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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its ninety-eighth session, 13–17 November 2023****Opinion No. 65/2023 concerning Shahzad Masih (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,¹ on 19 July 2023, the Working Group transmitted to the Government of Pakistan a communication concerning Shahzad Masih. 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).

¹ [A/HRC/36/38](#).

1. Submissions

(a) Communication from the source

4. Shahzad Masih is a citizen of Pakistan born on 13 October 2000. Mr. Masih is a resident of the city of Dinga, Gujrat District, Punjab Province. Prior to his arrest, he was working as a janitor at Shamim Riaz Hospital. Mr. Masih is a member of the Christian community.

5. On 13 July 2017, Mr. Masih, who was 16 years old at the time, was sitting in a room with his two Muslim co-workers. One of the co-workers asked Mr. Masih about Christian prophets. Mr. Masih told him that he did not know very much about religion, but that he would ask his family and would revert with an answer. Mr. Masih's co-worker then told him about Muslim prophets. Mr. Masih replied that one of his family's friends used derogatory words whenever he heard those names. When the co-worker became angry, Mr. Masih clarified that he had no intention of insulting the Muslim prophets and that he was only telling him about another person's words.

6. Mr. Masih was later called to the Popular Mobile Shop, where the owner and a group of men from a Muslim religious organization were present. The individuals asked Mr. Masih to repeat what he had said at the hospital. Mr. Masih repeated that a family friend used derogatory words. The men asked him to tell them what words that person used. Fearing for his life, Mr. Masih told them the words.

7. The group of individuals then took Mr. Masih to Jamia Rizvia Zia-ul-Quran, a nearby Islamic religious school. The police came to the school and detained him immediately.

8. The following morning, on 14 July 2017, a first information report was registered charging Mr. Masih with blasphemy under section 295C of the Penal Code. That provision stipulates that whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (Peace be upon Him) shall be punished with death or imprisonment for life, and shall also be liable to fine.

9. The source clarifies that a warrant is not required to make an arrest in a complaint filed over an allegation of blasphemy under section 295C of the Penal Code, as it is a cognizable offense under schedule II of the Code of Criminal Procedure of 1898 of Pakistan.

10. After apprehending Mr. Masih, the authorities did not inform his family of his whereabouts. Reportedly, the incident drew so much public attention, that Mr. Masih's parents heard about it soon after the group of individuals took their son to the religious school. His family then contacted the police and was told that Mr. Masih had been arrested for committing blasphemy. For several days, Mr. Masih's family did not know where he was being detained. A few days later, his family was allowed to see him for about 20 minutes. They were subsequently allowed to see him for 20 minutes each week until he was sent to prison.

11. The source remarks that, according to the police record, Mr. Masih was arrested on 17 August 2017. However, the source affirms that he was, in fact, detained on 13 July 2017 and has remained in custody ever since.

12. On 18 August 2017, Mr. Masih was first presented before the Judicial Magistrate to obtain permission to keep him in police custody for investigation. No defence counsel was present at the hearing. The judge allowed the police to keep Mr. Masih in custody, with the next hearing set for 12 September 2017.

13. On 12 September 2017, the police failed to submit the investigative report and the court then requested the police to submit it on 21 September 2017. On that day, however, the police again failed to submit the report. The court then requested the police to submit the report on 9 January 2018.

14. On 9 January 2018, the police submitted its investigative report to the court, which requested Mr. Masih to be presented before it on 18 January 2018. On that day, the case was assigned to the trial court.

15. The source emphasizes that, initially, Mr. Masih was not interrogated by the authorities in front of a lawyer. Mr. Masih's defence counsel submitted his power of attorney on 6 February 2018. The court records contain no mention of a defence lawyer in place before that date. The hearings that took place before 6 February 2018 therefore occurred without a defence lawyer.

16. Also on 6 February 2018, Mr. Masih's legal counsel filed a petition with the trial court, asking the court to try him as a juvenile. On 4 October 2018, eight months later, the court denied the petition by relying on an ossification test instead of Mr. Masih's Government-issued birth certificate. Mr. Masih was therefore tried as an adult.

17. On 15 May 2018, Mr. Masih's legal counsel filed a petition under section 265-K of the Code of Criminal Procedure of Pakistan, requesting the court to dismiss the charges because, according to the prosecution's own version of the facts, uncovered during the police investigation, Mr. Masih had committed no offence. On 24 January 2019, eight months later, the court rejected Mr. Masih's petition to dismiss the case for lack of evidence. The court issued the formal charge against Mr. Masih and he pleaded not guilty.

