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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

REFERENCE: UA G/SO 218/2 G/SO 214 (56-23) Minorities (2005-4) G/SO 214 (33-27)
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16 April 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 24/7, 22/20, and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the **alleged arbitrary detention, prosecution and sentence to death of Mr. Sawan Masih, under blasphemy charges in Pakistan.**

According to the information received:

On 7 March 2013, Mr. Sawan Masih, a 26-year-old Christian and father of three, was arrested and accused of making derogatory remarks against the Prophet Mohammed in an altercation with a Muslim believer, who registered a blasphemy charge at the local police station. On 8 March 2013, Mr. Masih was charged with blasphemy under Section 295-C of the Pakistani Criminal Code. On 9 March 2013, as news of the accusation spread, a large mob of several thousand Muslim believers attacked and vandalized the Joseph Colony, located in Badami Bagh, in Lahore, where Mr. Masih resided and which is a predominantly Christian area. The attackers looted and torched an estimated 198 Christian homes, shops and churches. Dozens of bibles were desecrated during the riots that lasted several days. Hundreds of Christian families were reportedly displaced as a result of the attacks.

It is reported that the police did not attempt to stop the rioters. After the incident, the police registered charges against 1,000 people. However, the State authorities reportedly did not prosecute the alleged perpetrators, who were subsequently released on bail.

During a year-long trial, Mr. Masih has repeatedly denied the charges against him, asserting that he did not insult the Prophet and that the false accusation was made as a result of a property dispute. Mr. Masih has been kept in jail since his arrest.

On 27 March 2014, Mr. Masih was sentenced to death after the Additional session judge Chaudhry Ghulam Murtaza found him guilty of blasphemy under Section 295-C of the Criminal Code. It is reported that the evidence used to secure the conviction rested upon the testimonies from Muslim witnesses and the complainant, which were not verified. Mr. Masih was ordered to pay a fine of 200,000 Pakistani rupees. The trial was conducted in the Lahore Camp Jail, due to fears for Mr. Masih's safety if he attended court facilities.

On 1 April 2014, Mr. Masih filed an appeal against his conviction in the Lahore High Court, which, under the Pakistani judicial system, has the competence to review all death penalty cases.

Legal provisions in Pakistan's Criminal Code prohibit blasphemy against any recognized religion and provide penalties ranging from a fine to death. However, little evidence appears to be required to register a blasphemy accusation. It is reported that false blasphemy accusations are common in Pakistan and often used to settle personal disputes, target religious minorities and other minority groups, or promote extremist agendas.

Grave concern is expressed that Mr. Sawan Masih has been detained, prosecuted and sentenced to death on the basis of allegations that he expressed views deemed to be derogatory towards Islam. We are concerned that the death penalty may have been imposed against Mr. Masih in contravention of international human rights law, which provides that capital punishment may be considered for the "most serious crimes" only. Our concerns are heightened by what appears to be a growing trend to misuse legal provisions relating to blasphemy for personal or political reasons, as well as a disproportionate use of such provisions against members of religious minorities.

In view of the irreversibility of the punishment of the death penalty, we call upon your Excellency's Government to commute without delay the death sentence imposed against Mr. Masih. We further urge your Excellency's Government to take all steps necessary to prevent the execution of Mr. Masih, which, if carried out, would be inconsistent with acceptable standards of international human rights law.

In this context, we wish to refer to article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) that Pakistan ratified on 23 June 2010, stipulating 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". Although international law does not prohibit the death penalty, it nonetheless provides that it must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner.

In this regard, we would like also to respectfully remind your Excellency's Government that "in countries which have not abolished the death penalty", the "sentence

of death may be imposed only for the most serious crimes” in accordance with article 6(2) of the ICCPR. In interpreting article 6(2) of the Covenant, the United Nations Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. By consequence, alleged offences of blasphemy do not meet the threshold of the “most serious crimes” provision, and the imposition of the death penalty on such charges is in contravention of international human rights law.

