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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023**

### **Opinion No. 7/2023 concerning Malik Zaheer Ahmad (Pakistan)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,<sup>1</sup> on 9 December 2023 the Working Group transmitted to the Government of Pakistan a communication concerning Malik Zaheer Ahmad. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Malik Zaheer Ahmad,<sup>2</sup> is a businessman of Pakistani nationality, with permanent residence in Lahore. Mr. Ahmad was 52 years old at the time of his detention, in 2020.

5. The source informs that Mr. Ahmad is an Ahmadi Muslim who, prior to his arrest, volunteered for the Ahmadiyya Muslim Community.

6. By way of background, the source states the Ahmadiyya Muslim Community was founded in 1889 and that its adherents have been the subject of various forms of persecution since its inception. Its adherents consider themselves Muslim, but the Constitution of Pakistan declares Ahmadi Muslims to be non-Muslim, and the Penal Code contains anti-Ahmadi and blasphemy provisions that prohibit Ahmadis from manifesting any aspect of their faith as Muslims. More specifically, the source recalls article 260.3 of the Constitution, which stipulates that the definition of “non-Muslim” includes those who call themselves Ahmadis. The source also recalls similar provisions, namely sections 298B and 298C of the Penal Code.

7. The source further states that the above provisions prohibit Ahmadis from using any honorific titles or epithets specific to Islam, building mosques, displaying the creed of Islam or reciting the call to Muslim prayer, among other things. Ahmadis also cannot present themselves as Muslims, call or refer to their faith as Islam, or preach or propagate their faith. Any act by an Ahmadi that is perceived by any person in Pakistan as being associated with Islam is deemed a criminal and arrestable offence, punishable by criminal sentences ranging from three years of imprisonment to life imprisonment or even death.<sup>3</sup>

8. A new set of blasphemy laws – the 2016 Prevention of Electronic Crimes Act and its November 2020 amendment – allows the Government to press charges against Ahmadis over social media activity.

9. It is alleged that the authorities, particularly at the provincial and local levels, are complicit in advocating religious hatred against Ahmadi Muslims. Reportedly, between 1984 and 2022, nearly 1,600 blasphemy and other religious-based cases were filed against Ahmadi Muslims.

10. In this context, the source proceeds to explain the circumstances of the arrest and deprivation of liberty of Mr. Ahmad. According to the source, on 29 September 2020, as part of his volunteer duties for the Ahmadiyya Muslim Community, Mr. Ahmad was asked to accompany two Ahmadi Muslim leaders who had been summoned to a local police station by the Cybercrimes Wing of the Federal Investigation Authority in connection with allegations stemming from anti-Ahmadi and blasphemy laws. Awaiting them at the police station was a known Ahmadi antagonist and religious cleric who had reportedly pursued multiple blasphemy cases against members of the Ahmadi Muslim Community in Pakistan.

11. When Mr. Ahmad and the two other Ahmadi Muslim leaders arrived at the Lahore office of the Cybercrimes Wing of the Federal Investigation Authority, Mr. Ahmad enquired as to why the two other Ahmadis were being arrested. Instead of providing a basis for the arrest, the authorities proceeded to arrest Mr. Ahmad himself, without a warrant and without informing him as to why he was being arrested. While Mr. Ahmad was being detained, the above-mentioned Ahmadi antagonist and religious cleric took possession of Mr. Ahmad’s telephone and downloaded an Ahmadi commentary of the Qur’an and other Ahmadi books from it in the presence of the authorities.

12. The authorities then charged Mr. Ahmad with possession of those Ahmadi books under anti-blasphemy laws, including charges of hate speech, misuse of epithets by Ahmadis and outraging the religious feelings of Muslims or posing as a Muslim. The authorities also

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<sup>2</sup> Sometimes referred to as “Zaheer Ahmad” or “Zaheer Ahmed” in the court proceedings.

<sup>3</sup> Penal Code, sections 295B and 295C.

charged Mr. Ahmad with the crime of defiling the Qur'an, which carries a sentence of up to life imprisonment.<sup>4</sup>

13. The basis for this charge is that Mr. Ahmad supposedly had an Ahmadi translation of the Qur'an with verses translated in a way that is not accepted by mainstream Muslims. According to the authorities, possession of an Ahmadi translation of the Qur'an is considered as defiling the Qur'an.

