

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 Human Rights Council resolutions 33/30, 35/15, 31/3 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning what appears to be a serious pattern of **violations of international human rights norms, including: the prohibition on arbitrary and summary executions; safeguards pertaining to fair trial and due process; the prohibition of torture and other cruel, inhuman or degrading treatment; and the protection of the rights of juvenile offenders by the Government of Pakistan under its application of its Anti-Terrorism Act, 1997. This apparent pattern is illustrated by 11 cases of individuals who were sentenced to death, are on death row or have been executed for crimes committed, whilst they were children and in at least four cases after they were alleged to have been subjected to torture in order to force them to confess the crimes imputed to them.**

According to the information received:

On 13 August 1997, the Pakistani Parliament passed the Anti-Terrorism Act (ATA), which came into force a few days later when the President signed it. Specialized Anti-Terrorism Courts (ATC) authorized by ATA were established in late August 1997. The continued implementation of ATA has resulted in the suspension of fundamental guarantees and safeguards recognized to citizens under the 1973 Constitution of Pakistan and Pakistan's laws on evidence (Qanoon-e-Shahadat 1984) and criminal procedures (Code of Criminal Procedure 1898).

It appears that ATA has effectively created a parallel system of unique and exceptional procedures from arrest to custody, detention, prosecution, and sentencing of terrorism suspects by authorizing measures such as the denial of bail, enhanced police powers, arrest without warrant, and extended remand of suspects for up to 30 days, thereby increasing the risk of torture as a means of extracting confessions in police or other law-enforcement's or security forces' custody.

The ATA contains an overly broad definition of “terrorism” that covers virtually all violent crimes. As a result, crimes which have no nexus (including murder, kidnapping, etc.) to terrorism are routinely tried under this vague definition, in violation of international standards protecting individuals from abuses of power, including those relating to due process and fair trial.

In 2014, there were around 17,000 pending “terrorism” cases, highlighting the systemic issues pertaining, firstly, to the ATA’s own inherent overreach and, secondly, significant overuse of the ATA by law enforcement officials. Updated and comprehensive terrorism-related statistics for Pakistan are not available, however, definitive figures from 2016 and 2017 are available with regard to the provinces of Punjab and Sindh respectively. There are around 800 pending cases before the ATCs in Punjab since 2016, while over 5,000 cases are pending before ATCs in Sindh as of 2017.

Section 7 of the ATA provides for the death penalty as a possible punishment for three actions: causing the death of any person (Section 7(a)); kidnapping for ransom or hostage-taking (Section 7(e)); and hijacking (Section 7(f)). Since the terrorist attack on the Army Public School in Peshawar in December 2014, Pakistan lifted the de facto six-year moratorium on the death penalty, following which over 480 individuals have been executed. A significant number of individuals, including children, have been executed or are awaiting execution as a consequence of convictions under the vague provisions of the ATA and following judicial procedures provided for in the ATA which violate due process and fair trial standards.

Despite the fact that under international law children are entitled to special protective safeguards, the existing domestic protections in Pakistan are commonly circumvented. This follows as a consequence of Pakistan’s superior courts holding that ATCs possess exclusive jurisdiction in cases of terrorism offences, even where juvenile offenders are the subjects of trial. This is further compounded by the overly broad and ambiguous definition of terrorism contained in Section 6 of the ATA coupled together with violations of the international standards for due process and fair trial. The 11 cases below are a few illustrative examples.

Earlier this year, the Parliament passed a new Juvenile Justice System Act, which has incorporated fundamental safeguards such as the right to legal assistance, establishment of observation homes, juvenile rehabilitation centres and juvenile courts, and provision of compulsory age determination mechanisms. Most importantly, the newly enacted legislative instrument provides that it has an overriding effect over other laws but the impact of this is yet to be assessed.

1. Case of Mr. **Muhammad Anwar**

On 6 March 1993, Mr. Muhammad Anwar was arrested for murder in the Vehari district. Following a 5-year trial, Mr. Anwar was convicted and sentenced to death on 27 June 1998. In 2001, an application was submitted to the provincial Home Department to determine Mr. Anwar's age, following which, in 2002, a medical board in Nishtar Hospital, Multan concluded that Mr. Anwar was a child at the time of his arrest. Despite evidence of his juvenility, Mr. Anwar's death sentence was upheld by the Supreme Court of Pakistan, he remains on death row. Mr. Anwar was the subject of a previous communication to your Excellency's Government (UA Pak 14/2015 dated 18 December 2015), to which no reply was received from your Excellency's Government.

