

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

REFERENCE:
OL PAK 9/2017

1 December 2017

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 35/15.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received which would indicate that your Excellency's Government is considering legislative reform to reduce the number of crimes for which the death penalty can be imposed.

While I do not wish to prejudge the accuracy of this information, if correct, I would warmly welcome this initiative and any other efforts taken by your Excellency's Government to bring the legislative framework and legal process in Pakistan closer in line with international standards.

As your Excellency's government is certainly aware, my predecessors and myself have previously expressed concern that the current legislative framework and legal proceedings in Pakistan regulating the imposition of the death penalty appear to contravene international standards in that they impose the death penalty for crimes which do not reach the threshold of the "most serious crimes" as required by article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) which Pakistan ratified on 23 June 2010. I very much welcome the lifting in 2011 of several of the reservations Pakistan had made when it ratified the Convention, including the lifting of the reservation regarding Article 6.

Several Special Procedures communications wrote to your Excellency's Government, drawing its attention to specific cases of persons sentenced to death for crimes that, in their view, did not meet the threshold of "the most serious crimes" as understood international law::

- Communication PAK 13/2014 sent on the 05 November 2014 concerning the death penalty imposed on an individual for the crime of blasphemy.

- Communication PAK 16/2014 sent on the 19 December 2014 concerning the removal of the unofficial moratorium on the death penalty, the risk of its imposition for offences which do not meet the "most serious crimes" threshold and information that the definition of acts of terrorism in the Pakistani legislation remains very vague.

- Communication PAK 2/2017 sent on the 5 May 2017 concerning the killing of an individual by a mob after having been accused of blasphemy, and legislation imposing the death penalty for blasphemy.

I welcome that your Excellency's government responded to the two most recent communications, which reflects the increasing seriousness with which you are considering this issue.

I express my hope that, should your Excellency's government decide to make changes to the legislation, the changes would ensure that the death penalty can only be imposed for "the most serious crimes." I would also encourage your Excellency's government to address other aspects of the legislative framework and legal process which do not currently conform to international standards. In this regard, according to the ICCPR, the death penalty can only be carried out pursuant to a final judgement rendered by a competent court, anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and a sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. Moreover, 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 following a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings.

In recent years a number of other communications from Special Procedures mandate-holders have brought to your Government's attention concerns relating to the imposition of death penalty against juveniles, against people with psychosocial or physical disability, and of fair trial guarantees. These communications include communication PAK 7/2017 sent on the 8 September 2017 concerning the death sentence of an individual who was a juvenile at the time of the offence, communication PAK 10/2016 sent on the 30 November 2016 concerning the negative consequences of the interpretation of articles 199 and 187 of the Pakistani Constitution and fair trial guarantees, communication PAK 9/2016 sent on the 26 September 2016 concerning the death sentence of an individual with a psychosocial disability and communication PAK 3/2016 sent on 01 February 2016 concerning the death sentence of an individual with a physical disability.

I am respectfully drawing your Government's attention to the fact that the Human Rights Committee (CCPR/C/PAK/CO/1), the Committee on Torture (CAT/C/PAK/CO/1) and the Committee on the Rights of the Child CRC/C/PAK/CO/5) have also raised similar concerns about the death penalty in Pakistan, and that it was the subject of 32 recommendations made during Pakistan's Universal Periodic Review in November 2017.

I also encourage your Excellency's Government to consider reinstating the moratorium on the death penalty.

As per my mandate, which includes enhancing dialogues with Governments, I rest at your disposition for any information or advice on applicable international standards that your Excellency's government may consider useful.

In the meanwhile, I am taking the liberty to highlight some relevant decisions and standards that may be helpful to your Excellency's government when considering narrowing the application of the death penalty to the most serious crimes standard. The standard of "the most serious crimes" has consistently been interpreted by the Human

Rights Committee to mean that the death sentence may only be imposed in respect of intentional killing. Furthermore, the Commission on Human Rights and the Human Rights Committee have determined that, amongst others, the following offences do not meet the “most serious crimes” threshold:

- abduction not resulting in death (CCPR/CO/72/GTM, para. 17),
- adultery (CCPR/C/79/Add.25, para. 8),
- homosexual acts (CCPR/C/79/Add.85, para. 8),
- illicit sex (ibid.),
- apostasy (CCPR/C/79/Add.85, para. 8),
- blasphemy (CCPR/C/PAK/CO/1, para 17)
- religious practice (resolution 2005/59 of the Commission on Human Rights, para. 7 (f))
- evasion of military service (CCPR/C/79/Add.84, para. 11),
- political offences (CCPR/C/79/Add.101, para. 8).
- theft by force (CCPR/C/79/Add.85, para. 8),
- drug-related offences (A/50/40, para. 449 and CCPR/C/PAK/CO/1, para 17).

My predecessors on the mandate have also noted that “victimless offences.... including treason, espionage or other vaguely defined acts usually described as “crimes against the State” would not fall within the “most serious crimes” threshold” (E/CN.4/2001/9 para. 83).

Communication PAK 2/2017 observes that the Pakistani blasphemy law, particularly the controversial sections A, B and C of Section 295 and sub sections A and B of Section 298 of the Pakistan Penal Code, would appear not to qualify as most serious crimes. Furthermore, the report of the Secretary General “Questions of the death penalty” A/HRC/27/23 has raised concern about the death penalty in relation to “overly broad and vague definitions of terrorist offences.” Finally, I note that sexual offences not involving intentional killing would also not fall within the threshold.

I hope that the above information will prove useful to your Excellency’s government should you decide to revise relevant legislation. I would like to reiterate that efforts towards bringing the legislative framework and legal process of Pakistan closer into line with international standards would be most welcome and to encourage your Excellency’s government to seek technical assistance and advice in any such efforts. I offer my cooperation and expertise to your Government, to look closely into the matter, jointly, so as to assist Pakistan in bringing its legislation in this regard in conformity with its obligations under ICCPR.

I would appreciate a response with information on any legislative reform being considered on this topic 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