14. The source remarks that the other two Ahmadi individuals accompanied by Mr. Ahmad to the police station were arrested on the same day as him. Both continue to be deprived of their liberty and their requests for bail have been rejected by the highest court in Pakistan. More than two years after their arrest, their trials have also yet to start.

15. For the first week, Mr. Ahmad remained in the custody of the Federal Investigation Authority, and then he was transferred to the Lahore District Jail.

16. Mr. Ahmad spent almost half a year in detention before the Lahore High Court heard his bail petition. On 23 February 2021, five months after his initial arrest, the Lahore High Court granted Mr. Ahmad bail owing to the failure of the Federal Investigation Authority to show any evidence that he had shared the books with others. The Lahore High Court held that mere possession of the Ahmadi-translated Qu'ran was not in violation of any laws, and that possessing a digital copy of the Qu'ran was not desecration. In its order granting bail, the Lahore High Court noted that its decision was tentative in nature and relevant only to the bail petition and not to the merits of the charge.

17. The source notes that, instead of promptly releasing Mr. Ahmad on bail, four days after the Lahore High Court issued a bail order, on 27 February 2021, the authorities from the Cybercrimes Wing of the Federal Investigation Authority charged Mr. Ahmad with another crime in an effort to address the deficiencies in their first arrest pointed out by the Lahore High Court. This time, Mr. Ahmad was charged with a crime that could potentially lead to a death sentence:<sup>5</sup> he was accused of directing two other Ahmadis to share Ahmadi books on an all-Ahmadi group on the messaging application WhatsApp in 2019. Those two other Ahmadis had already been arrested in connection with the same case, one in 2019 and the other in 2020. Therefore, Mr. Ahmad was charged in another case while still imprisoned. He was not released on bail and has thus remained deprived of his liberty since 29 September 2020.

18. The source specifies that, when Mr. Ahmad was charged with the additional crime, he remained in the custody of the Federal Investigation Authority for one day and was then moved to Lahore District Jail.

19. The source submits that the authorities decided to falsely accuse another innocent individual belonging to the Ahmadi community – Mr. Ahmad – and to add his name to an existing case. The authorities have charged Mr. Ahmad with the possession and dissemination of Ahmadi books under the anti-Ahmadi and blasphemy laws of Pakistan and with making supposedly derogatory remarks regarding the Holy Prophet, which is punishable by death. The authorities argue that the Ahmadi beliefs, as found in the books that Mr. Ahmad allegedly shared, amount to a derogatory remark regarding the Holy Prophet.

20. The source submits that, similar to Mr. Ahmad's first arrest, the basis of his second arrest, involving the sharing of Ahmadi books on a WhatsApp group, was also fabricated. As part of the Federal Investigation Authority investigation into Mr. Ahmad at the time of his initial arrest, Mr. Ahmad's mobile telephone was forensically analysed, and a complete set of data was recovered from the device. According to that initial forensic report, Mr. Ahmad

<sup>4</sup> Prevention of Electronic Crimes Act, 2016, section 11 (hate speech); and Pakistan Penal Code, sections 295-A (deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion and religious beliefs), 295-B (defiling, etc., of the Qur'an) (punishable by life imprisonment), 298-B (misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places, by Ahmadis), 298-C (outraging the religious feelings of Muslims or posing as a Muslim) and 109 (abetment).

<sup>5</sup> In addition to previous charges, he was charged under section 295-C of the Pakistan Penal Code (use of derogatory remarks, etc., in respect of the Holy Prophet) (punishable by death).

was accused of having electronic copies of Ahmadi books on his telephone, but nothing in the report indicated that those copies had been shared with anyone else or that he had directed anyone to share those copies.