2. Case of Mr. Muhammad Iqbal

In 1999, Mr. Muhammad Iqbal was sentenced to death by an Anti-Terrorism Court (ATC) for the offences of murder and robbery. Mr. Iqbal was kept in unlawful custody and subjected to torture by police officials for a month before his formal arrest. Mr. Iqbal's juvenility was confirmed during the course of the trial through both an ossification test and a school certificate produced during trial. Despite the fact that the trial court stated in its judgment that Mr. Iqbal was a minor at the time of the charged offenses, he was sentenced to death. His death sentence was upheld by the High Court on 20 March 2002 and the Supreme Court subsequently rejected Mr. Iqbal's appeal on 11 September 2002. He remains on death row. Mr. Iqbal's case was the subject of a previous communication to your Excellency's Government (UA Pak 7/2017 dated 8 September 2017) to which no reply was received from your Excellency's Government.

3. Case of Mr. Muhammad Azam

On 8 July 1999, Mr. Muhammad Azam was sentenced to death by an ATC at the age of 17. His appeal to the Supreme Court was rejected on 12 September 2000 despite substantial evidence illustrating his juvenility at the time of the alleged offense. There were birth records confirming Mr. Azam's date of birth as 18 March 1981 as well as jail records reflecting that he was 17 when he was admitted into custody. Indeed, he was originally held in Karachi at a Youthful Offenders Industrial School. The ATC denied a request sent by the Office of the Superintendent of the Central Jail in Karachi, seeking an age determination for Mr. Azam and 5 other juvenile offenders. Additionally, despite the fact that the heirs of the deceased had agreed to pardon Mr. Azam, due to the ATA's own internal bar on compromise between the parties, Mr. Azam remains on death row.

4. Case of Mr. Shafqat Hussain

In November 2004, Mr. Shafqat Hussain, a juvenile offender, was sentenced to death by an ATC for kidnapping and murder on the basis of a confession allegedly extracted through torture in police custody. Mr. Hussain was the subject of previous communications (UA Pak 2/2015 dated 19 March 2015 and UA Pak

7/2015 dated 3 August 2015 to which your Excellency's Government submitted a reply dated 5 August 2015). Despite a request to your Excellency's Government submitted by the UN Special Procedures mandate holders and the Sindh Human Rights Commission to halt the execution of Mr. Hussain pending an inquiry into his juvenility and claims of torture, he was executed in August 2015.

5. Case of Mr. **Ansar Abbas**

On 20 March 2007, Mr. Ansar Abbas, after being kept in custody outside of judicial oversight for 25 days and being repeatedly subjected to torture for the purpose of obtaining a confession, was convicted and sentenced to death by an ATC for allegedly shooting and killing a police officer and causing injury to another. Mr. Abbas' conviction relied almost exclusively on the eyewitness testimony of one policeman who was injured in the incident. Additionally, Mr. Abbas was the only one out of the two accused in custody who was put through an "identification parade" ten months after his arrest. The prosecution's case allegedly heavily relied on this positive identification, despite the fact that the weapon recovered from Mr. Abbas at the time of his arrest did not correspond to the bullets discovered at the crime scene. Despite all the aforementioned inconsistencies, Mr. Abbas was sentenced to death and is currently on death row.

6. Case of Mr. **Shabbir Hussain**

On 21 February 2011, Mr. Shabbir Hussain was arrested and subsequently convicted, for kidnapping and murdering the brother of a business partner for ransom, by an ATC in Lahore, Pakistan on 29 August 2009. Allegedly, Mr. Hussain was charged with terrorism following his inability to pay the police a bribe. He was unlawfully detained and subjected to severe torture and beatings. The High Court rejected Mr. Hussain's appeal despite the fact that the nature of the offense had no nexus with general definitions of terrorism outside the ambiguous definition contained in Section 6 of the ATA. Subsequently, Mr. Hussain's death sentence was converted into seven years imprisonment by the Supreme Court on 22 April 2011.

