

**Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Working Group on discrimination against women and girls**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 34/19, 35/6, 35/15, 42/16 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the unfair trial, lengthy pre-trial detention, torture and the inhuman conditions of detention of Ms. **Kanizan Bibi**, a woman with psychosocial disabilities who has been on Pakistan's death row for 30 years.

According to the information received:

Ms. Bibi was a minor living in poverty, her mother died when she was a child, and her father struggled to provide for her with his meagre income as a peasant. She started working at the age of 14 as a domestic worker for a rich, land-owning family and spent nearly two years caring for and playing with her employer's children. In 1989, Ms. Bibi and her employer were accused of killing members of the family, including the wife and five children, where she worked.

On 9 August 1989, Ms. Bibi was arrested and brought to Police Station Pir Mahal, Toba Tek Singh, where she was charged with murder under section 302/34 of the Pakistan Penal Code. Ms. Bibi was in police custody for 15 days. During this time, the police hung her from thick ropes, mice were let loose in her shalwar (loose pants) which were tied at the ankles so that the rodents would not be able to escape and she also received electric shockss. Ms. Bibi was so badly injured that she had to be transferred to a hospital for a few days. Eventually, the police managed to extract a false confession from her under duress. Later, she retracted her confession before the High Court on appeal. Her lawyers challenged the admissibility of the confession, but to no avail.

After spending almost 18 months in pre-trial detention, Ms. Bibi was sentenced to death by the District Court on 7 January 1991. The trial court's conviction relied heavily on Ms. Bibi's coerced confession and overlooked key evidentiary gaps. The court also failed to ascertain Ms. Bibi's age, although her family claim that she was around 16 years old at the time of arrest, the police recorded Ms. Bibi's age as 25 years old. Moreover, in deciding to impose the harshest sentence, the court relied on the gendered tropes in the prosecution's narrative, which painted Ms. Bibi as a promiscuous woman, having an affair with her co-accused, who was her employer—without any evidence. The judge accepted the story of the adulterous relationship, noting that the employer had been willing to kill his own relatives simply so that he could — “marry a lousy woman”—a reference to Ms. Bibi.

On appeal before the High Court, Ms. Bibi attempted to contest the coerced confession. However, the Lahore High Court upheld her sentence on 7 February 1994. The Supreme Court subsequently dismissed Ms. Bibi's final appeal on 2 March 1999. In coming to these decisions, the appeals courts failed to investigate Ms. Bibi's juvenile status at the time of the offence, the severe torture that coerced her into providing a false confession, the evidential gaps and the judicial stereotyping applied to her. In 1999, the President also dismissed her petition for mercy along with those of over sixty others.

Ms. Bibi's health, including her mental health, has deteriorated continuously during the three decades while on death row - more than two-thirds of her life. She was diagnosed with schizophrenia in 2000. In 2006, she was transferred to the Punjab Institute of Mental Health (PIMH), where she was institutionalized and received some mental health treatment. In December 2017, however, she was shifted back to a women's ward in Lahore's Central Jail to make space for other patients. She has not spoken a word in over a decade, does not recognize family members, and is unable to dress or care for herself.

On 21 April 2018, the Hon. Chief Justice of Pakistan took an unusual *suo motu* action in her case. He directed a medical board to examine her and submit a report to the Supreme Court, on the basis of which her sentence of death could be commuted. He also ordered that she be immediately shifted to the PIMH under the supervision of a consultant psychiatrist at PIMH. Following this order, Ms. Bibi was initially moved back to PIMH to receive treatment. However, on 13 July 2019 Ms. Bibi was transferred from PIMH to Central Jail Rawalpindi to undergo the medical board exam ordered by the Hon. Chief Justice. She has not had any access to mental health treatment and support since then. She remains on death row until today.

As the COVID-19 pandemic makes inmates exceptionally vulnerable to the contagion due to a combination of prison overcrowding, a longstanding dearth of health services, and weak responses to the current crisis by prison authorities. Ms. Bibi is imprisoned in Central Jail, Rawalpindi which houses three times as many prisoners than its intended maximum capacity.<sup>1</sup> Ms. Bibi requires support to carry out daily activities such as dressing and bathing, and to take precautionary measures to prevent COVID-19 contagion, such as thoroughly washing her hands and physical distancing. She is mostly left unattended without support. If exposed to the virus, she would be unable to identify the symptoms and to voice them. She is particularly vulnerable to infection, owing to her compromised immune system and the lack of adequate medical facilities and reasonable accommodation in detention to meet her heightened health care and support needs.

While we do not wish to prejudge the accuracy of the information received, we would like to express our grave concern over the imposition of the death penalty following a trial which appears to have violated fair trial and due process guarantees, including relying on a coerced confession obtained under torture and that the accused was under the age of 18 at the time of the alleged crime. We further express our concern at Ms. Bibi's continued detention without the provision of reasonable accommodation to, inter alia, ensure prevention from COVID-19 contagion.

Should the above allegations be confirmed, they would be in violation of articles 6, 7, 14 and 15 of the international Covenant on Civil and Political Rights (ICCPR) and of articles 2, 15 and 16 of the Convention against Torture (CAT), both ratified by Pakistan on 23 June 2010. They would also be a violation of Pakistan's Constitution law, article 14(2) safeguards against extracting confessions through torture. The allegations also appear to contravene articles 6, 10, 14, 15 and 25 of the Convention on the Rights of Persons with Disabilities (CRPD), 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, to provide reasonable accommodation in detention, secure effective access to justice, freedom from torture and cruel, inhuman or degrading treatment or punishment and to respect the right to health.

