

Mandates of the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL PAK 9/2021

14 September 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 44/8, 40/10 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the harassment and death threats against lawyer **Saif-ul-Malook**, allegedly in connection to the legitimate exercise of his professional activities in favour of his clients.

Mr. Saif-ul-Malook is a human rights lawyer. He has represented a number of individuals charged with or convicted of blasphemy, and he has attained a considerable degree of notoriety around the world because of his defence of human rights. Because of the nature of the cases he defends, Mr. Malook has been subject to harassment and intimidation, including death threats, from religious extremists.

According to the information received:

In June 2021, the High Court in Lahore quashed the convictions of a Christian couple who had been sentenced to death in 2014 for allegedly sending blasphemous text messages insulting the Prophet Muhammad. Mr. Malook represented the young couple before the High Court.

The acquittal of the couple resulted in an outpouring of media reports, tweets and threats against the couple and their lawyer. Mr. Malook has been subject to various forms of intimidation and harassment, including through social media, and has received numerous death threats, requiring police protection.

Allegedly, national authorities currently provide police protection for Mr. Malook and his family. However, the protection he receives does not appear to be sufficient in light of the serious and credible threats of serious harm against him and his family.

Mr. Malook also represented the very high-level case of Ms Asia Bibi, a Christian villager who had been convicted of blasphemy by a Pakistani court and spent eight years on death row in a case that attracted international condemnation (see PAK 1/2015, 13/2014, 3/2012 and 15/2010). In October 2018, the Supreme Court of Pakistan acquitted her based on insufficient evidence.

The case sparked protests headed by Islamist parties in major cities of the country. Due to credible death threats against him, Mr Malook was urged to leave the country in November 2018 and temporarily relocate to The Netherlands. He returned to Pakistan in order to plead her final and successful appeal, and since then his life continues to be in danger.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns at the alleged intimidation and harassment against Mr. Malook, allegedly in connection with the legitimate exercise of his professional activities in favour of individuals charged with or convicted of blasphemy.

If confirmed, the events described above would amount to a serious breach of a number of international and regional standards relating to the free and independent exercise of the legal profession. According to these standards, States must put in place all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. In particular, lawyers must not be subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics, and should never be identified with their clients or their clients' causes in the discharge of their professional duties.

We also recall our previous communications (cases nos. PAK 7/2014 and PAK 3/2017) expressing concerns on the physical integrity and safety of lawyers and human rights defenders working on anti-blasphemy cases or on protection of the rights of religious minorities and Pakistan's record of impunity with regards to arresting and convicting individuals carrying out attacks on human rights defenders, in particular, following accusations of blasphemy. We have stressed how impunity has emboldened hostile actors and fostered an increasingly violent climate, particularly for those working on religious freedom and minority rights. We further reiterate our concerns that the continued existence and use of anti-blasphemy legislation in Pakistan may be used to legitimize attacks through social mobilization and non-state actors against individuals, including lawyers, human right defenders, and journalists, who legitimately exercise their internationally guaranteed human rights.

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 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 detailed information on the measures put in place by competent State authorities to ensure the protection of Mr. Malook and his family, and explain to what extent they are adequate to the numerous

and credible threats he has been subject to as result of his client's acquittal in the High Court of Lahore.

3. Please provide detailed information on any investigation carried out by national authorities to identify and punish the authors of the threats against Mr. Malook and his family. If no investigation has been carried out, please explain why.
4. Please provide detailed information on the legislative and other measures adopted by Pakistan to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16 (a) of the Basic Principles on the Role of Lawyers) and to ensure that they are adequately safeguarded by the authorities when their security is threatened as a result of discharging their functions (Principle 17).

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

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

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

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), ratified by Pakistan on 23 June 2010, and to the Basic Principles on the Role of Lawyers.

Article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. They should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 17 provides that “[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”.

Principle 18 specifies that lawyers are not to be identified with their clients or their client’s causes as a result of their professional functions.

Article 18 of the ICCPR stresses that “Everyone shall have the right to freedom of thought, conscience and religion. This rights shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Generam 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 [...].” Peacefull expression of one’s thought and conscience cannot be restricted unless it has fulfilled stringent tests of legality, proportionality and necessity.

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) states in its Article 2 (1): "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In Article 4 (1), the General Assembly further states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]" Furthermore, we would like to refer your Government to Article 4(2) according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

We would also like to refer to the Declaration on the Right and responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the 'Declaration on Human Rights Defenders, A/RES/53/144), which in its Article 1 reaffirms that 'Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels'. Article 12 of the Declaration states that 'Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.