

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 independence of judges and lawyers; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief

Ref.: AL PAK 3/2022
(Please use this reference in your reply)

27 June 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 independence of judges and lawyers; Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 44/5, 42/22, 43/4, 44/8, 43/8 and 49/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **imposition of the death penalty on Mr. Junaid Hafeez for charges of blasphemy**, which do not meet the threshold of "most serious crimes" as required under international law when the death penalty is imposed.

The case has previously been communicated to your Excellency's Government (UA [PAK 7/2019](#) sent on 24 October 2019). The killing of Mr. Hafeez' counsel, who had reportedly received death threats for defending him, has been raised in AL [PAK 7/2014](#). We regret that no replies have been received to date.

According to the information received:

Imposition of the death penalty for blasphemy against Mr. Junaid Hafeez

On 13 March 2013, Mr. Hafeez was giving a lecture at Bahauddin Zakariya University in Multan, Pakistan, when he was arrested and charged under sections 295-A,-B and -C of the Pakistan Penal Code for allegedly making blasphemous remarks during his lectures and on his Facebook account.

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.'

After his arrest, Mr. Hafeez was not given access to legal counsel throughout his interrogation, during which he was allegedly subjected to ill-treatment. Nor was he assigned a government-appointed lawyer in the period before his legal counsel took over his case in November 2013. He was held in pre-trial

detention until the start of his trial in June 2014.

In the course of his legal proceedings, his case was referred to at least seven judges in the Multan courts. While the legal proceedings were delayed several times, the prosecution reportedly failed to present conclusive evidence of Mr. Hafeez's guilt. Evidence from the initial forensic investigation, based on a Facebook post allegedly written by Mr. Hafeez, uncovered metadata suggesting that the post was written after Mr. Hafeez's arrest while his electronic devices were reportedly in the sole custody of law enforcement officials. These practices raised serious doubts about the merits of the case and the independence of the judiciary in Mr. Hafeez's case.

On 1 October 2019, the trial judge decided to dismiss all applications from the prosecution for a second forensic review.

On 27 December 2019, the death penalty was imposed on Mr. Hafeez, despite concerns raised about the independence and fairness of the judicial process.

On 9 January 2020, an appeal was filed in the High Court of Mulan.

In November 2021, a petition was filed to transfer the case to the principal seat of the High Court in Lahore, which was granted on 21 December 2021.

In March 2022, his case file was forwarded to the seat of the High Court in Lahore, reportedly after several adjournments. The delay in scheduling Mr. Hafeez's appeal for a hearing is said to be due to the reluctance of judges to deal with high-profile blasphemy cases such as Mr. Hafeez's. There has been no official response to the murder inquiry into the case of Mr. Hafeez's legal counsel, who advocated against the misuse of blasphemy laws in Pakistan and was allegedly killed for representing Mr. Hafeez. A general climate of fear would reportedly continue to prevail among members of the judiciary in handling Mr. Hafeez's case.

Deterioration of Mr. Hafeez's health condition in detention

Since his trial started in June 2014, Mr. Hafeez has continued to be held in solitary confinement under allegedly harsh conditions. The long period of solitary confinement has reportedly severely affected Mr. Hafeez's mental and physical health condition, resulting in its continued deterioration.

Mr. Hafeez continues to be prohibited from making phone calls. Meetings with his family and legal counsel, which reportedly can take place every two weeks, are hampered by the fact that during the visit he can only speak on a telephone line that, according to sources, could be tapped.

Mandatory death penalty for blasphemy related charges

The mandatory death penalty for blasphemy charges is enshrined in Section 295 C of Pakistan Penal Code for allegations of insult of Prophet Muhammad. Mr. Hafeez's case is reportedly among a number of blasphemy related cases in which the death penalty has been imposed or in which such a sentence would constitute a possible outcome in pending trials. Pakistan's blasphemy laws are

allegedly overly broad, vague, and coercive and used to target ethnic and religious minorities. Judges and lawyers are reported to be reluctant to entertain cases related to blasphemy charges for fear of retaliation and related violations against their physical and mental integrity. There would allegedly be a tendency among complainants and lawyers belonging to extremist groups to insist on the inclusion of the above-mentioned Section 295 C in the indictment to pressure judges to sentence defendants under the death penalty.

