

**NATIONS UNIES
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AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24)
PAK 1/2012

7 February 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2, 15/15 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of **X. and Y., daughters of Yar Mohammad**, minors of 14 and 12 years of age, respectively.

According to the information received:

On 26 August 2010, both sisters were arrested from a house in Rawalpindi together with Mr. Ayaz Khan, 30 years of age. Officers from the Westridge Police Station took a 13 year old boy named C. from the same house, who had reportedly been kidnapped for ransom from another home in Rawalpindi on 4 August 2010, by four unknown men, following which the police lodged FIR No. 712/10, dated 4 August 2010, against unknown persons. The police charged them under Section 364-A of the Penal Code of Pakistan (kidnapping for ransom) and Section 7 of the Anti-Terrorism Act, but did not investigate the girls' involvement and intention in the case.

The two minors were nonetheless arrested and held one night in custody at the Westridge Police Station, when the police produced them before the Anti-Terrorism Court Rawalpindi No. 1. The Court ordered pre-trial detention for both girls and Mr. Khan and sent them to Adiala Jail in Rawalpindi, where they have been detained ever since awaiting trial before the same Court.

It is reported that the judiciary has not observed a number of procedural safeguards prescribed under Pakistan's domestic laws, in particular the Juvenile Justice System Ordinance 2000 (JJSO) and the Punjab Juvenile Justice System Rules 2002 (PJJSR).

Reportedly the Court did not order a medical examination with a view to determine their age when they were first produced before the Court, which is at variance with Section 7 of the JJSO. As juvenile offenders they should be tried by a Juvenile Court rather than an Anti-Terrorism Court, according to Section 4 of the JJSO. In terms of Section 4, para. 6, of the JJSO, their cases should have been decided within four months after cognizance of the offence. The trial of the two girls should have been separated from adults as prescribed under Section 5 of the JJSO. In violation of Section 9 of the JJSO, neither the police nor the Court has contacted the probation officer of the area to learn about the minors' characters and educational, social and moral backgrounds. After six months, the two minors were entitled to bail as a matter of right pursuant to Section 10 (b) of the JJSO which stipulates that "a child who, for commission of an offence, has been detained, shall be released on bail,—(b) if, being accused of any offence punishable with imprisonment for life having been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded".

According to Section 9 (3) of the PJJSR, female juveniles shall in no case be kept in a police lock-up or prison. Both girls, were however, detained at the police lock-up at the Westridge Police Station in Rawalpindi and then sent to Adiala Jail. Section 11 (b) of the PJJSR stipulates that minors shall be sent to the Borstal Institute for detention rather than to a jail.

In view of their reportedly prolonged pre-trial detention in a jail, concerns are expressed at the mental and physical integrity of X. and Y.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the two girls X. and Y. is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an

independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

Furthermore, we would like to refer your Excellency's Government to article 37 of the Convention on the Rights of the Child, ratified by Pakistan on 12 November 1990, which inter alia provides that:

"[...] (b) [...] The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;"

Article 40 of the said Convention further provides that:

"1. 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.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
[...]

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;
[...]

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
[...]

3. 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;”

In this connection, we would further like to refer your Excellency’s Government to the Concluding Observations of the Committee on the Rights of the Child concerning Pakistan from 15 October 2009 (CRC/C/PAK/CO/3-4), in which the Committee, *inter alia*, stated that:

“100. Taking into account the Committee’s general comment No. 10 (2007) on the administration of juvenile justice (CRC/C/GC/10), the Committee recommends that the State party continue and strengthen its efforts to ensure the full and effective implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention and other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System. In this regard, the Committee recommends that the State party:

[...](c) Raise the minimum age of criminal responsibility to an internationally acceptable level and ensure that children below the age of 18 years are accorded the protection of juvenile justice provisions and are not treated as adults;

(d) Review all cases of children sentenced to imprisonment in order to ensure that deprivation of liberty is only used as a measure of last resort and for the shortest possible period of time, and ensure that all children benefit from bail and the non-custodial provisions of JJSO;

[...](f) Set up a sufficient number of juvenile courts and ensure that juveniles are not tried jointly with adults;

(g) Ensure that, when in detention, children are always separated from adults and remain in regular contact with their families;
[...]”

In addition, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the two girls X. and Y. are respected. In the event that your investigations support or suggest the above allegations to be correct, we would call for the immediate release of the aforementioned juveniles and the accountability of any person responsible for the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of X. and Y. in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of X. and Y.?
3. Please provide information concerning the legal grounds for the arrest and detention of X. and Y. and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and in particular those set forth in the Convention on the Rights of the Child.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide information on the measures taken to ensure the safety of the girls X. and Y.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
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