

# URGENT ACTION

## CHILD HELD WITHOUT CHARGE OR TRIAL IN KASHMIR

**Faizan Rafiq Hakeem has been detained without charge or trial by the Jammu and Kashmir police in India since 23 February. The police admit that medical tests show Faizan's age as between 17 and 18 years.**

**Faizan Rafiq Hakeem** was arrested on 7 February outside his house in Anantnag, Jammu and Kashmir. He is alleged to have been part of a large crowd of protestors that pelted police and security forces with stones during protests against the state in four incidents in July 2009, June 2010, July 2010 and October 2010. He received two charges for rioting and other offences for his involvement in the incidents and was granted bail by a magistrate on February 12 for one of the charges and on February 23 for the second. He was however not released as the police decided to hold him in administrative detention – without charge or trial – under the Jammu and Kashmir Public Safety Act.

When he was charged, the police originally claimed that Faizan Rafiq Hakeem's age was 27, but his family showed Amnesty International a certificate provided by his school that records his date of birth as 18 May 1996 – making him less than 15 when he was arrested. Amnesty International has also verified the date of birth in the original records maintained in the school register. On 28 March, the Jammu and Kashmir police announced that age-tests conducted in the Government Medical College Jammu showed Faizan Hakeem's age as between 17 and 18 years.

Faizan Hakeem was moved to Kathua Jail – 300 kilometres away from Anantnag – on 25 February. Kathua Jail has no special facility for detention of children. Prison conditions are believed to be harsh with limited provisions of health care.

Faizan Hakeem's immediate family has been unable to meet with him since his removal to Kathua as they cannot afford the travel and accommodation costs. Faizan's father Mohammad Rafiq Hakeem – a fruit vendor in Anantnag – told Amnesty International that since he was busy trying to seek the release of Faizan, his younger son aged approximately 14 has had to drop out of school to manage the fruit cart as the family of five has no other source of income.

### **PLEASE WRITE IMMEDIATELY in English or your own language:**

- Demanding that the state authorities immediately end the detention without charge or trial of Faizan Rafiq Hakeem;
- Urging that if Faizan Rafiq Hakeem is to be held on charges of a recognizably criminal offence, he be afforded all fair trial guarantees set out in international law and specifically Article 40(2) of the UN Convention on the Rights of the Child, which stipulates also that any detention shall be used only as a measure of last resort and for the shortest appropriate period of time; such detention should be in a separate facility for children, as close as possible to his family in order to facilitate family contact.

### **PLEASE SEND APPEALS BEFORE 11 MAY 2011 TO:**

Chief Minister of Jammu & Kashmir

Omar Abdullah

Civil Secretariat

Government of Jammu and Kashmir

Jammu – 180 001

Fax: +91 191 2546466

**Salutation: Dear Chief Minister**

### **And copies to:**

Minister of Home Affairs

P Chidambaram

North Block, Central Secretariat

New Delhi – 110 001

Fax: + 91 11 23094221

Email: hm@nic.in

**Also send copies to diplomatic representatives accredited to your country.** Please check with your section office if sending appeals after the above date.

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### ADDITIONAL INFORMATION

Faizan Rafiq Hakeem is detained under the Jammu and Kashmir Public Safety Act – a law that allows the state authorities to detain persons for up to two years without any judicial review of the allegations against them. Repeat detentions are also commonly ordered.

At least 322 people are reported to have been detained without trial under the provisions of the Public Safety Act in Jammu and Kashmir from January to September 2010 alone. A number of them, reportedly including children, have been detained on similar grounds of stone pelting and rioting during various protests against the Indian government throughout the summer of 2010. The Chief Minister of Jammu and Kashmir has claimed that no minors are being detained in the state.

Although the police concede that that medical tests show Faizan Rafiq Hakeem is a child between 17-18 years of age, the Jammu and Kashmir Juvenile Justice Act 1987 states that a boy above the age of 16 is an adult. The Indian Juvenile Justice (Care and Protection of Children) Act 2000 operating in the rest of the country gives the age of majority as 18 in line with the UN Convention on the Rights of the Child (CRC). When considering India's second periodic report under the CRC, the Committee on the Rights of the Child specifically recommended the application of the updated national law to the state of Jammu and Kashmir.

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