Without making any judgment as to the accuracy of the information made available to us, we would like to express our grave concern about the imposition of the mandatory death penalty for blasphemy related charges against Mr. Junaid Hafeez, acts which do not qualify as “most serious crimes,” and after alleged arbitrary detention and prolonged solitary confinement, which reportedly contributed to the deterioration of his mental and physical health condition.

If the above allegations prove to be accurate, they would be in contravention of Mr. Hafeez’ right to life, not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, not to be deprived arbitrarily of his liberty and to be afforded fair proceedings before an independent and impartial tribunal, to freedom of thought, conscience and religion, the right to express his opinion in a peaceful manner and the right to be equal before the law and are entitled without any discrimination to the equal protection of the law as set out in article 3, 5, 9, 10, and 18 of the Universal Declaration of Human Rights (UDHR) and articles 6, 7, 9, 10, 14, 18, 19 and 26 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Pakistan on 23 June 2010. We also refer to the obligations enshrined in the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, ratified by Pakistan on 23 June 2010. We recall that the right to life constitutes a customary international and *jus cogens* norm from which no derogation is permitted under any circumstances pursuant to article 4(2) of the ICCPR.

We are deeply disturbed by the fact that the charge of blasphemy remains a crime punishable by death under sections A, B and C of Section 295 and sub sections A and B of Section 298 of the Pakistan Penal Code. We highlight that under international law, a **death sentence may only be imposed in respect of “the most serious crimes,” meaning in cases which involve intentional killing. Charges of blasphemy do not meet this threshold** (CCPR/C/PAK/CO/1 para. 17), as previously raised with your Excellency’s Government (PAK [13/2014](#) sent on the 5 November 2014; [PAK 9/2017](#) sent on 1 December 2017). Executions for blasphemy related charges amount to a violation of international law and constitute unlawful killings.

Mandatory death sentences are inherently over-inclusive and unavoidably violate human rights law. The categorical distinctions that may be drawn between offences in the criminal law are not sufficient to reflect the full range of factors relevant to determining whether a death sentence would be permissible in a capital case. In such cases, individualized sentencing by the judiciary is required in order to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life.¹ We re-iterate our concern that in Pakistani legislation, the death sentence remains mandatory, preventing other mitigating factors concerning the defendant’s personal circumstances or the circumstances of the particular offence from being considered.

¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, para 4.

We are further concerned that Mr. Hafeez has been arbitrarily detained on charges that cast reasonable doubt on the merits of the case, and that no conclusive evidence has allegedly been presented to prove his guilt. We reiterate our concern about the application of the blasphemy law against persons lawfully exercising their right to freedom of thought, conscience, religion, and expression, which would amount to the judicial persecution of individuals on religious grounds. Our concerns in this regard would be heightened by what appears to be a growing trend to misuse legal provisions relating to blasphemy for personal or political reasons. In addition, we are particularly concerned that the independence of the judges and lawyers handling the case and the fair trial proceedings in this case may be compromised by undue pressure and threats of violence.

We remain troubled by the removal of the de facto moratorium on death penalty in 2014. The Human Rights Committee (CCPR/C/PAK/CO/1) and the Committee on Torture (CAT/C/PAK/CO/1) have raised concerns about the death penalty in Pakistan, which was the subject of 32 recommendations made during Pakistan's Universal Periodic Review in November 2017. In this regard, we recall that the General Assembly has consistently called upon all States to establish a moratorium on executions with a view to abolishing the death penalty since its resolution 62/149 of 18 December 2007 (para.7) and most recently, in its resolution 73/175 of 17 December 2018 (para. 7), called upon all States to respect the Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984.

Under these circumstances, we respectfully call on your Excellency's Government **to halt all steps currently being considered or taken with respect to the further confirmation of the death penalty in the case of Mr. Junaid Hafeez, to fully investigate the allegations raised in this communication, and to ensure that he is retried in accordance with fair trial and due process standards enshrined in international law.**

In view of the irreversibility of the punishment of the death penalty and the ongoing development of an emerging customary law standard prohibiting the death penalty as a form of cruel, inhuman, or degrading punishment,² we respectfully reiterate our call on your Excellency's Government to consider reinstating an official moratorium on all executions as a further step towards fully abolishing the death penalty in the country.