18. On 22 March 2019, Mr. Masih's legal counsel appealed the trial court's decision at the Lahore High Court. On 25 March 2019, the High Court denied the appeal.

19. The source points out that the legal proceedings against Mr. Masih were subject to considerable delays, with court hearings repeatedly postponed on several occasions, most notably between 27 February and 4 October 2018, 9 May 2019 and 28 January 2020, 18 March and 2 September 2020 and 6 February and 25 May 2021. Mr. Masih remained in custody throughout that period.

20. On 22 November 2022, over five years after the arrest of Mr. Masih, the trial court announced the judgment, sentencing him to death by hanging. The judge reportedly ordered that the public evacuate the courthouse before announcing the verdict.

21. On 26 November 2022, Mr. Masih's legal counsel filed an appeal in the Lahore High Court. The court has yet to set a date to hear the appeal.

22. The source reports that, before his conviction, Mr. Masih was kept in the Gujarat District Jail, which is an adult facility. He was either in solitary confinement or shared a cell with another Christian man, who was undergoing a trial in a separate blasphemy case. After his conviction, Mr. Masih was transferred to Sahiwal District Jail, block number 7. He currently shares a cell with two Christian inmates, who are also on death row.

23. According to the source, Mr. Masih has been able to meet with his legal counsel and to have confidential conversations. The source also reports that Mr. Masih's health deteriorated during the time he was waiting for the trial court's decision, from September to November 2022. Since receiving the death sentence, his health has reportedly deteriorated further.

24. The source submits that the arrest and deprivation of liberty of Mr. Masih are arbitrary and fall within categories I, II, III and V.

25. In relation to category I, the source asserts that the basis for the deprivation of liberty of Mr. Masih is not authorized by the Constitution or the domestic law. The source explains that the deprivation of liberty is authorized by section 295C of the Penal Code only if derogatory remarks are made by the accused himself. In Mr. Masih's case, he did not make any derogatory remarks about the Prophet Muhammad. Rather, he was merely answering a question and informing his co-worker about what another man had said.

26. Furthermore, as a 16-year-old juvenile at the time of the arrest, Mr. Masih was entitled to be immediately released on bail, in accordance with section 6 of the Juvenile Justice System Act of 2018.

27. In relation to category II, the source argues that Mr. Masih has been deprived of his liberty for over five years as a result of the exercise of his rights under articles 18 and 19 of the Universal Declaration of Human Rights and under articles 18, 19 and 27 of the Covenant. Furthermore, his arrest and detention are in violation of article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.

28. The source recalls that article 18 of the Universal Declaration of Human Rights and article 18 of the Covenant guarantee freedom of thought, conscience and religion. That right includes the freedom to manifest one's beliefs in public or in private. Furthermore, article 19 of the Universal Declaration and article 19 of the Covenant guarantee freedom of opinion and expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. The right to freedom of expression is subject to limitations. The source notes that, while the authorities might argue that blasphemy laws are consistent with those limitations, it is a position contrary to the Human Rights Committee's interpretation of article 19 of the Covenant in its general comment No. 34 (2011). Furthermore, Mr. Masih's statements did not meet the elements of the blasphemy law under which he was charged.

29. In addition, the source notes that the prosecution witnesses' own testimony and the police investigation prove that Mr. Masih did not commit blasphemy. One of the witnesses testified under oath in court that he began the religious conversation with Mr. Masih. While the witness expressed his religious beliefs when he began the conversation, Mr. Masih did not express his own beliefs but merely referred to comments made by another man. The source submits that Mr. Masih was deprived of his liberty for simply imparting information about someone else's acts. His arrest and continued detention thus resulted from his exercise of the rights under articles 18 and 19 of the Universal Declaration of Human Rights and of the Covenant.

30. The source also notes that the prosecution witnesses' statements show that, even if Mr. Masih repeated the words that another man had used, he was forced to repeat those words by a large group of individuals while fearing for his life. The source notes that, in the past, many people have been killed by angry crowds over false accusations of blasphemy. In the present case, at least 20 male adults asked a young boy to tell them about another man's alleged commission of blasphemy and then accused Mr. Masih of committing blasphemy himself.

31. The Superintendent of Police in charge of the investigation stated in his investigative report and also testified in court that he did not observe any insult in Mr. Masih's discussion and that eyewitnesses did not observe any derogatory remarks by the accused either. The report also mentions that Mr. Masih was immature and underage at the time of the events.

32. Given the arguments above, the source submits that the prosecution, therefore, charged the wrong person. By doing so, the prosecution also denied Mr. Masih his right to equality before the law as guaranteed under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.