21. The source recalls that this was the reason that the Lahore High Court granted his bail petition. Just as Mr. Ahmad was going to be released on bail, the authorities from the Federal Investigation Authority claimed that Mr. Ahmad had directed two other Ahmadis to share the books on an all-Ahmadi WhatsApp group and he has now been charged with a crime that could lead to a death sentence. The Federal Investigation Authority has never explained, despite requests to do so, why the initial forensic report did not note this, and why it did not raise this argument in the first instance. The source argues that the evidence against Mr. Ahmad consists of manufactured screenshots prepared by the Federal Investigation Authority, which have no evidentiary value, in particular as they conflict with the Agency's initial forensic report.

22. The source notes that the charges against Mr. Ahmad occurred at the same time as the Government was arresting many other individuals belonging to the Ahmadiyya Muslim Community, in particular volunteers and those with leadership positions. Mr. Ahmad's arrest occurred just months after at least six other Ahmadis, all missionaries, and full-time volunteers of the Ahmadiyya Muslim Community, were arrested. Most of those individuals remain imprisoned on similar charges and are awaiting trial.

23. According to the source, more than two years have passed since Mr. Ahmad was first arrested. No trial date has been set, nor is one expected soon. Mr. Ahmad's request for bail relating to the second charge has been denied by all courts, including the Supreme Court of Pakistan on 29 April 2022.

24. According to the source, Federal Investigation Authority officials have repeatedly obstructed the delivery of the Authority's evidence on Mr. Ahmad. Mr. Ahmad's lawyers had to petition the Lahore High Court for delivery of the evidence related to his second charge, which was granted by the Lahore High Court on 16 February 2022, almost a year after his second arrest. The Authority then delivered its evidence against Mr. Ahmad approximately one month later, on 12 March 2022.

25. The source states that, instead of ensuring a prompt trial, the authorities have deprived Mr. Ahmad of liberty in a high-security prison, in a cell separated from the main jail premises, and that he is facing a death sentence because he allegedly possessed and directed others to share Ahmadi books on a WhatsApp group. Reportedly, the cells are so overcrowded that Mr. Ahmad must sleep with his legs folded. Mr. Ahmad remains in a prison cell at all times, except for a few minutes in the day, when he is permitted to walk in a small veranda adjacent to the cells.

26. The source submits that the above-mentioned facts render Mr. Ahmad's detention arbitrary and as falling under categories I, II, III and V of the Working Group.

27. The source recalls that a detention is arbitrary under category I when there is no legal basis or justification for it.<sup>6</sup> The source also recalls that the Working Group has found the lack of a legal basis for the purposes of category I when the Government fails to support its legal basis for detention with enough factual specifics to indicate the substance of the complaint, such as the wrongful act.<sup>7</sup> The Working Group has furthermore previously concluded that deprivations of liberty lack sufficient legal basis where: (a) authorities fail to present a warrant at the time of arrest and fail to inform the arrestee of the reasons for the arrest;<sup>8</sup> or (b) the Government charges an individual on the basis of overly broad and vague legal provisions.<sup>9</sup>

28. The source argues that, in the current case, the authorities have used pretextual charges to imprison Mr. Ahmad in their attempt to arrest anyone associated with the Ahmadiyya Muslim Community. At the time of his initial arrest, on 29 September 2020, the Federal

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<sup>6</sup> A/HRC/16/47 and A/HRC/16/47/Corr.1, annex, para. 8 (a).

<sup>7</sup> Opinion No. 45/2018, paras. 42 and 43.

<sup>8</sup> Opinions No. 46/2019, paras. 51 and 56; and No. 46/2020, paras. 40 and 44.

<sup>9</sup> Opinion No. 8/2020, para. 67.

Investigation Authority failed to present a warrant and to inform Mr. Ahmad of the reasons for his arrest and instead fabricated evidence and charges. The source notes that, even if the charges were true, which they are not, mere possession of Ahmadi books is not a violation of any domestic law, even under the overbroad blasphemy and anti-Ahmadi laws of Pakistan. There was no basis for imprisoning Mr. Ahmad, as recognized by the Lahore High Court when granting an order releasing Mr. Ahmad on bail.

