

**Mandates of the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA PAK 8/2018

21 December 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/6, 35/15 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of Mr. **Khizar Hayat**, a Pakistani national with a psychosocial disability, who is **reportedly at risk of imminent execution in Pakistan. It is reported that during his time in detention, Mr. Khizar Hayat has not been provided with appropriate health care and psychosocial support to effectively secure his physical and mental integrity. In addition, Mr. Khizar has not received procedural accommodations that persons with psychosocial disabilities may need to effectively access justice on an equal basis with others and to secure his defence during the review and reconsideration of the death sentence.**

A communication addressing the case of Mr. Khizar Hayat was previously transmitted to your Excellency's Government on 28 July 2015 (UA PAK 6/2015). We regret that to date no reply has been received. Our concern in this case is further heightened by the additional information received.

According to that information:

On 2 April 2003, Mr. Khizar Hayat, a Pakistani national and former police officer, with psychosocial disabilities, was convicted and sentenced to death for the alleged murder of a fellow police officer, under section 302 of the Pakistan Penal Code. During the trial, Mr. Hayat's lawyer did not: (i) introduce evidence; (ii) call witnesses in his client's defence, or (iii) inquire about his client's psychosocial health.

In 2008, Mr. Hayat was diagnosed with a mental health condition after being examined by the Medical Officer of the Central Jail in Lahore. This diagnosis was subsequently confirmed in Jail Medical Report No. 982 issued on 29 September 2008. Since then, Mr. Hayat has been receiving anti-psychotic medication.

On 19 January 2009, Mr. Hayat's death sentence was confirmed. On 1 March 2010, the Medical Officer at the Central Jail in Lahore issued a Medical Report No. 153, in which he recommended that Mr. Hayat be transferred to the Punjab Institute of Mental Health for specialized treatment in view of his mental health condition. However, on 6 May 2010, a court-mandated Medical Board, unfamiliar with Mr. Hayat's case, stated that the transfer was unnecessary and that the required medical treatment could be provided to him within the Central Jail premises in Lahore.

In 2011, Mr. Hayat was subjected to a brutal attack in the Central Jail, Lahore by his cellmates, which required his transfer to Jinnah Hospital as his wounds became infected and the Central Jail was not equipped to treat Mr. Hayat's injuries.

On 25 July 2015, an application for constitution of a medical board, and cancellation of the death warrant, was filed. On the same day, the Court ordered the suspension of death warrant and directed that a medical board be constituted to conduct an evaluation of Mr. Hayat's mental health condition. Subsequently, on 30 July 2015, the Medical Board of the Punjab Institute of Mental Health (PIMH), Lahore, conducted an examination of Mr. Hayat, concluding that he had "psychosis" and had been receiving medical treatment since 2009.

On 5 April 2016, an Assistant Professor of Psychiatry who is also a Consultant Psychiatrist, examined Mr. Hayat's medical records and medical history. He observed that Mr. Hayat had "treatment resistant Schizophrenia" and that the medical treatment in prison was not appropriate.

On 13 June 2016, a mercy petition was filed under Rule 101 of the Pakistan Prison Rules 1978, citing Mr. Hayat's psychosocial disability. Despite the fact that this mercy petition is still pending, the Superintendent of the Central Jail, Lahore filed a request for issuance of Mr. Hayat's black warrant for execution, and his execution was scheduled for 16 June 2016. A Writ Petition No. 18275/15 was filed requesting a stay of the execution until he was examined by a Medical Board and a petition was submitted to have him transferred to a mental health facility in line with Chapter 18 of the Pakistan Prison Rules. On 6 December 2018 the transfer request was dismissed. The dismissal means a new black warrant could be issued.

To date, Mr. Hayat has spent over 16 years on death row. He is currently held in a separate cell in the hospital section of the jail. The jail does not have a resident psychiatrist but a psychiatrist visits every 3 to 6 months to prescribe medication to Mr. Hayat. No psychosocial support is reportedly provided. Mr. Hayat condition has deteriorated significantly during his years in prison without receiving proper health care and psychosocial support.

We would like to express our urgent concern at allegations of Mr. Hayat's potential imminent execution, and his continued exposure to treatment that may amount to torture and ill-treatment in detention, including, inter alia, the by denying him access to appropriate health care and psychosocial support in detention.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Excellency's Government's attention to the fact that any judgment imposing the death sentence on persons with disabilities is incompatible with the international legal obligations undertaken by your Excellency's Government under various instruments.