33. The source submits that no informant has previously ever been charged with committing blasphemy for simply providing information about someone else's words. If the law holds the informant responsible for reporting on someone else's acts, then every complainant or witness who testifies in a blasphemy case against someone should be charged with blasphemy. The source states that that would be an irrational application of the law.

34. The source concludes that, in the light of the prosecution's evidence, article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant were violated. The source submits that a Muslim man was allowed to express his beliefs, while a Christian boy was not allowed to relay another person's words. The charge against Mr. Masih and his conviction are therefore baseless. Mr. Masih has been deprived of his liberty for exercising his rights under articles 18 and 19 of the Universal Declaration of Human Rights and of the Covenant. By detaining and sentencing him to death, the authorities have also violated his right to equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.

35. In relation to category III, the source recalls that article 14 (4) of the Covenant requires that, in the case of juvenile persons, the procedure shall be such as will take account of their age. It also recalls that, at the beginning of the trial, Mr. Masih's legal counsel filed a petition with the trial court, requesting that he be tried as a juvenile because he was 16 years old when he was arrested and charged.

36. The source states that the court denied the petition. It disregarded Mr. Masih's birth certificate, which provided his exact age, and relied instead on an ossification test, which

indicates only the approximate age of an individual. The source notes that, under section 8 of the Juvenile Justice System Act, such medical tests should be relied upon only when birth records are not available. The source submits that the court disregarded a valid government record of Mr. Masih's date of birth in order to try him as an adult. In addition, the court disregarded the Superintendent of Police's report, which declared Mr. Masih to be a minor.

37. Moreover, the source argues that Mr. Masih's initial arrest was wrongful and arbitrary under article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant because, under the prosecution witnesses' own version of the facts, Mr. Masih's words did not constitute a crime.

38. According to the source, Mr. Masih's continued detention is also arbitrary and contravenes article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant because his legal counsel filed a petition under section 265-K of the Code of Criminal Procedure seeking dismissal of the charges as, based on the allegations, a blasphemy charge could not be established. Section 265-K of the Code of Criminal Procedure allows a court to acquit an accused person at any stage of the case if the court considers that there is no probability of the accused being convicted of any offense.

39. Mr. Masih's legal counsel argued that, if the court believed that the statements of the witnesses for the prosecution given during the police investigation were true, it would have to agree that no crime had been committed and, thus, that Mr. Masih could not be convicted. The trial court disregarded that assertion and denied the petition, reasoning that it had not heard the witnesses' testimony and could not make a determination as to whether Mr. Masih had committed a crime. That decision was appealed to the Lahore High Court, but the appeal was denied.

40. Moreover, the source argues that a fair and impartial determination of the criminal charge did not occur in the case of Mr. Masih, in contravention of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. According to the source, those articles were violated when Mr. Masih was initially arrested and charged by the police. The police arrested him under section 295C without determining whether that section applied, that is, whether Mr. Masih had committed blasphemy. On the basis of the facts narrated by witnesses, the police were aware that Mr. Masih was recounting another person's act. The source notes that about 50 blasphemy cases are filed every year in Pakistan and the person who simply informs others about someone else's blasphemy is never charged.

41. The source also submits that article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant were violated when the Office of the Prosecutor pressed formal charges in court. The source recalls that the Superintendent of Police stated in his investigative report that neither he nor the eyewitness had found any blasphemy in Mr. Masih's conversation. The Office of the Prosecutor, however, brought formal charges and requested the court to begin the trial, thus disregarding all standards of fairness and impartiality.

42. The source also argues that the trial court and the High Court violated article 10 of the Universal Declaration of Human Rights and article 14 (2) of the Covenant when the trial was allowed to continue, disregarding Mr. Masih's petition and appeal in which his counsel sought dismissal of charges because no offence could be established, even under the prosecution's own version of the facts. Article 14 (2) of the Covenant requires that a person charged with a criminal offense have the right to be presumed innocent until proved guilty. In the present case, such a presumption was not required, because actual evidence of Mr. Masih's innocence existed. He was denied that right and, instead, was presumed guilty, despite evidence to the contrary.

43. Finally, the source submits that Mr. Masih's rights under articles 9 (3) and (4) and 14 (3) (c) of the Covenant were also violated. The source recalls that, under article 9 (3), a State party must not, as a general rule, detain a person awaiting trial in custody, that article 9 (4) requires that the lawfulness of the detention be decided without delay and that article 14 (3) (c) requires that a person be tried without undue delay. The source notes that courts in Pakistan normally take about one to two years to complete a trial. In the case of Mr. Masih, however, it took over five years for the court to complete the trial, which resulted, on 22 November 2022, after considerable delay and the postponement of several hearings,

in conviction and the imposition of a death sentence. The source concludes that all of those violations constitute breaches of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant.