Furthermore, Safeguard 4 of the United Nations Safeguards Protecting the Rights of those facing the death penalty stipulates that “capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts”.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Masih is arbitrary or not, we would like to appeal to your Excellency’s Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR), and articles 9 and 14 of ICCPR.

We would also like to appeal to your Excellency’s Government to ensure the right to freedom of religion or belief is protected in Pakistan in accordance with the principles set forth in article 18 of the UDHR and of the ICCPR.

With regards to the allegations that Mr. Masih was arrested and sentenced to death for allegedly using derogatory remarks against the Prophet Mohammed, we would like to recall article 6 (i) of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, which provides that the right to freedom of thought, conscience, religion or belief includes the freedom “to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels”.

Furthermore, paragraph 14 (h) of General Assembly resolution 68/170 and paragraph 8 (h) of Human Rights Council resolution 22/20, urge States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end to “ensure, in particular, the right of all persons to worship, assemble or teach in connection with a religion or belief, their right to establish and maintain places for these purposes and the right of all persons to seek, receive and impart information and ideas in these areas”.

With regards to the use of blasphemy laws in Pakistan against people deemed to have insulted a recognized religion, including in Mr. Masih’s case, we would like to draw your attention to General Comment 34 (on freedom of opinion and expression), where the Human Rights Committee stressed that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of

the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26 of the ICCPR. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

Furthermore, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, annex, appendix), makes clear that the related “article 20 ICCPR requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such a threshold needs to be read in consonance with article 19 of the ICCPR. Indeed the three part test for restrictions (legality, proportionality and necessity) also applies to incitement cases, i.e. such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions: are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measures available; are not overly broad, in that they do not restrict speech in a wide or untargeted way; and are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorize.”

Concerning the allegations that a mob of several thousand Muslims attacked and vandalized the Christian-majority area of Joseph Colony, we would like to draw your Excellency’s Government’s attention to paragraph 14 (k) of the aforementioned General Assembly resolution 68/170, which urge states to (k) “take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to members of religious minorities in all parts of the world.”

With regards to the allegations that religious minorities may be unfairly and disproportionately targeted by the application of blasphemy laws, we would like to recall paragraph 14 (m) of the same resolutions which urge states to “prevent any distinction, exclusion, restriction or preference based on religion or belief that impairs the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis, and to detect signs of intolerance that may lead to discrimination based on religion or belief.”

In view of the urgency of the matter, we would appreciate a response about the initial steps taken by your Excellency’s Government not to execute Mr. Masih and to safeguard his rights and those of the residents of Joseph Colony, in Lahore, Pakistan, in compliance with the aforementioned international standards.

Moreover, since 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 cooperation and your observations on the following matters:

1. Are the facts described in the above cases accurate?
2. Please provide details, including the legal basis, for the detention, prosecution and conviction against Mr. Masih and how these measures are compatible with the aforementioned international human rights standards, in particular with the right to freedom of religion or belief and the prohibition of arbitrary detention.
3. Please indicate the specific crime that Mr. Masih has been found guilty of and the legal basis of the death sentence imposed against him. Please indicate how this is compatible with international human rights law, specifically with the requirement in article 6(2) of the ICCPR to impose the death penalty for the most serious crimes only. Please provide details on the evidence used to convict and sentence Mr. Masih to death.
4. Please provide detailed information on the measures taken to investigate and, where applicable, prosecute the acts of vandalism, looting and torching of Christian property in Joseph Colony.
5. Please provide detailed information on the measures taken to ensure the right to freedom of religion or belief, in particular, the freedom to have or adopt a religion or belief of one's choice and the freedom to manifest one's religion or belief, in line with Pakistan's international human rights obligations.

We undertake to ensure that your Excellency's Government's response will be available in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Sawan Masih and the residents of the Joseph Colony are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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Special Rapporteur on freedom of religion or belief

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions