

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 44/5, 42/22 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the imminent execution of **Mr Munawar Ali**, who was sentenced to death despite being a minor at the time of the alleged offence and following a trial that did not fully meet due process guarantees.

According to the information received:

Child at the time of the offence

Mr. Ali was arrested in 2002 for a murder allegedly committed on 9 January 2002. At the time of the alleged offence, Mr. Ali was 16 years and 11 months old, as evidenced by his School Leaving Certificate. The murder was linked to a longstanding family rivalry, as a result of which Mr. Ali's parents had been abducted and murdered when he was 7 years old.

Mr Ali was charged under section 302 (B) Pakistan Penal Code read with section 7(a) of the Anti-Terrorism Act 1997. In 2004, Mr. Ali was sentenced to death by the Anti-Terrorism Court, despite the personal nature of the offence. He was unable to secure effective representation as he could not afford to hire his own lawyer. He was provided with a state-appointed counsel. However, no evidence of his age was presented by his defence. The court also did not ask for an age assessment despite section 7 of the Juvenile Justice Systems Ordinance ("JJSO") 2000, making it obligatory to conduct such an assessment when it appears necessary and prohibiting the sentencing to death individuals who were under 18 at the time of the alleged offence. Section 8 of the Juvenile Justice Systems Act, 2018 ("JJSO"), which replaced the JJSO, notes that there is an obligation on state authorities to determine the age of the offender "on the basis of his birth certificate, educational certificates or any other pertinent documents."

Mr. Ali's subsequent appeals against his sentence were dismissed and on 8 March 2021, the Anti-Terrorism Court, Shikarpur, scheduled his execution for

20 March 2021. On 16 March 2021, the High Court of Sindh, Circuit Court Larkana ordered a stay in the execution until the next date of hearing on 31 March 2021 in order to consider the compromise application filed by the legal heirs of the deceased.

Blanket denial of mercy petition

In December 2010, the prison authorities submitted a mercy petition for Mr. Ali. This was summarily rejected without substantive consideration in 2015, based on a blanket policy to reject all mercy petitions.

Under article 45 of the Constitution of Pakistan, the President has the power to pardon, suspend or commute any sentenced passed by the court and Rule 2014 of the Pakistan Prison Rules notes that the President may grant a reprieve from execution at any point.

Following the Peshawar school attack in 2014 in which 150 people were killed including 132 children, the moratorium on the death penalty in Pakistan was lifted. It was subsequently reported that the then President had indicated that no mercy appeals would be granted for any convicted terrorist. The Ministry of Interior later informally confirmed that Pakistan had a policy to summarily reject all pleas of mercy and that, in 2016, the President's office rejected all 513 petitions that had been submitted over the previous five years. There was therefore no meaningful consideration of the mercy petitions and the clemency process became a mere formality.

In 2019, the Ministry of Human Rights took steps to reform the mercy petition procedure. In August 2019, the Ministry of Interior issued new Standard Operating Procedures whereby the submission format and the procedure for the evaluation of mercy procedures were streamlined and provincial committees were constituted to review them.

The Supreme Court of Pakistan reaffirmed in the case of *Safia Bano* the importance of submitting mercy petitions, which contain the entirety of the prisoner's records and are comprehensive and that, if this was not the case, fresh mercy petitions should be submitted containing the relevant records.

Mr. Ali's original mercy petition was submitted 11 years ago, was rudimentary, did not meet these requirements, and was rejected under the blanket policy of refusing all mercy petitions of those sentenced to death by the Anti-Terrorism Courts. Despite this, the prison authorities did not submit a fresh mercy petition on behalf of Mr. Ali and thus deprived him of having his petition for clemency considered under the reformed procedure. No mercy petitions have been granted since the 2019 reforms.

Mr Ali is entitled to a new mercy petition under the new Standard Operating Procedures of the Ministry of Interior and there are fresh grounds that should be brought to the attention of the President, including that he was a child at the time of the offence.

Additionally, Mr. Ali has faced two execution dates and been in prison for 20 years, which is more than an individual sentenced to life imprisonment would normally serve; as such, the principle of legitimate expectancy of life is applicable. The Supreme Court of Pakistan has indicated that where a convict sentenced to death undergoes a period of custody equal to or more than the full term of imprisonment for life, the principle of expectancy of life may be a relevant factor to be considered along with others in reducing a sentence of death. In the case of *Safia Bano*, the Supreme Court stated “[the] convict ... has already served out about 20 years of his substantive sentence. Therefore, on the principle of legitimate expectancy of life recently considered by this Court in the case of *Sikandar Hayat* and another versus the State and others, he is entitled to conversion of death sentence to that of imprisonment for life.”

Furthermore, in the intervening period, the heirs of the victim have forgiven Mr. Ali and do not want him to be executed.

On 18 March 2021, a fresh mercy petition was filed for Mr. Ali.

Other information

On 13 May 2020, the Prime Minister of Pakistan publicly stated that “we intend to continue working to fulfil our commitments under the 27 International Conventions we are party to, including 6 Human Rights Conventions, and which are part of GSP Plus agreement.”

Pakistan is due to be reviewed by the Human Rights Committee and the Committee on the Rights of the Child in 2022.