44. The source submits that Mr. Masih was wrongly convicted in the absence of any evidence of wrongdoing because the judges were intimidated by the members of the Muslim organization, who attended the hearings regularly. Furthermore, the leader of that organization had reportedly published a statement on a social media platform stating that members of his organization would kill Mr. Masih themselves if the judge did not convict him. According to the source, on 22 November 2022, before the judge announced the decision, members of the organization were present in the courtroom, where they took photographs and then left, as if they already knew the verdict.

45. Finally, in relation to category V, the source submits that Mr. Masih was deprived of his liberty solely because of his Christian faith. The Muslim individual who allegedly made the blasphemous statements was never investigated or charged. The police interviewed him only as a witness, not a suspect, and believed his statement that he did not commit blasphemy, without any further investigation. The individuals who called Mr. Masih to the Popular Mobile Shop and forced him to repeat the blasphemous statements were also never investigated or prosecuted and were called, instead, as prosecution witnesses against Mr. Masih.

(b) Response from the Government

46. On 19 July 2023, the Working Group transmitted the allegations from the source to the Government of Pakistan under its regular communication procedure. The Working Group requested the Government to provide detailed information by 18 September 2023 about the current situation of Mr. Masih. The Working Group also requested the Government to clarify the legal provisions justifying his detention and its compatibility with the State's obligations under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Masih's physical and mental integrity.

47. The Working Group regrets that it did not receive a response from the Government to the present 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.

2. Discussion

48. 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.

49. In determining whether Mr. Masih's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

(a) Category I

50. The Working Group will first consider whether there have been violations under category I, which concerns the deprivation of liberty without any legal basis.

51. The source submits that, according to the police record, Mr. Masih was arrested on 17 August 2017, but affirms that he was, in fact, detained on 13 July 2017 and has remained in custody ever since. On 18 August 2017, Mr. Masih was first presented before the Judicial Magistrate to obtain permission to keep him in police custody for investigation. No defence counsel was present at that hearing. The judge allowed the police to retain Mr. Masih in custody for 14 days, with the next hearing set for 12 September 2017.

² [A/HRC/19/57](#), para. 68.

52. As the Working Group has reiterated in its jurisprudence and as the Human Rights Committee has specified, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee promptly before a judge; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.³ As Mr. Masih was a minor at the time of his arrest, the Working Group also recalls articles 37 (b) and 40 (2) (b) (ii) of the Convention on the Rights of the Child, noting that every child arrested and deprived of his or her liberty should be brought before a competent authority within 24 hours to examine the legality of the deprivation of liberty or its continuation.⁴ The Committee on the Rights of the Child has stated that an especially strict standard of promptness – within 24 hours – should apply in the case of juveniles.⁵ In the absence of information or justification from the Government, the Working Group finds that Mr. Masih was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant.

53. It is also stated in article 9 (3) of the Covenant that it shall not be the general rule that persons awaiting trial be detained in custody. Mr. Masih has been in custody since 13 July 2017. The Working Group recalls the view of the Human Rights Committee and its own recurrent findings that pretrial detention must be the exception and not the rule; should be ordered for as short a time as possible;⁶ and 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. Courts must examine whether alternatives to pretrial detention would render detention unnecessary in the case in question.⁷ The Working Group concludes that an individualized determination of Mr. Masih's circumstances was absent and that, as a result, his detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant. In reaching that conclusion, the Working Group notes that the Government did not submit any information to suggest that such a determination took place or to rebut the source's submissions. Moreover, as a 16-year-old juvenile at the time of his arrest, Mr. Masih was entitled to be immediately released on bail, in accordance with section 6 of the Juvenile Justice System Act. The Human Rights Committee has stated that the pretrial detention of juveniles should be avoided but that, when it occurs, they are entitled to be brought to trial in especially speedy fashion under article 10 (2) (b) of the Covenant.⁸

54. The Working Group also finds that Mr. Masih was not afforded the right to bring proceedings before a court so that the court could decide without delay on the lawfulness of his detention, in breach of article 9 (4) of the Covenant, articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that there is a legal basis for the detention.⁹

55. Furthermore, the source submits that, after apprehending Mr. Masih, the authorities did not inform his family of his whereabouts and that, for several days, the family did not know where he was being detained. In the light of the submission that Mr. Masih was a minor at the relevant time, the Working Group recalls rules 7.1, 10.1 and 15.2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), according to which a detainee has the right to have their parents or guardians informed of the arrest immediately after it happens and to have them present at subsequent proceedings so long as their presence is not deemed to be against the best interests of the detainee. In

³ See opinions No. 60/2020 and No. 66/2020 and Human Rights Committee, general comment No. 35 (2014), para. 33.