Additionally, several other prisoners have been unlawfully executed despite credible evidence supporting their juvenility. These prisoners included inter alia: **Mr. Faisal Mehmood** (executed on 27 March 2015); **Mr. Mohammad Amin** (executed on 31 March 2015); **Mr. Aftab Bahadur** (executed on 10 June 2015); **Mr. Ansar Iqbal**, who was the subject of a previous communication to your Excellency's Government (UA Pak 10/2015 dated 28 September 2015) to which no reply was received from your Excellency's Government) and was executed on 29 September 2015; and **Mr. Muhammad Sarfaraz** (executed on 10 May 2016).

We express our grave concern at the allegations received which point to excessively wide-ranging counter-terrorism powers pertaining to arrest, interrogation and detention granted to police and other security officials; unchecked and broad

discretionary authority to courts, especially ATCs, due to the ambiguous definition of terrorism in the ATA; and serious miscarriages of justice stemming from the wide scope of the offense of terrorism under the ATA; and unlawful treatment of children as adult offenders in terrorism cases. The definition of terrorism under Section 6 of the ATA is overly inclusive in that it extends to virtually all violent offences, including inter alia murder and kidnapping without any nexus to terrorism, which should ordinarily be tried under the regular criminal justice system and criminal code.

In addition, we are concerned that the ATA provides for the death penalty for offences which are vaguely defined and thus all-encompassing, including specific offences which do not appear to meet the 'most serious crimes' threshold which limits, in international law, the application of the death penalty to crimes involving intentional killing and following proceedings which do not comply with fair trial and due process standards. We further re-iterate our serious concern that at least six individuals who were children at the time of the offence have been executed after convictions under the ATA and that at least five others remain on death row.

While we do not wish to prejudge the accuracy of the information described above, we are concerned that these allegations, if confirmed, would violate the right to life (article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Pakistan on 23 June 2010); the right not to be subjected to arbitrary arrest and detention and the right to a fair and public hearing by independent tribunal (articles 9 and 10 of the UDHR and 9 and 14 of the ICCPR); the right not to be subjected to and to be protect from torture (articles 7 and 10 of the ICCPR and articles 2, 12 and 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Pakistan on 23 June 2010). They would also appear to be in breach of articles 6, 37 and 40 of the Convention on the Rights of the Child (CRC), ratified by Pakistan on 12 November 1990.

In connection with the above alleged facts and concerns, please refer to the **International Law on Human Rights Annex** attached to this letter.

In view of the irreversibility of the punishment of the death penalty, we respectfully urge your Excellency's Government to take all steps necessary to **halt any steps taken to execute the death sentences against the five aforementioned individuals currently on death row, to quash the them, and to order their retrial according to standards of fair trial as provide for by Pakistan international human rights obligations under the treaties it has ratified. To proceed with their executions may constitute a violation of applicable international human rights law and standards, and thus amount to arbitrary executions.**

While awaiting your Excellency's response, we are reiterating our call to your Excellency's Government to re-instate the moratorium on executions with the view to fully abolishing the death penalty, as well as review the current anti-terrorism legislation, including the definition of terrorism, the guarantees for fair trial and due process,

particularly with regard to children, and the provisions providing for the death penalty, with the view to bring it in compliance with the international human rights law.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any comment you may have on these allegations.
2. Please provide information on the factual and legal grounds for the arrest, detention, trial and death sentence pronounced against these 11 individuals, and how these proceedings are consistent with Pakistan's international human rights obligations.
3. Please provide information pertaining to justification for the wide-ranging scope of the definition of "terrorism" under Section 6 of the ATA, which includes ordinary criminal offences. Please explain how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as proposed by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).
2. Please provide information on the status and the full details of any investigation into the arrests, detentions, sentences and executions reported above as well as any other similar actions. If investigations have not been initiated, please explain the reasons why.
3. Please provide information on the number of law enforcement personnel prosecuted and convicted, or otherwise held accountable, for unlawfully detaining and torturing alleged terrorism suspects for the purposes of obtaining confessions.
4. Please provide information on the number of terrorism cases involving juvenile offenders and that have been remanded to an appropriate juvenile court for retrial, and the outcome of these cases.
5. Please provide detailed information about the measures taken to effectively protect, and to ensure the safety of children during the course of anti-terrorism arrests, detentions and trials.
6. Please provide any information on the effect of the newly enacted Juvenile Justice System Act 2018, particularly with regard to its overriding effect over others laws such as the ATA.
7. Please also provide information on any actions that have been taken or are planned to ensure the death penalty against the four aforementioned

individuals on death row is quashed in view of their juvenility and lack of compliance with fair trial standards.

