

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA PAK 7/2019

24 October 2019

Excellency,

We have the honour to address you in our capacity as the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/22, 35/11, 40/10 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 arrest, solitary confinement, as well as on-going prosecution of Mr. **Junaid Hafeez** under blasphemy charges.

According to the information received:

Mr. Junaid Hafeez, a 33-year-old lecturer at Bahauddin Zakariya University in Multan, was arrested on 13 March 2013 and charged under sections 295-A, -B and -C of the Pakistan Penal Code.

The blasphemy charges were related to the allegations of (1) deliberately uttering words with malicious intent to cause outrage among the Muslims by supporting two novels, 'Holy Women' and 'Typhon'; (2) willfully using the Qur'an in a derogatory manner by claiming that it was derived from folklore stories and (3) defiling the sacred name of the Holy Prophet Muhammad by being friends with people with objectionable names on Facebook, and (4) being a member of and posting in social groups such as 'Liberals of Pakistan' and 'Atheism is Fact'.

Since his trial started in 2014, he has been kept in solitary confinement, ostensibly for his personal security. As a consequence of prolonged solitary confinement and reportedly harsh detention conditions, his mental and physical health have become seriously affected.

The case has gone through lengthy trials in Multan courts with the prosecution failing to provide any convincing evidence to prove that Mr. Hafeez was guilty of the charges. The case is currently with the eighth judge since his trial began while previous judges were reportedly transferred. Furthermore, there was a severe delay in the 2014 proceedings following the 7 May killing of Mr. Hafeez'

counsel, Mr. Rashid Rehman, who had received death threats for defending him (see previous communication, ref. PAK 7/2014). Until present, there is no official response to this murder inquiry. As a result, there is a general climate of fear among members of the judiciary in handling this case, and they are also under undue pressure. His family is forced to keep a low profile in another city for security reasons.

Recently, the prosecution filed an application for another forensic review of Mr. Hafeez' computer and mobile phone despite the fact that both items were already submitted for a forensic review in 2014. Moreover, the evidence from the previous forensic review that relied on a Facebook post allegedly made by Mr. Hafeez, uncovered metadata which suggested that the post had been made after Mr. Hafeez's arrest and while the items were under the sole of custody of law enforcement officers. Such allegations raise serious doubt as to the merits of the case. On 1 October 2019, the trial judge decided to dismiss all applications from the prosecution for a second forensic review.

Without expressing at this stage an opinion on the facts of the case, we would like to express our concerns about Mr. Hafeez' mental and physical well being due to prolonged solitary confinement, and reportedly harsh detention conditions. We are also concerned that Mr. Hafeez has been arbitrarily detained on charges that raise reasonable doubts as to the merits of the case. We reiterate our concerns of the use of blasphemy provision against individual who legitimately exercise their rights to freedom of thought, conscience, religion and expression. Moreover, we are particularly concerned that the independence of the judges and lawyers involved in the case, and the fair trial proceedings in this case, could be compromised due to undue pressure and threat of violence.

We would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of Mr. Hafeez not to be deprived arbitrarily of his liberty and to be afforded 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 the International Covenant on Civil and Political Rights (ICCPR) ratified by Pakistan on 23 June 2010.

We are alarmed about the use of solitary confinement, which appears to be seriously contributing to the deterioration of Mr. Hafeez physical and mental health. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268) has underscored that the use of prolonged solitary confinement in itself runs afoul of the absolute prohibition of torture and other ill-treatment. Due to the prisoner's lack of communication and contacts with other potential witnesses, including his family and his defence lawyers, solitary confinement enhances the risk of torture or ill-treatment. Paragraph 6 of General Comment No. 20 of the Human Rights Committee

states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by article 7 of the ICCPR.

The Istanbul Statement on the Use and Effects of Solitary Confinement provides useful guidance in efforts to promote the respect and protection of the rights of detainees. The United Nations Standard Minimum Rules for the Treatment of Prisoners (also known as the Mandela Rules, 2015) provides in its Rules 43.1(b), 43.3, 44, 45 and 46 internationally recognized norms relating to disciplinary sanctions or restrictive measures, including solitary confinement, and the role of health-care personnel regarding any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of prisoners subjected to such sanctions or measures. Solitary confinement may only be used under exceptional circumstances, as a measure of last resort, and for the shortest time possible. Rule 44 in particular provides that “For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.” When solitary confinement is used in exceptional circumstances, minimum procedural safeguards must be followed.

We are also drawing your Excellency’s Government’s attention to article 18 of the UDHR and ICCPR, which sets forth the principle that everyone has the right to freedom of thought, conscience and religion; and to Article 19 of the ICCPR which provides that anyone has the right to express one’s opinion in a peaceful manner and that this right should be protected by law. General Comment No. 22 of the Human Rights Committee has clearly stressed that article 18 “does not permit any limitations whatsoever on the freedom of thought and conscience [...]” Peaceful expression of one’s thought and conscience cannot be restricted unless it has fulfilled stringent tests of legality, proportionality and necessity.

The principle of the independence of the judiciary is a fundamental principle of justice. The principle has been enshrined in a large number of United Nations legal instruments, including Article 14 of the ICCPR, and the Basic Principles on the Independence of the Judiciary. The Principles provide, inter alia, that it is the duty of all state institutions, including the executive and legislative powers to respect the independence of the judiciary (principle 1); that judges shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4). Principle 14 of the Guidelines on the Role of Prosecutors clearly states that prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

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 your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information of the factual and legal grounds for the arrest, detention and prosecution of Mr. Hafeez.
3. Please provide detailed information on the current conditions of detention of Mr. Hafeez, including the access to outing and contacts with other detainees as well as access to his family and defence lawyers. Please explain how his solitary confinement since his arrest in 2014 are compatible with the standards of international human rights law, in particular articles 7, 9 and 14 of the ICCPR, and Rule 44 of the Standard Minimum Rules for the Treatment of Prisoners.
4. Please provide the details and where available, the results of any judicial or other investigation, which may have been carried in relation with the killing of Mr. Hafeez' counsel in 2014.
5. Please provide information on measures taken by your Excellency's Government in ensuring the protection of the judiciary from any undue pressure or threat of violence. Please also elaborate the steps taken to ensure the independence of the judiciary and fair trials.
6. Please provide information on concrete steps taken by the Government in upholding the right to freedom of thought, conscience, religion and expression in Pakistan.
7. Please provide detailed clarification about the use of section 295 of the Penal Code.

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 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 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.

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

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Vice-Chair of the Working Group on Arbitrary Detention

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

Ahmed Shaheed  
Special Rapporteur on freedom of religion or belief

Nils Melzer  
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