Without prejudging the accuracy of the information received, we express serious concern as to the alleged imminent execution of Mr. Ali, despite him having been a child at the time of the offence and his death sentence following a trial in which he did not have access to effective legal representation at all stages of the proceedings. We are further concerned that his case was dealt with by the Anti-Terrorism Court despite being an ordinary criminal case and that his death sentence was scheduled without his petition for clemency having been meaningfully considered.

In view of the above, we call upon your Excellency’s Government as a matter of urgency to halt the execution of Mr. Ali and to ensure that he is either released or has his sentence commuted in line with international juvenile justice standards. In this regard, we respectfully call on the President of Pakistan to grant Mr. Ali’s fresh mercy petition. On the allegations made available to us, his

execution would constitute a violation of applicable international human rights standards and thus an arbitrary execution.

Child at the time of the offence

We wish to highlight 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.

In this regard, we note that in 2016 the Committee on the Rights of the Child in its Concluding Observations on Pakistan expressed serious concern at "reports of the execution of several individuals for offences committed while they were under the age of 18 years, or where the age of the individual was contested," at the large number of child offenders on death row and that "these persons have limited access to procedures for challenging their sentences on the basis of their age." The Committee urged your Excellency's Government to order a stay on all executions involving minors and launch a review of all cases including where there was an indication that the individual was a juvenile at the time of the offence and to establish effective age determination mechanisms in order to ensure that in cases where there is no proof of age, the child is entitled to a proper investigation to establish his or her age and, in the case of conflicting or inconclusive evidence, has the right to the rule of the benefit of the doubt," (CRC/C/PAK/CO/5, para. 24 and 25).

Fair trial

The Human Rights Committee has found that "violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the Covenant." Such violations would include the lack of effective representation at any stage of the legal proceedings (CCPR/C/GC/36, para. 41).

We would also wish to recall the right to effective legal representation under article 14 of International Covenant on Civil and Political Rights and article 40 (2) (b) (ii) and (iii) of the Convention on the Rights of the Child. More specifically, article 40 (2) (b) provides, among other guarantees, that: a) every child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence and b) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.

We also wish to highlight that being tried in a terrorism court for an ordinary criminal offence may have restricted Mr. Ali's enjoyment of several other procedural rights guaranteed to him under the article 14 of the ICCPR. We recall in this regard that the Anti-Terrorism Court has been the subject of prior communication (AL PAK 6/2018, sent on 24 October 2018) to your Excellency's Government from the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism.

Denial of mercy petition

Article 6(4) of the ICCPR states: "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases." In General Comment 36, the Human Rights Committee noted, that "parties are required pursuant to article 6 (4) to allow individuals sentenced to death to seek pardon or commutation, to ensure that amnesties, pardons and commutation can be granted to them in appropriate circumstances, and to ensure that sentences are not carried out before requests for pardon or commutation have been meaningfully considered and conclusively decided upon according to applicable procedures. No category of sentenced persons can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner." In 2017, the Human Rights Committee observed in its Concluding Observations on Pakistan that a "policy of blanket refusal of clemency applications is allegedly in place and no clemency applications have been granted" and recommended that "pardon or commutation of the sentence is available in all cases, regardless of the crime committed," (CCPR/C/PAK/CO/1, paras. 17 and 18).

For these reasons, we respectfully reiterate our call on your Excellency's Government to take all the necessary steps to ensure Mr. Ali is not executed.

Additionally, while we strongly condemn the 2014 Peshawar school attack, we would like to emphasise that there is a lack of persuasive evidence that the death penalty could contribute more than any other punishment to eradicating terrorism. We respectfully reiterate our recommendation that your Excellency's Government reinstate a moratorium on executions with the view to fully abolishing the death penalty.

In the meantime, we urge your Excellency's Government to promptly implement the recommendations from the Committee on the Rights of the Child related to the death penalty, including reviewing all cases where there is an indication the individual was a child at the time of the offence. We further call on your Excellency's Government to ensure that no category of offences have mercy petitions automatically denied, to ensure that individuals whose mercy petitions were previously summarily rejected are able to submit fresh petitions and that all mercy petitions are meaningfully considered.

The full texts of the human rights instruments and standards recalled above are available on 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(s) 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 your observations 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. Ali'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 information that Mr. Ali's minor age is confirmed by his School Leaving Certificate.
3. Please provide information on the steps taken to ensure that all mercy petitions are meaningfully considered in line with Pakistan's international human right obligations. Please include information on whether the policy summarily reject pleas of mercy including for death sentences handed down by the Anti-Terrorism Court remains in place and if so how this is compatible with international standards.
4. Please provide factual and legal information on the reason why the case was dealt by the Anti-Terrorism Court. Please indicate how this complies with the obligation to pursue counter-terrorism obligations consistent with international law as set out *inter alia in* United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004) and the model definition of terrorism provided by the mandate of the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism.

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 may 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 implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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 appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for 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 would like to respectfully request that this communication be brought to the attention of His Excellency Dr. Arif Alvi, President of the Islamic Republic of Pakistan and Mr. Imran Khan, Prime Minister of the Islamic Republic of Pakistan.

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Elina Steinerte

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