29. The source submits that the second charge – that Mr. Ahmad supposedly shared Ahmadi books on an all-Ahmadi WhatsApp group – is equally fabricated and just as deficient. Mr. Ahmad has repeatedly denied sharing any Ahmadi books on any WhatsApp group and the evidentiary basis of the charges are reportedly fabricated screenshots, which do not match up with the initial forensic report of the Federal Investigation Authority. The source reiterates that the authorities have targeted Mr. Ahmad to involve him in a case initiated in 2019.

30. According to the source, even if the Government’s allegations were true – which they are not – the Government has never explained how sharing Ahmadi books on an all-Ahmadi WhatsApp group constitutes an offence under the provisions of the Pakistan Penal Code under which Mr. Ahmad has been charged. Also according to the source, the Government has not substantiated the charges that Mr. Ahmad made derogatory remarks regarding the Holy Prophet, which could lead to the capital punishment of Mr. Ahmad. The source argues that the blasphemy provisions that Mr. Ahmad has been charged under are so indeterminate and unspecified that Ahmadi Muslims and other individuals cannot possibly be reasonably expected to know how to adequately guide their conduct so as avoid violating them.

31. Finally, in relation to category I, the source notes that four days passed between the Lahore High Court ordering release on bail and the confirmation of the second set of charges against Mr. Ahmad; during those four days, Mr. Ahmad was detained without any legal basis, while the Government authorities allegedly searched for new grounds to detain him. This is the prototypical example of a category I detention, notes the source.<sup>10</sup>

32. The source concludes that, because the Government has relied upon a flawed evidentiary basis, has used vague and overly broad charges to detain Mr. Ahmad and has targeted Mr. Ahmad for prosecution in order to criminalize his religious faith, it cannot be considered that a legitimate legal basis exists for his detention.

33. The source observes that a detention is arbitrary under category II when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of thought, conscience, religion, expression and association. It is submitted that, in Mr. Ahmad’s case, the Government has violated all of these rights.

34. The source clarifies that the authorities detained Mr. Ahmad in violation of his right to freedom of religion. Article 18 of the Covenant and the Universal Declaration of Human Rights expressly protect the right to freedom of thought, conscience and religion. Under article 18 (1) of the Covenant, individuals have the freedom to have or to adopt a religion or belief of their choice and the freedom, either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching.

35. The Human Rights Committee has expressed concern about discrimination against religious minorities that are “the subject of hostility by a predominant religious community”.<sup>11</sup> Even when an official ideology is enshrined in constitutions, statutes or the proclamations of a ruling party, this “shall not result in any impairment of the freedoms under article 18”.<sup>12</sup> Importantly, the fundamental character of this right is such that it may not be derogated – even in times of public emergency – as confirmed by article 4 (2) of the Covenant.<sup>13</sup> Rather, pursuant to article 18 (3), the freedom to manifest religion or beliefs can

<sup>10</sup> Opinion No. 60/2021, para. 43.

<sup>11</sup> General comment No. 22 (1993), para. 2.

<sup>12</sup> *Ibid.*, para. 10.

<sup>13</sup> Article 4 (1) identifies the provisions that may be derogated from in time of public emergency that threatens the life of the nation and the existence of which is officially proclaimed, which does not include article 18.

be limited only when the restrictions are prescribed by law and are necessary to protect public safety, order, health or the morals or the fundamental rights and freedom of others. The source argues that none of those circumstances are present in the case of Mr. Ahmad.

36. The source submits that, as an Ahmadi Muslim, Mr. Ahmad is a member of a minority religious group that has been the subject of persecution by the Government. Mr. Ahmad's detention in a high-security prison for more than two years is based solely on his membership in this group, as evidenced by the charges that stem from him allegedly possessing and sharing Ahmadi religious books. The source recalls that the Ahmadi Muslim community has been subject to targeting and that Mr. Ahmad was arrested at the same time as multiple other Ahmadis in leadership positions in the Ahmadi Muslim community were also arrested, including the two Ahmadis who he accompanied to the offices of the Federal Investigation Authority. According to the source, this further demonstrates the intent by the authorities to target Mr. Ahmad on the basis of his religion.

