

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolution 26/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the negative consequences of the interpretation of articles 199 and 187 of the Pakistani Constitution by Pakistani Supreme Court and High Courts' jurisdiction on the right to life of those facing the death penalty.**

According to the information received:

Several cases brought before the Pakistani Supreme Court and High Courts' jurisdiction under articles 199 and 187 of the Pakistani Constitution have been dismissed due to the fact that the regular appeals had already been exhausted, whereas these two articles may be interpreted in more human rights-friendly manner.

In the case of *Shafqat Hussain Vs. President of Pakistan and others* (Civil Petition No. 1127 (2015)), when Mr. Hussain's lawyers sought to prevent his execution on the basis of new evidence demonstrating that he was a juvenile at the time of the offence and that his trial court conviction was based on a confession extracted through torture, the Supreme Court of Pakistan dismissed the Appeal on 10 June 2015. It held that when all legal remedies have been exhausted, then there will be no legal justification to suspend an execution. It insisted that the matter should be dealt in accordance with the laws of Pakistan, that the international laws should be kept aside and therefore a case could not be re-opened on the basis of new issues of fact.

In the case of *Nusrat Parveen Vs. the Home Department and others*, (Writ Petition No. 22496/2015), the Lahore High Court considered arguments about whether to admit a writ petition filed under Article 199 of the Constitution seeking to suspend the execution warrant of Abdul Basit, a paraplegic prisoner in Faisalabad Central Jail. The Court held that the case could not be re-opened, stating that the writ jurisdiction is not the proper forum to suspend or set-aside the execution of a death sentence. The Lahore High Court highlighted that: "when all legal remedies have been exhausted then there will be no legal justification to suspend an execution..." The court further held that the jurisdiction of the high court under

article 199 was not the appropriate forum to bring new arguments arising post-conviction and prior to execution.

Furthermore, the above-mentioned decisions are all in contradiction to the views expressed by the Government of the Pakistan in October 2015. Through its initial report to the Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR), the Government of Pakistan reporting on the compliance of Pakistani law with article 14 of the ICCPR on the right to fair trial, stated that “*Information which surfaces after conviction may be placed before a court under articles 199 and 187 of the Constitution, and coupled with the courts inherent power to recall an order passed mistakenly, a conviction may be reversed.*” (CCPR/C/PAK/1; para 137).

This contradiction between the evolving jurisprudence of its courts and the report of Pakistan under the ICCPR may have a potential impact on the right to life of those facing the death penalty. The Human Rights Cell of the Pakistani Supreme Court (HR Cell) whose task is to expeditiously address infringement of fundamental rights is the appropriate body to provide the necessary guidance on the matter raised above.

Without prejudging the accuracy of the information made available to me, I wish to express my concern that there is a marked difference between the application of articles 199 and 187 of the Pakistani Constitution presented by the Government of Pakistan to the Human Rights Committee in its initial report and the jurisprudence developed by the superior courts and the interpretation of the high courts in Pakistan.

I am also concerned about the consequences of the views expressed by high courts in Pakistan on the imposition of the death penalty where new evidences surface. Refusing the right to bring new elements before the Supreme Court may constitute a violation of the right to a fair trial guarantee.

Such contradictions between the position of the State and the acts of Pakistan courts may negatively impact the obligations of the State to fulfill its obligations under international human rights law; and may potentially be in contravention of the right of every individual to life, liberty and security as set out in article 3 of the Universal Declaration of Human Rights (UDHR) and article 6.1 of the International Covenant on Civil and Political Rights (ICCPR), to which Pakistan is a State Party. These allegations also seem to be in contravention of the right to fair proceedings before an independent and impartial tribunal, as set forth in article 14 of the ICCPR and article 10 of the UDHR.

I would further like to recall that according to paragraph 4 of General Comment 31 of the Human Rights Committee, the obligations contained in the Covenant are binding on every State as a whole and that all branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level — national, regional or local — are in a position to engage the responsibility of the State Party.

In connection to the above alleged facts and concerns, please refer to the Annex attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would particularly appreciate receiving information from your Excellency's Government on the following question:

- 1. Could you confirm whether and how did the Human Rights Cell of the Pakistani Supreme Court interpret the combined application of articles 199 and 187 of the Constitution concerning the superior court's jurisdiction to consider new information that may be discovered after a conviction, including after the imposition of the death penalty ?**
- 2. What are the implications of the statement contained in the report of the Government of Pakistan presented to the Human Rights Committee (CCPR/C/PAK/1; para 137) on the combined application of articles 199 and 187 of the Constitution for the Pakistani Courts ?**

I would appreciate a response within 60 days.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex Reference to international human rights law

In this connection, we wish to draw your Excellency's Government's attention to Article 3 of the Universal Declaration of Human Rights and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) acceded by Pakistan on 23 June 2010, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

Article 14 of the ICCPR and art 10 of the UDHR guarantee the right to fair proceedings before an independent and impartial tribunal.

Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that “Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR), including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.” Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

In its General Comment n°32 to article 14 of the ICCPR on the “Right to equality before courts and tribunals and to a fair trial”, the Human Rights Committee states that: “in cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant)”. (CCPR/C/GC/32, para 59).

General Comment 31 of the Human Rights Committee, in its paragraph 4 stipulates that the obligations of the Covenant are binding on every State Party as a whole. “ All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility...”