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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Jubilee Campaign, a non- governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2019]

* Issued as received, in the language(s) of submission only.



Arbitrary Detention in Pakistan regarding Blasphemy Laws

Jubilee Campaign would like to draw the Councils attention to the practice of arbitrary detention in Pakistan deriving from articles 295-A, 295-B, 295-C, 298-B and 298-C of the Penal Code of Pakistan, known as the blasphemy laws.

Between 1987 and 2017, 1,500 people or more were charged with blasphemy: 730 were Muslims, 501 were Ahmadis, 205 were Christians and 26 were Hindus.

The blasphemy laws are worded in such manner that enable easy misuse. This accommodates false accusations initiated to settle personal scores, economic competition issues and sectarian differences. The laws are routinely used to target religious minorities for personal or political motives and result in a violation of fundamental rights.

There are several practical realities and elements in the law which enable misuse and allow for arbitrary detention:

No deliberate intent is required

The laws do not require a deliberate intent. Article 295-C, which concerns the use of derogatory remarks in respect of the Holy Prophet, states: “Whoever, by words either spoken or written, or by visible representation, or by imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammad (peace upon him) shall be punished by death and shall also be liable to fine.” The text of the article shows that deliberate intent is not mandatory. If a person insults the prophet Mohammad accidentally or by mistake, he or she can still be convicted.

Ramesh Kumar Malhi is a Hindu veterinarian from Sindh who was accused of blasphemy after a cleric said he had delivered medicine wrapped in verses from the Quran. After news of the arrest, riots broke out in the area where Mr. Malhi lives and protesters burned shops belonging to Hindus.

No definition of ‘insult’

The laws do not provide a definition for “insult”, which leads to a broad interpretation of the word. It can lead to feelings of uncertainty when entering into religious topics. A broad range of statements could lead to an accusation of having ‘insulted’ and cannot always be foreseen. Situations could arise where someone is accused of blasphemy because he or she insults the beard of a Muslim.

The testimony of one witness is sufficient

The blasphemy legislation in Pakistan requires that the testimony of one person is sufficient to arrest and convict a blasphemy suspect. This is apparent from The Qanun-e-Shahadat Order 1984 (Law of Evidence) that contains provisions on evidence. Its preamble says that “it is expedient to revise, amend and consolidate the law of evidence so as to bring it in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah”. Article 17 2(b) of the same order, states that the court is allowed to act on the testimony of one person when a matter does not pertain to “financial or future obligations”:

2.(b) in all other matters, the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.

On August 23, 2014, Nazir Masih, a Christian cleaner, was charged with blasphemy under section 295-A of the Penal Code in Pakistan on allegations of humiliating and insulting Islam’s Holy Prophet Lut.

Nazir Masih frequently met with Shahid Mehmood, a barber whose shop was next to the school and would chat as friends. However, one day during their conversation, Masih

decided to recount the story of Lot in the Bible found in the book of Genesis. Mehmood considered this story blasphemy and reported him to the police, accusing him of insulting the Prophet Lut in the Quran (the Islamic version of Lot found in the Quran), leading to Masih's indictment. The only witness present was Shahid Mehmood himself.

Lawyers and judges are threatened

In the courtroom lawyers defending people accused of blasphemy face frequent threats.¹ Religious extremists attend court hearings and intimidate the judges, witnesses and other people present. The security in the lower courts is often lacking and people sometimes succeed to take guns on the premises. Pressure is added in small cities and villages where judges, lawyers and citizens know each other and can easily find out where a person and his family are living. People working in the session court do not have the proper means to hire continuous personal security.

Due to fear or biased sentiments of the judge, sometimes those accused receive the death sentence without substantial evidence or adherence to court procedures.² There are judges who genuinely are forced to give the death sentence due to threats. But there are also lawyers, prosecutors and judges who are making a name for themselves by sentencing blasphemy convicts.³ Most courts leave blasphemy decisions to a higher court causing the accused to be detained for many years without due reason.

Slow judicial system

The slow judicial system is another reason for concern and trials can be very lengthy. Someone can be detained due to an allegation of blasphemy, and after two years still not have received any message on the date of his trial. Delays can occur for all kinds of reasons. One day the lawyer is not present, the other day the other opponent advocate counsel is not present. One day the police did not bring the accused from the jail, another day the judge has been on leave.

People come to court for years for something that should not take more than a few months. Some people have to travel from far to visit the court and the process is very time consuming and costly.

Moreover, the courts are overloaded, and it leads to injustice. A man accused of murder was acquitted by the apex court due to a weak prosecution and evidence. The man had been unduly imprisoned for 24 years.

In cases of blasphemy or other religiously motivated trials the general slow and corrupt system are influencing the outcome of court proceedings. In addition, these cases are complicated by religious sentiments which make it difficult to obtain justice.

People who are accused of blasphemy without substantial evidence can face lengthy detention periods, losing years of their life, before receiving justice from the courts.

¹ Hashim, Asad. "Living in Fear under Pakistan's Blasphemy Law." Pakistan | Al Jazeera, Al Jazeera, 17 May 2014, <www.aljazeera.com/indepth/features/2014/05/living-fear-under-pakistan-blasphemy-law-20145179369144891.html> [accessed 9 August 2019].

² "Wife Beaten so Badly She Can't Walk, He's Deep in Debt: Pakistani Christian Freed after 3 Year 'Blasphemy' Trial." World Watch Monitor, 29 Jan. 2019, <www.worldwatchmonitor.org/2019/01/wife-beaten-so-badly-she-cant-walk-and-hes-now-deep-in-debt-pakistani-christian-freed-from-3-year-false-trial-for-blasphemy/> [accessed 9 August 2019]; Hashim, Asad. "Living in Fear under Pakistan's Blasphemy Law." Pakistan | Al Jazeera, Al Jazeera, 17 May 2014, <www.aljazeera.com/indepth/features/2014/05/living-fear-under-pakistan-blasphemy-law-20145179369144891.html> [accessed 9 August 2019].

³ Hashim, Asad. (2014)., *supra note 2*.

Recommendations

Jubilee Campaign calls on the Human Rights Council to urge Pakistan to:

- Repeal all blasphemy laws, particularly sections 295-A, 295-B, 295-C, 298-A, 298-B and 298-C, or amend them substantially so that they are consistent with international standards including on freedom of expression; freedom of thought, conscience or religion; and equal protection of the law as guaranteed under the International Covenant on Civil and Political Rights.
- Abolish mandatory death penalty, including for section 295-C cases.
- Expressly include the requirement of proof of deliberate and malicious intent in all offences related to religion that are retained in the short or long term, particularly section 295-C of the Pakistan Penal Code.
- Ensure that no one is convicted of blasphemy under section 295-C in the absence of proof beyond a reasonable doubt of every element of the crime.
- Register criminal cases where courts have concluded or there are reasonable grounds to believe that complainants and/or the witnesses in blasphemy cases have committed perjury.
- Take all necessary measures to guarantee protection for the lives and physical integrity of judges and lawyers. Any allegations of attacks, threats, or harassment must be promptly and thoroughly investigated by an independent and impartial authority and those responsible brought to justice in the course of fair proceedings.

Stichting Jubilee Campaign Nederland NGO(s) without consultative status, also share the views expressed in this statement.