

Mandates of the Special Rapporteur on freedom of religion or belief; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on minority issues

REFERENCE:
UA PAK 10/2021

13 October 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on freedom of religion or belief; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 40/10, 42/22, 43/4, 42/16 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the arrest, prolonged detention and ongoing prosecution of Mr. Stephen Masih, a person with psychosocial disabilities and member of the Pakistani Christian minority from Imran Pura Badian village (Sialkot district of Punjab), who is charged with blasphemy under Section 295-C of Pakistan's Penal Code.**

According to information received:

On 11 March 2019, following a heated argument with one of his neighbours in the Imran Pura Badian village, Mr. Stephen Masih was physically attacked by a group of people accusing him of committing blasphemy. Rather than arresting the perpetrators of this attack, the local authorities filed a First Information Report (FIR) against Mr. Masih, and then few days later, on 15 March, proceeded with his arrest and detention. Following the arrest, Mr. Masih's family home was set on fire.

Mr. Masih was informed about the blasphemy charges against him only three months after his arrest, in June 2019. Since then, there have been more than 40 hearings on his case. In seven cases, the authorities prevented Mr. Masih from attending the hearings, while in six other cases, the judges were on leave and the hearings did not take place. Several other hearings have been postponed due to COVID-19 related concerns.

At the time of writing this communication, no verdict has been reached on his case by the judges of the Session Court in Sialkot. The prosecution has not disclosed publicly any evidence against Mr. Masih, while the witness

testimonies of the prosecution have not been recorded during the hearings that took place.

In March 2020, a medical board was convened to review Mr. Masih's mental health status, four months after Court's initial request for such a review. It took more than a year for the Punjab Institute of Mental Health to release Mr. Masih's health report. It was dated 8 July 2021, but it was published on 30 July 2021. The release of the report only happened after pressure by civil society organisations who were following Mr. Masih's case. According to the report, Mr. Masih has "Bipolar Affective Disorder" and is "unfit to stand trial at the moment." According to experts, symptoms of such condition may include mood swings which can affect judgement, behaviour and the ability to think clearly.¹

Following the release of the medical review, Mr. Masih's lawyer filed an application for bail, early release, and alternatively for putting Mr. Masih's under the custody of his brother. All of these requests were denied by the Court on 5 August 2021.

The Court challenged Mr. Masih's unfitness to stand trial by arguing that if it had been the case, then Mr. Masih couldn't have been in a position to engage any counsel with purpose of appealing for bail, and it denied the bail because the alleged charges fall under the blasphemy provisions of the Pakistani Penal Code. The Court also denied a request for temporary release, arguing about the potential threats against Mr. Masih's life as well as the risk of abscondence. Finally, it was decided that the trial be postponed on the basis of the opinion of the Medical Board on Mental Health, until Mr. Masih "gains his mental health". On 7 August 2021, Mr. Masih's lawyers filed an appeal before the Lahore High Court requesting anew for a bail and assuring the Court of Mr. Masih's intention not to abscond or tamper with the prosecution evidence. The hearing will take place on 22 October 2021.

At the moment, Mr. Masih is detained in the Sialkot District Jail and he has access to his lawyers and family members. However, it is reported that Mr. Masih is kept in a cell with prisoners of the Muslim faith and that the prison authorities have not provided Mr. Masih with any treatment for his health condition, contrary to the guidance provided in the decision of the Court of 5 August 2021, which specifically called on the prison superintendent and the Sialkot District Police Officer to make the "necessary arrangement" for Mr. Masih's security and treatment while in detention.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concerns regarding the arrest, detention and judicial harassment experienced by Mr. Stephen Masih on the reported grounds of blasphemy for what appeared to be an argument among neighbours. We note with concern that the local police may have not proceeded with a thorough investigation of the incident, and that

¹ <https://mentalhealth.org.nz/conditions/condition/bipolar-affective-disorder>; <https://www.nhs.uk/mental-health/conditions/bipolar-disorder/symptoms/>

instead of protecting Mr. Masih and his family from violent acts perpetrated by an angry mob, investigating such acts and prosecuting those responsible, it filed instead a FIR against him based on the local villagers' and neighbors' claims of him committing a blasphemy, a crime which may carry the death penalty according to Pakistan's Penal Code. It would be further concerning if such conduct by the local police had been based on socially entrenched prejudice against members of religious minorities, given that Mr. Masih is a member of the Christian minority and the other parties to the attack and neighbourhood argument were Muslims.

Furthermore, we wish to express our serious concern at the reported violations of due process and fair trial guarantees, including the significant delay in communicating the official charges to Mr. Masih, the numerous postponements of the hearings, as well as delays in convening Mr. Masih's expert mental health review and releasing the results of this review. We are also concerned that the reasons provided by the Court in its decision to deny bail or alternative custody or temporary release of Mr. Masih may be based on an ableist notion and discriminatory in nature, which is contrary to the international human rights obligations Pakistan has committed to, including as provided by Articles 5, 12 and 13 of the Convention on the rights of Persons with disabilities.