37. The source argues that, although the right to freedom of religion is not absolute, in this case the Government has failed to provide any grounds demonstrating that imprisoning Mr. Ahmad falls within the permissible limitations under article 18 of the Covenant. Accordingly, Mr. Ahmad's detention violates article 18 of the Covenant and article 18 of the Universal Declaration of Human Rights.

38. The source also argues that the authorities detained Mr. Ahmad in violation of his right to freedom of expression. It recalls that article 19 (1) of the Covenant provides that everyone shall have the right to hold opinions without interference. This provision protects all forms of opinion, including religious opinion.<sup>14</sup> Article 19 (2) provides that everyone has the right to freedom of expression and that that right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of an individual's choice. As the Human Rights Committee has explained, article 19 (2) protects all forms of dissemination of such opinions, including those that are electronic or Internet-based.<sup>15</sup>

39. The source argues that, in the present case, the pretext for Mr. Ahmad's detention was based, firstly, on his supposed possession of certain Ahmadi books on his telephone and, secondly, on sharing those Ahmadi books with fellow Ahmadi Muslims, which – even if these allegations were true and the evidence not planted – would be a violation of his right to hold opinions and share information related to his religious beliefs.

40. Although the right is not absolute, there is no arguable basis for the violation of Mr. Ahmad's right to freedom of expression in this case. Article 19 (3) of the Covenant provides that freedom of expression may be restricted only when both provided by law and necessary for the respect of the rights or reputations of others or the protection of national security or public order, health or morals. The Human Rights Committee has interpreted this limitation narrowly, noting that such restrictions must not "put in jeopardy the right itself".<sup>16</sup>

41. The source recalls that, in a previous case, the Working Group held that governmental authorities did not have legitimate grounds for restricting a detainee's freedom of expression because the detainee had not advocated violence or threatened the rights or reputations of others, national security or public order, health or morals.<sup>17</sup> It is argued that, in the present case, Mr. Ahmad practised his Ahmadi faith peacefully and there is no evidence of any threats to public safety. Mr. Ahmad also complied with domestic laws and respected the religion of Islam as the official religion of Pakistan. The Government therefore has no legitimate grounds for restricting Mr. Ahmad's right to freedom of expression as none of his practices warrant restriction of this right. It is submitted that, as a result, Mr. Ahmad's detention amounts to a violation of his rights under article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights.

42. Finally, in relation to category II, the source submits that the authorities have detained Mr. Ahmad in violation of his right to freedom of association, as guaranteed by article 22 of

<sup>14</sup> Human Rights Committee, general comment No. 34 (2011), para. 9.

<sup>15</sup> *Ibid.*, para. 12.

<sup>16</sup> *Ibid.*, para. 21.

<sup>17</sup> Opinion No. 83/2018, para. 53.

the Covenant. It recalls that the article 22 (1) states that everyone has the right to freedom of association with others. Article 20 (1) of the Universal Declaration of Human Rights provides a similar guarantee. Article 22 (2) of the Covenant establishes the standards that a State must meet in order to restrict freedom of association. As such, it prohibits restrictions other than those that are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of rights and freedoms.

43. It is submitted that Mr. Ahmad was targeted for investigation and arrest by local religious clerics and the provincial authorities because he had accompanied two other Ahmadis as part of his volunteer duties. It was only because of Mr. Ahmad's peaceful voluntary association with those two men and his broader affiliation with the Ahmadi community that the local authorities began investigating him. Accordingly, Mr. Ahmad's detention resulted from, and amounts to a burden on, his peaceful exercise of his right to freedom of association. Despite the Government's use of domestic laws to justify its treatment of Mr. Ahmad on the basis of his religious association, including blasphemy and anti-Ahmadi laws, those laws are not necessary to serve any of the legitimate State interests enumerated under article 22 (2) of the Covenant. As such, the Government cannot justify its violations of Mr. Ahmad's rights under article 22 of the Covenant, argues the source.