⁴ Committee on the Rights of the Child, general comment No. 24 (2019), para. 90.

⁵ *Ibid.*

⁶ Opinions No. 57/2014, para. 26; No. 8/2020, para. 54; No. 5/2021, para. 43; and No. 6/2021, para. 50. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

⁷ [A/HRC/19/57](#), paras. 48–58.

⁸ Human Rights Committee, general comments No. 21 (1992), para. 13; and No. 35 (2014), para. 37. See also general comment No. 32 (2007), para. 42; and Committee on the Rights of the Child, general comment No. 24 (2019), para. 90.

⁹ Opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

addition, in the light of the source's un rebutted submissions that there was no official information about the fate or whereabouts of Mr. Masih for several days, the Working Group finds that he was subjected to enforced disappearance, which is an aggravated form of arbitrary detention.¹⁰ As a result, he was unable to effectively exercise his right to challenge his detention so that a court could decide, without delay, on its legality, in accordance with articles 9 (3) and (4) of the Covenant.

56. For those reasons, the Working Group considers that the deprivation of liberty of Mr. Masih lacks legal basis and is thus arbitrary, falling under category I.

(b) Category II

57. The source argues that Mr. Masih has been deprived of his liberty for over five years as a result of the exercise of his rights under articles 18 and 19 of the Universal Declaration of Human Rights and of the Covenant. The Working Group recalls that that freedom of opinion and freedom of expression, as set out in article 19 of the Covenant, are indispensable conditions for the full development of the person and are essential for any society and, in fact, constitute the foundation stone for every free and democratic society.¹¹ Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and that right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.¹²

58. The source submits that one of the witnesses testified under oath in court that he had begun a conversation about religion with Mr. Masih. While the witness had expressed his own religious beliefs when he had begun the conversation, Mr. Masih had not expressed his own beliefs but had merely referred to comments made by another man, who was Muslim. The source submits that Mr. Masih was deprived of his liberty for simply imparting information about someone else's acts.

59. The Working Group is persuaded that Mr. Masih did nothing more than exercise his freedom of expression as envisaged in article 19 of the Covenant by repeating what someone else had said. The Human Rights Committee, in its concluding observations on the initial report of Pakistan, stated that it was concerned by the blasphemy laws, including sections 295 and 298 of the Pakistan Penal Code, that carried severe penalties, including the mandatory death penalty (sect. 295C), and reportedly had a discriminatory effect; by the very high number of blasphemy cases based on false accusations and by violence against those accused of blasphemy, as illustrated by the case of Mashal Khan; and by repeated reports that judges who heard blasphemy cases were frequently harassed and subjected to intimidation and threats.¹³ It called upon Pakistan to repeal all blasphemy laws or amend them in compliance with the strict requirements of the Covenant, including as set forth in the Committee's general comment No. 34 (2011) on the freedom of opinion and expression.¹⁴ The Working Group recalls that the obligation of Pakistan to respect Mr. Masih's freedom of conscience and religion 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.¹⁵

60. For those reasons the Working Group finds that the deprivation of liberty of Mr. Masih is arbitrary under category II and breaches article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The Working Group refers the present case to the

¹⁰ Human Rights Committee, general comment No. 35 (2014), para. 17. See also opinion No. 37/2021, para. 65.

¹¹ Human Rights Committee, general comment No. 34 (2011), para. 2.

¹² *Ibid.*, para. 11.

¹³ *CCPR/PAK/CO/1*, para. 33.

¹⁴ *Ibid.*, para. 34 (a).

¹⁵ Human Rights Committee, general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 4.

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

(c) **Category III**

61. Given its finding that the deprivation of liberty of Mr. Masih is arbitrary under category II, the Working Group wishes to emphasize that, in such circumstances, no trial should have been held. However, as Mr. Masih has been tried and sentenced to death, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give the deprivation of liberty an arbitrary character, such that it falls within category III.

