

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; 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:  
AL PAK 4/2020

30 March 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; 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 35/15, 42/22, 40/16 and 34/19.

We are writing to follow-up on communications AL PAK 6/2018 and UA PAK 7/2017 in relation to the case of Mr. **Muhammad Iqbal**, who was sentenced to death in spite of being a minor at the time he was charged, and who reportedly remains on death row. We regret that no reply was received from Your Excellency's Government to the two communications referred to above.

According to the information received:

In 1999, Mr. Muhammad Iqbal was sentenced to death by an Anti-Terrorism Court (ATC) for the offences of murder and robbery. At the time of the crimes, he was below the age of 18 years. Mr. Iqbal's juvenility was confirmed during the course of the trial through both an ossification test and a school certificate produced during trial.

Mr. Iqbal was unlawfully detained and subjected to torture by police officials for a month before his formal arrest. The death sentence was upheld by the Lahore High Court on 20 March 2002. The Court argued that while Mr. Iqbal could have been a minor, the nature of the offence and the damages caused made him deserve no leniency.

An appeal to the Supreme Court was subsequently dismissed on 11 September 2002. The court reportedly quoted the above-mentioned statement by the Lahore High Court as part of its reasoning.

Previously, in 2001, the President of Pakistan had granted a general amnesty to those prisoners on death row who had been convicted for crimes they had perpetrated when they were below the age of 18. As he was among those prisoners, Mr. Iqbal should have been released but that did not happen.

In 2004, the complainants in the case withdrew their petition and expressed forgiveness to Mr. Iqbal, based on the fact that he had already spent several years in prison and that alone was a sufficient punishment. They also stated that they did not want Mr. Iqbal to be executed.

However, in 2005, an application for acquittal submitted on Mr. Iqbal's behalf on grounds of compromise was dismissed due to the non-compoundable nature of the offence.

In March 2016, a mercy petition submitted on behalf of Mr. Iqbal was rejected and a black warrant was issued for his execution. The execution was temporarily stayed in a review petition before the Supreme Court.

On 23 June 2017, Justice Project Pakistan (JPP) filed a complaint on behalf of Mr. Iqbal before Pakistan's National Commission for Human Rights (NCHR). The NCHR concluded that he was not afforded with the guarantees to which a juvenile would be entitled under the Juvenile Justice System Ordinance (JJSO). The JJSO, promulgated in 2000, as well as the Juvenile Justice System Act (JJSA) of 2018, prohibit the sentencing to death of persons below the age of 18 years.

The NCHR advised that, until a proper investigation into the case of Mr. Iqbal was conducted, authorities should abstain from issuing execution warrants and warned that his execution would be in violation of Pakistan's domestic laws.

At present, Mr. Iqbal remains on death row. It is understood that a petition for mercy is currently pending before the President.

We wish to reiterate the concerns already expressed in the communications mentioned-above in relation to the fact that judgments imposing the death sentence on, and subsequent executions of juvenile offenders, run contrary to Article 37 (a) of the Convention on the Rights of the Child (CRC) and Article 6 (5) of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government, respectively on 12 November 1990 and on 23 June 2010.

The case of Mr. Iqbal is of particular concern since it appears that he was arbitrarily arrested and detained when he was a juvenile, was subjected to torture and a what appears to be a flawed judicial process, contrary to articles 7 and 14 of the ICCPR and articles 2 and 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

By virtue of the conventions it has ratified, Pakistan is under the obligation to treat everyone under the age of 18 as a child. Children should never be subject to the death penalty, as this violates an existing norm of customary international law. Furthermore, Mr. Iqbal was subjected to arbitrary detention and torture, each one of which will render the sentence of death penalty and its execution arbitrary should it be carried out, for which the State of Pakistan would be responsible.

For these reasons, we respectfully reiterate our call on your Excellency's Government to take all the necessary steps to not execute Mr. Iqbal and to ensure that he is either released or has his sentence commuted in line with international juvenile justice standards. We also respectfully reiterate our recommendation that the Government reinstate a moratorium on executions with the view to fully abolishing the death penalty.

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

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any information and any comment you may have on the above-mentioned allegations.
2. Please explain how Mr. Iqbal's death sentence is compatible with Pakistan's international human right obligations, particularly in relation to the protection of minors, and in light of the fact that Mr. Iqbal's minor age was reportedly verified during the course of the trial.
3. Please provide information on whether the petition for mercy filed with the President is being considered.
4. Please explain whether any investigation was ever conducted in relation to the allegations of torture and please provide detailed information on their results. If no investigation was conducted, please explain the reasons why and how is this compatible with Pakistan's international human rights obligations. Please explain what measures are being envisaged by Your Excellency's Government to ensure that Mr. Iqbal may obtain redress, as appropriate.
5. Please provide detailed information on the circumstances of Mr. Iqbal's detention prior to his formal arrest. In particular, please explain on what basis was he deprived of his liberty before being formally arrested. Please also clarify on what grounds he was subsequently formally arrested and explain whether he could challenge the lawfulness of such deprivation of liberty and detention, including through timely access to adequate legal assistance. In addition, please explain why he has not been released despite a general amnesty that is reportedly applicable to him.
6. 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).

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal procedure and the regular procedure.

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.

We are considering to publicly express our concerns in the near future, given the importance of the concerns described above (allegations of arbitrary arrest and detention, of torture, of lack of due process and unfair trial, death sentence imposed on a crime imputed to a juvenile, and the irreversibility of that sentence if executed) and the lack of response from the Government to our two earlier communications in this case. We also believe that the matter is of public interest and that the wider public should be alerted informed about the human rights implications involved in this case. Any expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue in question.

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

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

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 connection with above alleged facts and concerns, we wish to refer your Excellency's Government to Article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person".

Likewise, Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

In this context, we wish to emphasize that the death penalty may only be imposed subject to stringent requirements. In particular, the death penalty may be imposed only for the most serious crimes; can never be imposed against persons below 18 years of age at the time of the commission of the crime; and can only be imposed after a legal process which upholds strict fair-trial guarantees. In fact, only full respect for the most stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. In addition, anyone sentenced to death shall have the right to seek pardon or commutation of sentence.

Article 6 (5) of the ICCPR further states that "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age". Likewise, Article 37(a) of the Convention on the Rights of the Child (CRC) reaffirms the internationally accepted standard that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction. In this context, 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<sup>1</sup>.

With regard to the allegations of torture, we wish to reiterate that the prohibition of torture in international law is absolute and cannot be derogated under any circumstances.

Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) states that: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever (...) may be invoked as a justification of torture (...)".

Article 7 of the CAT also states that: "The State Party (...) shall (...) submit the case [of torture] to its competent authorities for the purpose of prosecution (...)".

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Article 12 of the CAT further provides that: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”.

Article 14 of the CAT states that:” Each State Party shall ensure (...) that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. (...)”.

Article 15 of the CAT provides that: “(...) any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings (...)”.

With regard to the allegations of unlawful deprivation of liberty, Article 9 (1) of the ICCPR states that “Everyone has the right to liberty and security of person”.

In this regard, we wish to stress that even if an arrest or detention may be authorized by domestic law it can nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances. Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention<sup>2</sup>.

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 \(2014\)](#), [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](#), [72/180](#) and [73/174](#), in particular with international human rights law, refugee law, and humanitarian law contained therein. 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 contained therein.

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

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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.