

May 21, 2015

Honorable Prime Minister, Mr Mian Muhammad Nawaz Sharif
Honorable Interior Minister, Mr Chaudhry Nisar Ali Khan

Your Excellencies,

The Human Rights Commission of Pakistan (HRCP) and the International Commission of Jurists (ICJ) are deeply concerned that following the 21st amendment, juveniles suspected of committing offences related to terrorism could end up being tried by Pakistan's newly constituted military courts.

The 21st constitutional amendment and the corresponding amendments to the Army Act, 1952, give military courts jurisdiction to try all persons, including civilians, alleged to have committed certain offences related to terrorism. The amendments provide that the government may transfer a case related to the enumerated offences under the Army Act from *any* court (which *prima facie* includes juvenile courts) to a military tribunal for trial. The amended law also stipulates that in case of inconsistency with other laws, provisions of the Army Act would prevail. The amendments do not expressly exclude juveniles from their ambit.

These provisions have created the possibility that the requirement under the Juvenile Justice System Ordinance (JJSO), 2002, whereby juvenile courts shall have exclusive jurisdiction to try individuals below 18 years of age, could be overridden in certain terrorism-related cases.

In the circumstances, it is important that the government clarifies and ensures that in implementing the law, individuals who were under the age of 18 at the time of the alleged crime may not be tried in military courts, not least because a trial before such a court would violate Pakistan's obligations under international law.

International standards on the trial of juveniles

Under international standards, including the International Covenant on Civil and Political Rights, which Pakistan ratified in 2010 and Convention on the Rights of the Child (CRC), which Pakistan ratified in 1990, as well as the UN Standard Minimum Rules for the

Administration of Juvenile Justice (Beijing Rules), juveniles are entitled to all internationally recognized fair trial guarantees that apply to adults, as well as special care and additional protection.

Far from ensuring special care and additional protection for juveniles, proceedings before Pakistani military courts fall well short of national and international standards requiring fair trials before independent and impartial courts: judges are part of the executive branch of the State and continue to be subjected to military command; judges are not legally trained, let alone specially trained on protecting the rights of the child and the principles related to juvenile justice; the right to appeal to civilian courts is not available; the right to a public hearing is not guaranteed; and a duly reasoned, written judgment, including the essential findings, evidence and legal reasoning, is denied. In addition, the procedures of military courts, the selection of cases to be referred to them, the location and timing of trial, and alleged offences are kept secret.

It should also be noted that the Committee on the Rights of the Child has taken the position that only civilian courts are able to take into account the requirements of the proper administration of justice in the case of juveniles.

HRC and the ICJ urge you to clarify the Government's policy on referral of juveniles to military courts for trial, ensure that in its implementation of the amended law, no case of an individual who was under the age of 18 at the time of the alleged crime is referred or transferred to military courts for trial.

Doing so will help to ensure that Pakistan complies with its obligations under Pakistani law and international standards to ensure and that juveniles suspected of infringing the penal law are only tried by special juvenile courts in proceedings that meet international standards for the fair administration of juvenile justice.

We would be happy to discuss these issues with you at your convenience.

Yours sincerely,

I. A. Rehman	Sam Zarifi
(Secretary-General)	Asia Director
Human Rights Commission of Pakistan	International Commission of Jurists