44. In the context of category III, the source observes that due process is one of the tenets of the right to a fair trial. The minimum international standards of due process are established in the Covenant, the Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

45. The source argues that the Government has violated Mr. Ahmad's right not to be subjected to arbitrary arrest. Article 9 (1) of the Covenant states that no individual shall be subjected to arbitrary arrest or detention, and no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. Those rights are also guaranteed in article 9 of the Universal Declaration of Human Rights and principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Human Rights Committee has explained that arrest due to the legitimate exercise of rights enshrined in the Covenant, such as the freedom of expression and the freedom of religion, is arbitrary.<sup>18</sup>

46. The source reiterates that Mr. Ahmad's arrest was pretextual and based solely on his faith. Mr. Ahmad has been detained for years without trial, and the evidence against him was planted. Absent any legal grounds to detain him, Mr. Ahmad's detention is arbitrary, in violation of article 9 (1) of the Covenant.

47. Further, it is submitted that the authorities have violated Mr. Ahmad's right to release pending trial. Article 9 (3) of the Covenant provides that anyone arrested or detained shall be brought promptly before a judge or other officer and shall be entitled to a trial within a reasonable time or to release. The Human Rights Committee has clarified that 48 hours is usually sufficient to bring a detainee before a judge. Delays longer than 48 hours must be "absolutely exceptional".<sup>19</sup>

48. Article 9 (3) of the Covenant provides that pretrial detention shall not be the general rule. The Human Rights Committee has clarified that pretrial detention "must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime".<sup>20</sup> Principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also demonstrate that pretrial detention is the exception rather than the rule.

<sup>18</sup> General comment No. 35 (2014), para. 17.

<sup>19</sup> *Ibid.*, para. 33.

<sup>20</sup> *Ibid.*, para. 38.

49. It is submitted that, in the present case, Mr. Ahmad has been detained without bail or trial for more than two years, since September 2020, far exceeding the Human Rights Committee's 48-hour rule. When he was brought before a judge who ordered his release on bail on the basis of a lack of evidence, he was immediately charged with further crimes.

50. The Government reportedly lacks any basis for Mr. Ahmad's pretrial detention, as he does not pose a flight risk nor is there any valid claim that Mr. Ahmad's release would lead to the destruction of evidence. It is submitted that Mr. Ahmad is a middle-aged, law-abiding family man who has been accused of a non-violent crime (his supposed "crime" was allegedly directing others to share web links to Ahmadi books) and poses no risk to the public.

51. Moreover, most of the charges against Mr. Ahmad are "non-bailable" under the Criminal Code of Pakistan, which, under domestic law, means that bail cannot be claimed as a matter of right. Charging Mr. Ahmad with non-bailable offences, rather than making an individualized determination of his situation as the Human Rights Committee requires, violates Mr. Ahmad's right to release pending trial.

52. The source therefore concludes that Mr. Ahmad's pretrial detention without a legitimate basis is in violation of article 9 (3) of the Covenant.

53. Finally, it is submitted that the authorities violated Mr. Ahmad's right to be tried without undue delay. In this context, the source recalls that the article 14 (3) (c) of the Covenant protects the right to be tried without undue delay. This right is also protected under principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Human Rights Committee has stated that expeditiousness is an important aspect of the fairness of a hearing.<sup>21</sup> Article 14 (3) (c) of the Covenant is meant to prevent individuals from being kept in a prolonged state of uncertainty and to ensure that their detention does not last longer than necessary in the circumstances of the specific case.<sup>22</sup>

54. In the present case, the source recalls that Mr. Ahmad has been in detention since September 2020. No trial date has been set, nor is a trial date expected any time soon, and all efforts to have him released on bail have failed. The prosecution has repeatedly delayed delivering evidence, and the courts have been slow in their responses. No valid reason exists to continue to hold Mr. Ahmad without trial in a high-security prison, violating article 14 (3) (c) of the Covenant and therefore amounting to arbitrary detention under category III.

55. Finally, in the context of category V, the source recalls that the deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status. The source argues that Mr. Ahmad's detention is arbitrary as the Government has detained and prosecuted him because of his religious faith. This discrimination based on his faith violates international law, rendering Mr. Ahmad's detention arbitrary under category V of the Working Group.