8. Please provide information about any policy and measure taken to effectively train law enforcement agents on how to ensure the protection of the right to life and the human rights of children.

We would appreciate receiving 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.

While awaiting a reply, we urge that all necessary measures be taken to halt the alleged violations, prevent their re-occurrence and investigate claims pertaining to abuse of Constitutional safeguards by law enforcement officials and ATCs. We note that in a number of the cases identified above, individuals have spent over a decade in prison, despite serious concerns being raised about the fairness of trial and the appropriateness of sentencing. The duration of detention underscore the urgency of review, and the ongoing nature of the violations concerned. In the event that the investigations support or suggest the allegations to be correct, we urge that the accountability of any person(s) responsible for the alleged violations is ensured.

We are considering to publicly express our concerns in the near future as, in our view, the information reported above appears to be sufficiently reliable to indicate a matter warranting serious attention, especially taking into consideration what appears to be its systemic nature. We also believe that the wider public should be alerted of the potential human rights implications of these allegations. Any public statement on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

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Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In this regard, we wish to draw your Excellency's Government's attention to relevant international principles and norms governing the right to fair trial and due process, protection against torture or inhuman or degrading treatment or punishment and safeguards against arbitrary and extrajudicial executions.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

In paragraph 3 of its Resolution 1566 (2004), the UN Security Council recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.

According to international standards on the right to life, the death penalty may only be imposed subject to stringent requirements: it may be imposed only for the most serious crimes (intentional crimes with lethal consequences), never against persons below 18 years of age at the time of the commission of the crime or persons with psycho-social disabilities, only after a legal process which upholds strict fair-trial guarantees, and that anyone sentenced to death shall have the right to seek pardon or commutation of sentence. Where capital punishment occurs, it must be carried out so as to inflict the minimum possible suffering (see the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty (the UN Safeguards), approved by the Economic and Social Council on 25 May 1984 (resolution 1984/50)),

In this regard, we would like to recall Article 1 of the UN Safeguards which provides that countries which have not abolished the death penalty may only impose it for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. This provision has consistently been interpreted by international experts to mean that the death sentence may

only be imposed in respect of offences that resulted in the loss of life (A/HRC/4/20, para. 53).

Article 37(a) of the Convention on the Rights of the Child (CRC), expressly **prohibits the imposition of the death penalty for offences committed by persons below 18 years of age**. In its General Comment No. 10, the Committee on the Rights of the Child stated that in case there is no proof of age the child should be given the benefit of the doubt. In addition, the execution of persons for crimes committed while they were under 18 years of age is inherently cruel and amounts to a violation of the prohibition of torture and cruel, inhuman and degrading treatment which is prohibited, inter alia, in the the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),

Article 5 of the UN Safeguards further provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial. **Only full respect for the most stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.**

Moreover, most circumstances surrounding the actual imposition or execution of the death penalty can also constitute cruel, inhuman or degrading treatment or punishment or even torture. As such, the harshness of the death penalty goes beyond the execution itself. Physical or mental torture or other cruel, inhuman or degrading treatment or punishment may be inflicted on a convict and his or her relatives awaiting execution at different stages of his or her time in detention. (see report of the Special Rapporteur on Torture (A/67/279, para. 75)

We would also like to refer to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279), in which retentionist States are called upon to rigorously observe the restrictions and conditions imposed by article 7 of the International Covenant on Civil and Political Rights and articles 1,2 and 16 of the CAT.

Additionally, all States should reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/67/279, para. 79).

We would also like to refer to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279), in which retentionist States are called upon to rigorously observe the restrictions and conditions imposed by article 7 of the International Covenant on Civil and Political Rights and articles 1,2 and 16 of the CAT.