We would like to reiterate that we stand ready to assist your Excellency's Government in relation to any efforts towards bringing the legislative framework and legal process of Pakistan into line with international standards and its obligations under the ICCPR. We express hope that, should your Excellency's Government decide to make changes to existing legislation in relation to the death penalty, the changes would ensure that the death penalty can only be imposed for "the most serious crimes".

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.

² Report of the former Special Rapporteur on Torture, A/67/279.

We are issuing this appeal in order to safeguard the rights of Mr. Hafeez from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.³

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 details on how the imposition of the death penalty in the case of Mr. Hafeez, after delayed judicial proceedings and based on allegedly inconclusive evidence, complies with international human rights law, in particular with the above-mentioned United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty.
3. Please provide clarification about the use of section 295 of the Penal Code. In particular, please provide detailed information on how the imposition of the death penalty for blasphemy related charges is consistent with the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, which states that capital punishment may be imposed only for the “most serious crimes,” excluding blasphemy.
4. Please provide information on how the alleged violations of the right to a fair trial and the prolonged solitary confinement of Mr. Hafeez since 2014 are consistent with Pakistan's obligations under international human rights law. Please provide detailed information on Mr. Hafeez's current conditions of detention, including information on his mental and physical health condition.
5. Please provide details and, to the extent available, the results of any judicial or other investigation conducted in connection with the killing of Mr. Hafeez's counsel in 2014. Please indicate whether any autopsy was conducted, and if so, whether conducted in accordance with international standards embodied in the United Nations Revised Manual for the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions (The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)).
6. Please provide information on the number of individuals currently held on death row in Pakistan related to charges under the above-mentioned blasphemy laws.
7. Please provide information on any efforts envisaged to remove the mandatory death penalty in Pakistan for blasphemy related charges and to bring the current legislation in line with international human rights norms.

³ Article 41 ICJ Statute ‘Interim Protection’: Part III, Section D (Incidental Proceedings), Subsection 1

While awaiting a reply, we recommend that prompt measures be taken to stop any steps towards the further confirmation of the death penalty in Mr. Hafeez' case, to immediately terminate his detention in solitary confinement and that his case be thoroughly reviewed, taking into account the multiple irregularities in his trial proceedings referred to in this communication, and which seem to have been repeatedly disregarded. In the light of this case, we also recommend that similar judicial process in capital punishment cases be thoroughly reviewed to prevent any future risk of arbitrary death sentences and executions.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter 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.

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Mumba Malila
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

Diego García-Sayán
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Fernand de Varennes
Special Rapporteur on minority issues

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the right to life, not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, not to be deprived arbitrarily of his liberty and to be afforded fair proceedings before an independent and impartial tribunal, to freedom of thought, conscience and religion, the right to express his opinion in a peaceful manner and the right to be equal before the law and are entitled without any discrimination to the equal protection of the law as set out in article 3, 5, 9, 10, and 18 of the Universal Declaration of Human Rights (UDHR) and articles 6, 7, 9, 10, 14, 18, 19 and 26 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Pakistan on 23 June 2010. We also refer to articles 2, 11, 12, 13 and 14 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, ratified by Pakistan on 23 June 2010. We stress that the right to life constitutes a supreme right from which no derogation is permitted under any circumstances pursuant to article 4(2) of the ICCPR.

The death penalty has long been regarded as an extreme exception to the fundamental right to life. We would like to draw your Excellency's Government's attention to article 6(2) of the ICCPR stating that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes." Article 1 of the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by the Economic and Social Council on 25 May 1984 (resolution 1984/50), also state that, in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes which are considered to be intentional crimes with lethal or other extremely grave consequences. Similarly, it was submitted in a report by the mandate on extrajudicial, summary or arbitrary executions to the Human Rights Council that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). The imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant (CCPR/C/79/Add.25). Blasphemy related charges do not meet the "most serious crimes" threshold (CCPR/C/PAK/CO/1, para. 17). Furthermore, the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment requires States to ensure legal and procedural safeguards, including access to a lawyer, contact with the family, independent medical examination, and the right to contest the legality of one's detention, are granted to all persons from the outset of arrest. These safeguards prevent the risk of torture and ill-treatment and are prerequisites for a fair trial.