#### *Response from the Government*

56. On 9 December 2022, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 7 February 2023 about the situation of Mr. Ahmad. The Working Group also requested the Government to clarify the legal provisions justifying his continued detention, as well as the compatibility of his detention with the State's obligations under international human rights law, and in particular with regard to the treaties ratified by Pakistan. Moreover, the Working Group called upon the Government to ensure Mr. Ahmad's physical and mental integrity.

57. The Working Group regrets that it did not receive a response from the Government to this communication. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work.

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<sup>21</sup> General comment No. 32 (2007), para. 27.

<sup>22</sup> *Ibid.*, para. 35.

## Discussion

58. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

59. In the present case, two proceedings have been initiated against Mr. Ahmad:

(a) The first case involves allegations of possession of Ahmadi books prohibited under the anti-blasphemy laws of Pakistan, including charges of hate speech, misuse of epithets by Ahmadis, outraging the religious feelings of Muslims or posing as a Muslim, and the crime of defiling the Qur'an under section 11 of the Prevention of Electronic Crimes Act and sections 295-A, 295-B, 298-B, 298-C and 109 of the Penal Code. Mr. Ahmad was reportedly arrested on 29 September 2020, without an arrest warrant and without being informed of the reasons for his arrest, and then charged as described above. Mr. Ahmad was detained for five months until he was granted bail, on 23 February 2021. However, he was not released and, four days later, was charged with an additional crime;

(b) The second case thus involves previous charges, together with an accusation of directing two other Ahmadis to share Ahmadi books on an all-Ahmadi WhatsApp group in 2019, sanctioned under section 295-C of the Penal Code. The trial has not yet started.

60. The Working Group will consider whether the detention of Mr. Ahmad in relation to both sets of proceedings was arbitrary under the relevant categories provided for in its methods of work.<sup>23</sup>

### *Category I*

61. The Working Group notes at the outset that the situation of Ahmadi Muslims remains under close attention by United Nations entities.<sup>24</sup> It recalls that it has already found arbitrary the deprivation of liberty of Ahmadi Muslims in Pakistan merely for exercising their legitimate right to freedom of religion and conscience.<sup>25</sup>

62. The Working Group recalls that detention is considered arbitrary under category I if it lacks legal basis. Article 9 (2) of the Covenant provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and shall be promptly informed of any charges. The Working Group has previously stated that, for deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically<sup>26</sup> done through an arrest warrant, an arrest order or equivalent document.<sup>27</sup> The reasons for an arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.<sup>28</sup> The Working Group notes that Mr. Ahmad was not arrested in flagrante delicto, when the opportunity to obtain a warrant would not be typically available.

63. The authorities must invoke the legal basis and apply it to the circumstances of the case through an arrest warrant. The international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation of liberty, under articles 3 and 9, respectively, of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or

<sup>23</sup> A/HRC/36/38, para. 8.

<sup>24</sup> See

<https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/Submissions/CSOs/01.aml.pdf>.

<sup>25</sup> Decision No. 10/1996.

<sup>26</sup> Human Rights Committee, general comment No. 35 (2014), para. 23; see also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. See also article 14 (1) of the Arab Charter on Human Rights.

<sup>27</sup> Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58 and 59.

<sup>28</sup> Opinion No. 2021/85, para. 69.

other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

64. The Working Group observes that this did not take place in the case of Mr. Ahmad, and the Government failed to respond to these allegations. The Working Group therefore finds a breach of article 9 (1) of the Covenant.

65. Moreover, it is not contested that Mr. Ahmad, despite his release on bail being ordered by a decision of the court on 23 February 2021, was not liberated immediately but instead was kept in detention and faced new charges on 27 February. Those four days of detention without any legal basis whatsoever constitute a further breach of article 9 (1) of the Covenant.

66. The Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception, not the rule, and that it should be ordered for as short a time as possible.<sup>29</sup> Article 9 (3) of the Covenant provides that it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.<sup>30</sup>

67. In the present case, Mr. Ahmad has been held in pretrial detention for more than two and half years, and a trial is not yet scheduled. The Government failed to provide any explanation for his ongoing detention. In the absence of such an explanation, the Working Group cannot accept that Mr. Ahmad's pretrial detention was properly constituted in accordance with article 9 (3) of the Covenant. The Working Group therefore concludes that the continued pretrial detention of Mr. Ahmad lacks legal basis, is arbitrary and falls under category I as applied by the Working Group.