**In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to ensure Mr. Khizar Hayat is not executed**, which, based on the facts available to us, if carried out would be in a violation of applicable international human rights standards, and thus constitute an arbitrary execution. We further urge that his **death sentence be annulled and that he is provided with appropriate health care and psychosocial support in detention.**

If confirmed, these allegations are in contravention of the right of every individual to life, liberty and not to be arbitrarily deprived of life and the right not to be subjected to torture and ill-treatment as set out in articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), as well as the articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), both of which Pakistan ratified on 23 June 2010. The allegations appear to also contravene articles 10, 13, 14 and 15 of the Convention on the Rights of Persons with Disabilities, ratified by Pakistan on 5 July 2011, which call upon States parties to take all necessary measures to ensure the effective enjoyment of the right to life by persons with disabilities on an equal basis with others, secure effective access to justice and prevent torture and cruel, inhuman or degrading treatment or punishment as well as article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Pakistan on 17 April 2008, which underlines the obligation of States to respect the right to health.

With regard to the death sentence, we underline that Article 10 of the Convention on the Rights of Persons with Disabilities explicitly recognizes and protects the right to life, including protection against State conduct that threatens this right. In line with this provision, the Human Rights Committee has emphasized that States parties should "refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psycho-social and intellectual disabilities impeded their effective defense, and on persons that have limited moral culpability" (CCPR/C/GC/36, para. 49).

We further note that the Human Rights Committee, in its concluding observations called on Pakistan as a matter of priority, to take all measures necessary to ensure that "no one with serious psychosocial or intellectual disabilities is executed or sentenced to death, including by establishing an independent mechanism to review all cases where there is

credible evidence that prisoners who are facing the death penalty have such disabilities and reviewing the mental health of death row inmates”.

With regard to the mercy petition filed, we note that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence according to Article 6 (4) of the ICCPR and that the sentences should not be carried out before requests for pardon or commutation have been meaningfully considered and conclusively decided upon according to applicable procedures (CCPR/C/GC/36, para. 47).

Furthermore, Article 13 of the Convention on the Rights of Persons with Disabilities enshrines an explicit right to access to justice on an equal basis with others. In particular, all persons with disabilities, including persons with psychosocial disabilities shall be informed about, and provided access to, promptly and as required, procedural accommodation to facilitate their effective participation, as well as to ensure fair trial and due process. The Committee on the Rights of Persons with Disabilities has expressed concern at the fact that persons with psychosocial and/or intellectual disabilities may face a greater risk of death penalty due to the lack of procedural accommodations in criminal proceedings (A/HRC/37/25, para. 31).

In addition, and especially relevant to the case are the Economic and Social Council resolution 1989/64, which recommends that States strengthen further the protection of the rights of those facing the death penalty by eliminating it for persons with intellectual or psychosocial disabilities, whether at the stage of sentence or execution. In conjunction with the several resolutions adopted by the Commission on Human Rights urging all States not to impose the death penalty on, or to execute, any person with intellectual or psychosocial disabilities (e.g., Commission resolution 2005/59 para. 7 (c)).

With regard to Mr. Hayat’s lack of access to appropriate health care, psychosocial support and reasonable accommodation in detention we would like to draw your Excellency’s Government attention to Article 14 of the Convention on the Rights of Persons with Disabilities. In view of their obligations under paragraph 2, States shall ensure that when persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law. In their Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, the Committee has explicitly stated that this is a non-discrimination provision aimed at ensuring that persons with disabilities have, among other things, access to the various services, such as health care and psychosocial support. Denial of reasonable accommodation amounts to discrimination. Moreover, the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111, underline that prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

Moreover, as outlined by the UN Standard Minimum Rules for the Treatment of Prisoners (see the revised version adopted on 5 November 2015 and renamed “Mandela Rules”), the provision of health care is the responsibility of the state authorities and prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1)). Rule 27(1) furthermore provides that all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care. Furthermore, rule 109 states that persons who are later diagnosed with severe mental disabilities/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible. In this context, the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we recommend a thorough review of this case, so that his rights are duly taken into account and safeguarded in compliance with international conventions that are binding on Pakistan.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention we would be grateful for your observations on any additional information and any comment you may have on the above-mentioned allegations.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We are considering to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential human rights implications of the above-mentioned allegations. Any public expression of concern on our part will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days.

They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Catalina Devandas-Aguilar  
Special Rapporteur on the rights of persons with disabilities

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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