We are also deeply alarmed at the treatment of Mr. Masih, who remains detained despite the reported absence of evidence to support the claims and official charges against him, and despite the fact that the Court was well aware of his mental health condition, following the release of his mental health review by the Punjab Institute of Mental Health. It also deeply regrettable that security and health-related concerns were not taken into account by the district police and prison authorities, contrary to the Court's decision of 5 August 2021, and that Mr. Masih is currently sharing a cell with prisoners of Muslim faith and is deprived of any medical treatment for his health condition. Drawing from Mr. Masih's case, we are concerned about the situation of persons with disabilities in conflict with the law in Pakistan, including their right to access to justice on an equal basis with others, and the role of all the relevant state authorities in ensuring that their human rights are fully respected and protected, prior, during and after any judicial process.

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 by non-state actors against individuals, and in particular against persons belonging to minorities and against those who advocate for their human rights.

We wish to underscore that, if confirmed, the above-mentioned allegations would be in violations of international human rights standards, including on non-discrimination, liberty and security, equality before the law and respect of due process and fair trial guarantees, freedom of thought, conscience, religion and belief, freedom of opinion and expression, as well as protection of the rights of persons belonging to minorities and of the rights of persons with disabilities, as enshrined in international human rights instruments to which Pakistan is a party, including articles 2, 3, 9, 14, 18, 19, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR), and

articles 5, 12, 13 and 21 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Pakistan respectively on 23 June 2010 and on 5 July 2011.

In connection with the above alleged facts and concerns, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the fundamental rights in accordance with the principles as set forth in articles 2, 3, 9, 14, 18, 19, 26 and 27 of the ICCPR.

Article 18 of the ICCPR and of the Universal Declaration of Human Rights (UDHR) guarantee the right of freedom of thought, conscience, religion or belief and protects against any coercion which would impair one's freedom to have or to adopt a religion or belief of his choice.

Article 19 of the ICCPR and article 21 of the CRPD guarantee the right to freedom of opinion. It protects the right to hold opinions of any kind, including religious opinions. The Human Rights Committee has affirmed that "no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions ... It is incompatible with paragraph 1 to criminalize the holding of an opinion" (General Comment no. 34 para. 9).

In this respect, we wish to remind your Excellency's Government that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR is arbitrary, including the right to freedom of opinion and expression (article 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17) (CCPR/C/GC/35, para. 17).

Article 26 of the ICCPR stresses that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion or other status [...].

We would further like to bring to Your Excellency's Government attention the international standards regarding the protection of the rights of persons belonging to religious minorities, in particular to article 27 of the ICCPR that guarantees minorities, inter alia, the right to profess and practice their own religion. Moreover, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end (article 1), recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination (article 2) and requires States to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).

In addition, we wish to recall that the repeal of blasphemy laws has been called for by the Special Rapporteur on freedom of religion or belief, and is a recommendation

of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (para. 17), as well as of the Human Rights Committee in its General Comment No. 34. Such repeal is particularly urgent in situations where the law carries the death sentence, a punishment which contravenes both the letter and the spirit of article 6 (2,4) of the ICCPR.

Finally, we draw your Excellency's Government attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners (reviewed on 17 December 2015 and also known as the "Mandela Rules"), in particular to Rule 24 that establishes that the provision of health care for prisoners is a State responsibility that should ensure continuity of treatment and care; and, Rule 25 that indicates that prisons' health-care services shall protect and improve prisoners' health, particularly of prisoners with special health-care needs or which health issues that hamper their rehabilitation.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

We are issuing this appeal in order to safeguard the rights of abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

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 Mr. Stephen Masih, 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. Stephen Masih.
3. Please provide an explanation on the alleged violations of due process and on the refusal by the judicial authorities to grant Mr. Masih bail, temporary release, or alternatively custody by his brother.
4. Please explain the reasons for the delay in convening a mental health review for Mr. Masih, as well as for the delay in releasing its results.
5. Please indicate the measures undertaken by relevant authorities to investigate the violent attacks against Mr. Masih and his family, and the reported burning of his family home. Please provide information on any investigation being undertaken or plans to do so, and the identification

of those responsible for these acts. If no investigation or other inquiry has taken place, or if it has been inconclusive, please indicate the reasons why and what actions are envisaged to address this issue.

6. Please provide a factual and legal argument for maintaining in Pakistan's Penal Code provisions on blasphemy and explain how such provisions are compatible with Pakistan's obligations under international human rights law, and in particular with articles 18 and 19 of the ICCPR.
7. Please provide detailed information on the reasons why the security and health-related concerns outlined in the decision of the Sialkot Court of 5 August 2021 were taken into account by the Sialkot District Police and the Sialkot Jail Superintendent, and explain how such a treatment complies with the international standards and norms covering conditions in detention and the treatment of detainees, including the United Nations Standard Minimum Rules for the Treatment of Prisons ("the Nelson Mandela Rules").
8. Please provide information on the measures undertaken to ensure that persons with disabilities in Pakistan are not discriminated in all aspects of judicial processes and that their human rights are fully respected and protected on equal basis with others, in line with Pakistan's obligations under international human rights law, and in particular article 13 of the CRPD.

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 prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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 reserve the right to publicly express our concerns in this case in the future as in our view, should what appears to be the arbitrary detention of this person on religious grounds. We believe, based on available information, that this case warrants prompt attention, and that the wider public should be alerted to the potential human rights implications of these allegations. Any public expression on our part will indicate that we have been in contact with the Government to clarify the issue in question.

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.

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Fernand de Varennes
Special Rapporteur on minority issues