#### *Category II*

68. The source alleges that Mr. Ahmad was deprived of his liberty as a result of the exercise of his rights to freedom of expression, freedom of religion and conscience and peaceful assembly under articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19 and 22 of the Covenant.

69. The Working Group has previously determined that detention of several individuals from the Ahmadi Muslim community on blasphemy charges was arbitrary under category II, as they were deprived of their freedom merely for exercising their legitimate right to freedom of religion and conscience, guaranteed by article 18 of the Universal Declaration of Human Rights.

70. The Working Group finds no reason to depart from that conclusion in the present case. It recalls that the obligation of Pakistan to respect Mr. Ahmad's freedom of conscience and religion also derives from article 18 of the Covenant. As interpreted by the Human Rights Committee in its general comment No. 22 (1993), as a consequence of freedom of religion, in conjunction with freedom of thought and belief (art. 18) and freedom of expression (art. 19), everyone may express their opinion in public or private, including on matters of religion.

71. Nothing in Mr. Ahmad's case demonstrates that any of the permitted restrictions on freedom of expression found in article 19 (3) and on freedom to manifest religion or beliefs found in article 18 (3) of the Covenant applied. Therefore, Mr. Ahmad's deprivation of liberty is arbitrary under category II and breaches articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19 and 22 of the Covenant. Under these circumstances, no trial should take place, and the Working Group thus does not need to make additional conclusions under category III.

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<sup>29</sup> Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

<sup>30</sup> [A/HRC/19/57](#), para. 54.

*Category V*

72. The Working Group has previously concluded that Ahmadi Muslims in Pakistan are persecuted and deprived of their freedom merely for exercising their legitimate right to freedom of religion and conscience. In this case, the Working Group finds that Mr. Ahmad was also deprived of his liberty on discriminatory grounds, based on his religious faith and opinions. His detention violates articles 2 and 7 of the Universal Declaration of Human Rights, article 26 of the Covenant and articles 1–4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. It is therefore arbitrary, falling within category V.

73. The Working Group refers the present case to the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on minority issues, for further action.

*Concluding remarks*

74. The Working Group expresses its serious concern about blasphemy laws in Pakistan and the criminalization of Ahmadi Muslims for practising their faith. It would welcome the opportunity to undertake a country visit to Pakistan to work constructively with the authorities in addressing its concerns in relation to the arbitrary deprivation of liberty. The Working Group made a request to the Government on 11 June 2018 to conduct a country visit. As an elected member of the Human Rights Council from 2021 to 2023, Pakistan is well placed to demonstrate its commitment to human rights by inviting the Working Group to undertake a visit.<sup>31</sup>

**Disposition**

75. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Malik Zaheer Ahmad, being in contravention of articles 2, 7, 9, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 18, 19, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and V.

76. The Working Group requests the Government of Pakistan to take the steps necessary to remedy the situation of Mr. Ahmad without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

77. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ahmad immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

78. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Ahmad and to take appropriate measures against those responsible for the violation of his rights.

79. The Working Group requests the Government to bring its laws, in particular the relevant provisions of the Penal Code, into conformity with the recommendations made in the present opinion and with the commitments made by Pakistan under international human rights law.

80. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on minority issues, for appropriate action.

81. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

<sup>31</sup> The Government made a voluntary commitment prior to its election to the Human Rights Council to “continue to strengthen cooperation with the special procedures, including by arranging visits of the High Commissioner for Human Rights and the special rapporteurs” (A/75/119, para. 30 (p)).

### Follow-up procedure

82. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Ahmad has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ahmad;
- (c) Whether an investigation has been conducted into the violation of Mr. Ahmad's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Pakistan with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

83. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

84. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

85. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>32</sup>

*[Adopted on 28 March 2023]*

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<sup>32</sup> Human Rights Council resolution 51/8, paras. 6 and 9.