62. In relation to category III, the source submits that, at the beginning of the trial, Mr. Masih's legal counsel petitioned the trial court requesting Mr. Masih to be tried as a juvenile because he was 16 years old when he was arrested and charged. The source also notes that the court reportedly disregarded a valid government record of Mr. Masih's date of birth and tried him as an adult. In addition, the court disregarded the Superintendent of Police's report, in which it was declared that Mr. Masih was a minor. The Working Group thus finds a violation of article 14 (4) of the Covenant, under which, in the case of a juvenile person, the procedure shall be such as will take account of their age.

63. The Working Group reminds the Government of its obligation under articles 37 and 40 of the Convention on the Rights of the Child to try minors in courts specific for that purpose and to use diversionary measures as the preferred manner of dealing with children.¹⁶ Furthermore, the Committee on the Rights of the Child has expressed deep concerns that, in Pakistan, juvenile offenders have reportedly been sentenced to death, very long imprisonment and high fines, even after the promulgation of the Juvenile Justice System Ordinance of 2000.¹⁷

64. The source points out that the legal proceedings against Mr. Masih have been subject to considerable delays and that he has remained in custody throughout that period. Under articles 9 (3) and 14 (3) (c) of the Covenant, anyone arrested or detained on a criminal charge is entitled to trial within a reasonable time and without undue delay. The reasonableness of any delay in bringing the case to trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the authorities.¹⁸ The Human Rights Committee has stated that an important aspect of the fairness of a hearing is its expeditiousness and that, in cases where the accused is denied bail by the court, they must be tried as expeditiously as possible.¹⁹

65. The delay in the present case was exacerbated because Mr. Masih was not given a bail hearing and his detention was not reviewed by a judicial authority, despite his status as a juvenile, as discussed above. In the light of the Working Group's finding that Mr. Masih's detention was arbitrary under category II, as it resulted from the peaceful exercise of his rights, any delay in trying his case is unreasonable²⁰ and in violation of article 14 (3) (c) of the Covenant and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

66. The source submits that Mr. Masih was interrogated by the authorities without a lawyer. All hearings that took place before 6 February 2018 therefore occurred without a defence lawyer. The Working Group considers that the source has established that Mr. Masih did not have access to a lawyer from the outset of his detention and at other key stages, including during his interrogation. Persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and such access must be provided without

¹⁶ Committee on the Rights of the Child, general comment No. 24 (2019), paras. 15–18; and the Beijing Rules, rule 11.

¹⁷ [CRC/PAK/CO/3-4](#), para. 99 (b).

¹⁸ Human Rights Committee, general comments No. 32 (2007), para. 35; and No. 35 (2014), para. 37. See also [CCPR/C/VNM/CO/3](#), paras. 35 and 36.

¹⁹ Human Rights Committee, general comment No. 32 (2007), paras. 27, 31, 35 and 37.

²⁰ Opinions No. 8/2020, para. 75; No. 16/2020, para. 77; and No. 10/2021, para. 78.

delay.²¹ The Working Group therefore finds that Mr. Masih's right to prompt recourse to effective legal counsel was denied, in violation of article 10 of the Universal Declaration of Human Rights and articles 14 (1) and (3) (b) and (d) of the Covenant.

67. The Working Group considers that the failure to provide Mr. Masih with access to counsel from the outset seriously affected his ability to prepare a defence. Those circumstances lead the Working Group to find that his right to adequate time and facilities for the preparation of his defence under article 14 (3) (b) of the Covenant and principles 17 (1) and 18 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was violated, as was his right to present an effective defence through counsel of his own choosing under article 14 (3) (d) of the Covenant.

68. Those violations of due process and fair trial rights are all the more egregious because Mr. Masih was a juvenile and faced a charge that carried the possibility of a death sentence. Indeed, he has been sentenced to death by hanging. The Working Group recalls his rights under articles 37 (d) and 40 (2) (b) (ii) of the Convention on the Rights of the Child to prompt access to legal assistance in the preparation of his defence. States should ensure that a child is guaranteed legal or other appropriate assistance from the outset of the proceedings in the preparation and presentation of the defence and until all appeals and reviews have been exhausted.²² The Working Group recalls the Human Rights Committee's guidance that it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings in cases involving capital punishment.²³ The Working Group also finds a violation of article 6 (5) of the Covenant, which prohibits the sentence of death for crimes committed by persons below 18 years of age. The Working Group refers the case to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

69. The source also argues that the trial court and the High Court violated article 10 of the Universal Declaration of Human Rights and article 14 (2) of the Covenant when the trial was allowed to continue, disregarding Mr. Masih's petition and appeal in which his counsel sought dismissal of the charges because no offence could be established, even under the prosecution's own version of the facts. Mr. Masih was denied the right to be presumed innocent and, instead, was presumed guilty, despite evidence to the contrary. The source submits that no informant has previously ever been charged with committing blasphemy for simply providing information about someone else's words. If the law holds an informant responsible for reporting on someone else's acts, then every complainant or witness who testifies in a blasphemy case against someone should be charged with blasphemy. The source states that that would be an irrational application of the law. On the basis of the foregoing, the Working Group considers that Mr. Masih's rights under article 10 of the Universal Declaration of Human Rights and articles 14 (1) and (2) of the Covenant have been violated.

