Juvenile Justice System

7 CRC/PAK/CO/5, paras 63, 64

8 Ibid, paras 69, 70.

9 CRC/PAK/6-7, 7th February 2024, para 235.

10 Ibid, para 250.

Ordinance, 2000, which enables the courts to try juveniles” and recommended “removing the jurisdiction of the antiterrorism courts over juvenile offenders”.¹¹

The Committee also expressed concern over the role and procedures of military courts, and recommended:

“The State party should (a) review the legislation relating to the military courts with a view to abrogating their jurisdiction over civilians and their authority to impose the death penalty and (b) reform the military courts to bring their proceedings into full conformity with articles 14 and 15 of the Covenant in order to ensure a fair trial.”¹²

The Second Periodic Report indicates that the Special Military Courts have now expired, and in response to a question in the List of Issues¹³ the State Party has now indicated:

“In 2018, Pakistan enacted the Juvenile Justice System Act (JJSA), which allowed the juvenile justice system to handle cases of children under 18 years. Furthermore, in the case of Saeed Ullah vs Lal Sher and State (2023), the Peshawar High Court ruled that the Juvenile Court shall hear the trial of juvenile offenders accused of terrorism established under the JJSA.”¹⁴

Pakistan’s latest report under the Convention on the Rights of the Child reports more broadly on the provisions of the JJSA:

“Under JJSA, no person who was a juvenile offender at the time of the commission of an offence shall be awarded the punishment of death. According to JJSA, the Juvenile Court shall have exclusive jurisdiction in cases in which a juvenile is accused of commission of an offence. All cases pending before a trial Court in which a juvenile is accused of an offence stand transferred to the Juvenile Court having jurisdiction that is staffed by specially trained juvenile judges, prosecutors, probation officers, and other relevant staff. The JJSA 2018 also provides a mechanism for the determination of the age of juveniles and further protection for juveniles. It allows children in conflict with the right to seek legal assistance from a qualified legal practitioner appointed by the Government or by the Juvenile Court with at least seven years standing at the Bar. No juvenile may be charged with and tried for an offence with an adult.”¹⁵

11 CCPR/C/PAK/CO/1, 23rd August 2017, paras 21,22.

12 Ibid, para 24.

13 CCPR/C/PAK/Q/2, 29th November 2023, para 7.

14 CCPR/C/PAK/RQ/2, 20th May, 2024, para 54.

15 CRC/C/PAK/6-7, para 287.

Suggested Questions and Recommendations

The Committee notes that Pakistan has ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict but has yet to deliver its Report. Meanwhile the legal military recruitment age, at 16, is one of the lowest in the world. Does the State Party plan to raise the minimum recruitment age?

The Committee notes also that there is no conscription, all recruitment into the armed forces being voluntary. Have there nevertheless been any instances where a serving member of the armed forces has sought early release having developed conscientious objections? In such cases, what procedures were, or would be, followed?