International law excludes juveniles—persons under the age of 18 at the time of the offence—from the application of the death penalty and renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment. Pakistan has one of the lowest birth registration rates in the world, and official birth records are often lacking<sup>2</sup>. In the absence of records attesting a defendant's age, international law requires that the prosecuting state either

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<sup>1</sup> Tribune, '*Adiala has three times more prisoners than its capacity*'. Accessed at: <https://tribune.com.pk/story/2109014/1-adiala-3-times-prisoners-capacity/>

<sup>2</sup> UNICEF, Birth Registration Data, (December 2019) <<https://data.unicef.org/topic/child-protection/birth-registration/>>

present affirmative evidence of the person's age through medical or other analysis, or treat the defendant as a juvenile. Pakistan ratified the Convention on the Rights of the Child on 12 November 1990, a year before Ms. Bibi's trial. Article 37(a) of the Convention forbids death sentences for juvenile offenders: "[N]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age". Moreover, Article 6(5) of the ICCPR forbids death sentences for juvenile offenders, and while Pakistan did not ratify the treaty until 2010, this exclusion had attained customary international law status by the time of Ms. Bibi's trial.

We would also like to draw attention to the fact that the harshness of the death penalty goes beyond the execution itself. The "death row phenomenon", which is the emotional distress suffered by people who spend long periods of detention on death row, has long been considered as cruel, inhuman or degrading treatment or punishment inflicted on a convict and his or her relatives (A/67/279, para. 75).

Additionally, imposing and executing the death penalty on a person with psychosocial disabilities, as is the case with Ms. Bibi, is per se a violation of the fundamental right under international law. Article 10 of the CRPD 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 psychosocial and intellectual disabilities impeded their effective defense, and on persons that have limited moral culpability" (CCPR/C/GC/36, para. 49).

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".

Especially relevant to the case is 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/Human Rights Council 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), HRC resolution 36/17).

With regard to Ms. Bibi's lengthy pre-trial detention, we refer to the findings of the Special Rapporteur on extreme poverty that poverty shapes not only the crimes of which women are accused, but also their interactions with the criminal justice system, which also have an effect on the likelihood of their incarceration and its length. In particular, lack of income and wealth negatively impacting their ability to obtain favourable outcomes in the court system. It also limits their ability to post bail, which not only subjects them to pretrial detention, but has also been found to dramatically increase the likelihood of their eventual conviction (A/66/265).

With regard to Ms. Bibi's lack of access to reasonable accommodation and psychosocial support in detention, we draw attention to article 14 (2) of the CRPD, requiring States to 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, including by provision of reasonable accommodation.

In relation to access to health care, under ICCPR article 6, States have a duty to protect the life of all detained individuals including through the provision of the necessary medical care and appropriate regular monitoring of their health. In addition, article 25 of the CRPD requires States to provide those health services needed by persons with disabilities specifically because of their disabilities, on the basis of free and informed consent. 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).

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 and prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1)). 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.

Moreover, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) recognize the heightened vulnerability of women prisoners with specific needs that may not be met in the existing prison facilities designed primarily for male prisoners. They provide that women prisoners shall have access to —gender sensitive, trauma-informed and comprehensive mental health care in prison or in noncustodial settings; and that female prisoners shall be ensured the least restrictive security measures in light of their mental health needs. Furthermore, the Working Group on discrimination against women has recommended States to address women's deprivation of liberty with all of its root causes

by making available effective gender-specific interventions that aim primarily to divert women away from the criminal justice system, integrating into the national system the standards provided in the Bangkok Rules, and addressing the underlying factors leading to women coming into contact with the criminal justice system (A/HRC/41/33). We are concerned that the outbreak of COVID-19 in Pakistan's prisons exacerbates the vulnerability of Ms. Bibi, who is confined in an overcrowded prison, with high support needs and unhygienic conditions. We further appeal to your Excellency's Government to immediately transfer Ms. Bibi to an appropriate facility where she can receive specialized care and psychosocial support, and obtain testing for COVID-19.

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 would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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 additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the details and, where available, the results of any investigation and judicial or other inquiries which may have been carried out, or which are foreseen, into the allegations that she was a minor at the time of arrest, had an unfair trial and torture and other cruel, inhuman or degrading treatment or punishment inflicted upon the above mentioned individual. If no such enquiries have been conducted, please explain why, taking into account Pakistan's obligation under international human rights law.
3. Please indicate what measures have been taken to ensure that Ms. Bibi is provided with reasonable accommodation in detention, medical care and psychosocial support, and to ensure the prevention from COVID-19 contagion.
4. Please provide information on the status of the implementation of the order of the Chief Justice to review the case of Ms. Bibi.
5. Please explain whether, other than any prevention and control measure, the Government of Pakistan has adopted, or envisages to adopt to reduce the

population of persons deprived of their liberty, such as, for instance, commutation of sentences, clemency, medical quarantine or home detention, and/or targeted release programs, particularly with regard to persons in situations of vulnerability. In this connection, please explain whether any measure was adopted, or it is envisaged to be adopted and implemented in relation to persons with intellectual and psychosocial disabilities.

6. Please indicate what measures have been taken to ensure that persons with intellectual and psychosocial disabilities facing the death penalty have their sentences commuted.

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.

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