70. The source also submits that Mr. Masih was wrongly convicted in the absence of any evidence of wrongdoing because the judges were intimidated by the members of the Muslim organization, who have regularly attended the hearings. Furthermore, the leader of that organization reportedly wrote, in a statement published on a social media platform, that members of his organization would kill Mr. Masih themselves if the judge did not convict him.

71. The source submits that, on 22 November 2022, before the judge announced the decision, members of the Muslim organization were present in the courtroom, where they took photographs and then left, as if they already knew the verdict. The Working Group recalls the report of the Special Rapporteur on the independence of judges and lawyers following her visit to Pakistan in 2012, in which she expressed particular concern about instances in which judges had been coerced or pressured to decide against the accused, even without supporting evidence, and that, in some cases, acquitted persons had been killed by

²¹ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8; and Human Rights Committee, general comment No. 35 (2014), para. 35. See also General Assembly resolution 73/181; [CCPR/C/IRN/CO/3](#), para. 21; and [A/HRC/45/16](#), para. 51.

²² Committee on the Rights of the Child, general comment No. 24 (2019), para. 49; and the Beijing Rules, rule 15.

²³ Human Rights Committee, general comment No. 32 (2007), para. 38.

vigilante mobs.²⁴ The Working Group also recalls the observation of the Special Rapporteur that the judiciary had also grown very afraid of public sentiment regarding blasphemy cases. Such sentiment, coupled with intimidation and violence, as well as the lack of protection measures from authorities, seriously encroached on the independence of the judiciary and resulted in a biased delivery of justice.²⁵ In addition, the Working Group recalls that it appears that cases brought under section 295C must be tried by Muslims, noting that it has found that, under Pakistani law, blasphemy cases insulting the Muslim religion can be heard only by Muslim judges, which undermines credibility in a fair and impartial trial being conducted.²⁶

72. In those circumstances, and recalling that the Human Rights Committee, in its concluding observations on the initial report of Pakistan, stated that it was concerned by the blasphemy laws, including sections 295 and 298 of the Pakistan Penal Code, that carried severe penalties, including the mandatory death penalty (sect. 295C), and reportedly had a discriminatory effect and by repeated reports that judges who heard blasphemy cases were frequently harassed and subjected to intimidation and threats,²⁷ the Working Group finds further violations of Mr. Masih's right to a fair hearing by an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

73. For the reasons above, the Working Group concludes that the breaches of Mr. Masih's fair trial and due process rights are of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

(d) Category V

74. The source submits that Mr. Masih has been deprived of his liberty because of his Christian faith.

75. In the discussion above concerning category II, the Working Group established that the detention of Mr. Masih was the result of the peaceful exercise of his rights under international law. The Working Group recalls that it has repeatedly stated in its jurisprudence that, when detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination.²⁸

76. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention, namely, that the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, other persons with similarly distinguishing characteristics having also been persecuted, or that the context suggests that the authorities detained a person on discriminatory grounds or to prevent them from exercising their human rights.²⁹ In that regard, the Working Group recalls that it has previously concluded that religious minorities are persecuted and deprived of their freedom merely for exercising their legitimate right to freedom of religion and conscience.³⁰ It also draws attention to the concern raised by the Special Rapporteur on the independence of judges and lawyers that blasphemy laws are abused to target Christians in Pakistan.³¹

77. The Working Group also recalls the source's submission that Mr. Masih is currently on death row and shares a cell with two other Christians. Previously, he shared a cell with another Christian man, who was under trial in a separate blasphemy case, potentially indicating a pattern of targeting Christians with blasphemy prosecutions. In that regard, the Special Rapporteur on freedom of religion or belief has noted an interference with the

²⁴ [A/HRC/23/43/Add.2](#), para. 56.

²⁵ *Ibid.*, para. 58.

²⁶ Opinion No. 25/2001, para. 19.

²⁷ [CCPR/C/PAK/CO/1](#), para. 33.