We further refer to the Human Rights Committee stating that "In all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific attenuating elements must be considered by the sentencing court. Hence, mandatory death sentences that leave domestic courts with no discretion on whether or not to designate the offence as a crime entailing the death penalty, and on whether or not to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature. The availability of a right to seek pardon or commutation on the basis of the special circumstances of the case or the accused is not an adequate substitute for the need for judicial discretion in the application of the death penalty" (CCPR/C/GC/36,

para. 37).

We would like to call the attention of your Excellency's Government to the evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/67/279). This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (A/67/279, para. 74). The Special Rapporteur on torture has called upon all States to reconsider whether the use of the death penalty *per se* respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/67/279, para. 79).

The circumstances surrounding the imposition or execution of the death penalty can also constitute cruel, inhuman or degrading treatment or punishment or even torture. Physical or mental torture or other cruel, inhuman or degrading treatment or punishment, particularly the so-called death row syndrome, may inflict pain and suffering on convicts and their relatives which may well amount to torture or other cruel, inhuman or degrading treatment or punishment (see Report of the Special Rapporteur on Torture, A/67/279, para. 75).

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 imposition of the death penalty based on ambiguous and inconclusive evidence and after excessive and unjustified delays in the trial or the appeal process and the general lack of fairness of the criminal process, or lack of independence or impartiality of the trial or appeal court (CCPR/C/GC/36, para. 41). In this regard, the Human Rights Committee, in its General Comment No. 36, has held that "the execution of sentenced persons whose guilt has not been established beyond reasonable doubt also constitutes an arbitrary deprivation of life", therefore, States parties are required to "take all feasible measures in order to avoid wrongful convictions in death penalty cases, to review procedural barriers to reconsideration of convictions and to re-examine past convictions on the basis of new evidence. We also refer to the above mentioned Safeguards, in particular paragraphs 4 to 8, which provide 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, that it may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which provides all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages. Only full respect for stringent due process guarantees distinguishes capital punishment from arbitrary execution.

In relation to the allegations of solitary confinement, we remind your Excellency's Government of paragraph 6 of General Comment No. 20 of the Human Rights Committee which states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by article 7 of the ICCPR. Solitary confinement may only be used under exceptional circumstances, as a measure of last resort, and for the shortest time possible. In this regard we refer your Excellency's

Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners (also known as the Mandela Rules, 2015), in particular Rule 44, which 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.” We recall that when solitary confinement is used in exceptional circumstances, minimum procedural safeguards must be followed. We would also like to refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement in itself runs afoul of the absolute prohibition of torture and other ill-treatment. Moreover, due to the prisoner’s lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment.

We further recall that the mandatory imposition of the death penalty based on blasphemy laws remains an undue restriction of the right to freedom of thought, conscience and religion. In this regard, we would like to recall article 18 of the ICCPR, which stresses that “Everyone shall have the right to freedom of thought, conscience and religion. This right 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.” 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 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.

The repeal of blasphemy laws has been called for by the Special Rapporteurs on freedom of religion or belief and freedom of opinion and expression and is a recommendation of the Rabat Plan of Action (see A/HRC/22/17/Add.4) and Human Rights Committee General Comment No. 34. Such repeal is particularly urgent in situations where the laws carry death sentences, such as in Pakistan.

In relation of allegations that the blasphemy laws in place are used to target ethnic and religious minorities, we would like to draw the attention of your Excellency’s Government to the prohibition on the discriminatory application of the death penalty, as discussed by the Human Rights Committee, in its General Comment No. 36: “Data suggesting that members of religious, racial or ethnic minorities, indigent persons or foreign nationals are disproportionately likely to face the death penalty may indicate an unequal application of the death penalty, which raises concerns under article 2 (1) read in conjunction with article 6, as well as under article 26” (CCPR/C/GC/36, para. 44).

Ultimately, when executions have been suspended for an extended period of time, it is unlikely that their resumption may be justified by objective reasons. If executions are resumed owing to developments unrelated to the crime or criminal in question, such as a deterioration in the law and order situation in the country, they are similarly arbitrary (A/69/265). In this regard, we stress that there exists no evidence that the death penalty has a deterrent effect against crime.