²⁸ Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; No. 59/2019, para. 79; No. 36/2020, para. 75; No. 42/2020, para. 93; No. 62/2020, para. 74; and No. 75/2022, para. 91.

²⁹ [A/HRC/36/37](#), para. 48.

³⁰ Opinions No. 25/2001, para. 19; No. 7/2023, para. 72; and No. 35/2023, para. 64.

³¹ [A/HRC/23/43/Add.2](#), para. 56.

religious activities of Christians in Pakistan due to abusive application of the blasphemy law.³² The Special Rapporteur on the independence of judges and lawyers, following her visit to Pakistan, reported that the vague language of the blasphemy laws made no reference to a potential offender's psychological state or intention and represented an open door for abuse and the persecution of minorities, in particular religious or sectarian groups. She added that those laws served the vested interests of extremist religious groups and were not only contrary to the Constitution of Pakistan but also to international human rights norms, in particular those relating to non-discrimination and freedom of expression and opinion.³³ In 2021, several Special Rapporteurs called for the release of another Christian national of Pakistan, who was detained under blasphemy laws.³⁴

78. The Working Group is struck by the numerous procedural irregularities that have permeated Mr. Masih's case: the lack of a legal basis for his arrest, as it was not he who had made any alleged blasphemous statement; the denial of his right to be tried as a juvenile, in violation of domestic law; the insistence on pursuing his case, even though the police investigation had not yielded such a recommendation; and the apparent intimidation of the judiciary by a Muslim religious organization.

79. In the light of those circumstances and upon consideration of the source's credible submissions, the Working Group finds that Mr. Masih was deprived of his liberty on discriminatory grounds, based on his religious faith, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and article 26 of the Covenant and in contravention of 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.³⁵ The Working Group refers the present case to the Special Rapporteur on freedom of religion or belief and to the Special Rapporteur on minority issues.

(e) Concluding remarks

80. Recalling the source's un rebutted submission that Mr. Masih was kept in solitary confinement, the Working Group notes that, according to rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement is to be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to authorization by a competent authority. It is also submitted that he was detained in an adult facility before his conviction. The Working Group reminds the Government of rule 29 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, according to which, in all detention facilities, juveniles should be separated from adults, unless they are members of the same family. The Working Group has previously observed that the non-observance of standards applicable to juvenile detainees, such as the right to be tried in a juvenile justice system and to be housed separately from adults in detention facilities, would render detention arbitrary.³⁶

81. The Working Group is gravely concerned about the health and well-being of Mr. Masih, noting that, since he received the death sentence, his health has reportedly deteriorated further. The Working Group is thus obliged to remind the Government of its obligation under article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, according to which all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of health care available in the community. The Working Group urges the Government to immediately and unconditionally release him and to ensure that he receives

³² E/CN.4/1996/95/Add.1, para. 45.

³³ A/HRC/23/43/Add.2, para. 57.

³⁴ Office of the United Nations High Commissioner for Human Rights, "Pakistan: Christian on blasphemy charges must be freed – experts", Press Release, 21 October 2021, available at <https://www.ohchr.org/en/press-releases/2021/10/pakistan-christian-blasphemy-charges-must-be-freed-experts>.

³⁵ Opinion No. 7/2023, para. 72.

³⁶ Opinions No. 14/2015, paras. 25 and 26; No. 17/2015, para. 25; and No. 13/2016, para. 22.

the medical attention required. The Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

82. The Working Group expresses its serious concern about blasphemy laws in Pakistan that result in the violation of the rights of minorities. It would welcome the opportunity to undertake a country visit to Pakistan to work constructively with the authorities to address 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.³⁷

3. Disposition

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

The deprivation of liberty of Shahzad Masih, being in contravention of articles 2, 3, 7, 8, 9, 10 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

84. The Working Group requests the Government of Pakistan to take the steps necessary to remedy the situation of Mr. Masih 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.

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

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

87. The Working Group requests the Government to bring its laws, particularly article 295C of the Pakistan Penal Code, into conformity with the recommendations made in the present opinion and with the commitments made by Pakistan under international human rights law.

88. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on minority issues, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers for appropriate action.

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

4. Follow-up procedure

90. 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. Masih has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Masih;

³⁷ 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 United Nations High Commissioner for Human Rights and the special rapporteurs (A/75/119, para. 30 (p)).

(c) Whether an investigation has been conducted into the violation of Mr. Masih'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.

91. 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.

92. 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 of any failure to take action.

93. 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.³⁸

[Adopted on 14 November 2023]

³⁸ Human Rights Council resolution 51/8, paras. 6 and 9.