

OPINION No. 25/2001 (Pakistan)

Communication addressed to the Government on 18 October 2001

Concerning: Ayub Masih

The State has not signed nor ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requested information in good time.

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

- (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act (category I);
- (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
- (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III),

4. In the light of the allegations made, the Working Group welcomes the co-operation of the Government. The Working Group transmitted the reply of the Government to the source. The latter provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Group Ayub Masih, citizen of Pakistan who is a Christian, was arrested on 14 October 1996 by police. No arrest warrant or decision was presented at the moment of detention.

6. According to the source, Mr. Masih's family had applied for land under a Government program that distributes parcels of land to provide housing for homeless people. The local landlord and other residents of the village apparently resented this prospect as previously Christian families lived on land provided by Muslim landowners in exchange for labor. Implementation of the Government's land allocation program would have deprived the village landowners of the benefits of Christian labor.

7. It is submitted that Mr. Masih was arrested when a Muslim neighbor, Mr. Muhammad Akram, told Police that Mr. Masih had offended him by stating that Christianity was "right" and suggesting he should read British author Salman Rushdie's Satanic Verses. Mr. Masih denied all these accusations. On the same day of his arrest, the other villagers forced the entire Christian population of the village (14 families) to leave their home and abandon their belongings. Authorities allocated Mr. Masih's house to the complainant Mr. Akram, who has apparently been living there ever since. Bishop John Joseph of Faisalbad, observed that Mr. Akram's allegations against Mr. Masih were motivated by a dispute between Muslim and Christian villagers. He pointed out that neither Mr. Masih nor the complainant could read English and would know little about the Rushdie's book.

8. On 6 November 1997, the complainant Mr. Akram injured and shot Mr. Masih in the halls of the Sahiwal Sessions Court, after which the trial was held in camera. The Police reportedly refused to register a complaint against Mr. Akram, despite eyewitness testimony by family members. The trial began on 8 January 1998. On 20 April 1998, Judge Khan sentenced Mr. Masih to death and to a fine of 100,000 Rupees. Mr. Masih immediately filed an appeal before the Multan Bench of the Lahore High Court. On the day of the verdict, extremists near the Court threatened Mr. Masih's lawyer with dire consequences for pursuing the case. It is reported that on 6 May 1998 Bishop John Joseph of Faisalbad shot and killed himself in front of the court to protest against Masih's conviction.

9. In January 1999, Mr. Masih was allegedly attacked and injured in the prison by four other inmates. No action appears to have been taken against the attackers. In April 1999, the Multan Bench of the Lahore High Court denied Mr. Masih's application for medical treatment.

10. The source reports that on 24 July 2001, the High Court finally heard Mr. Masih's appeal, over three years and three months after being convicted. On the day of the hearing, the courtroom was filled with extremists who made death threats against the Court and Mr. Masih's lawyer. Shortly thereafter, Justices Naeem, Ullah Khan Sherwani and Khawaja Muhammad Sharif affirmed the judgment. Mr. Masih's case is currently on appeal to the Supreme Court of Pakistan.

11. The law giving rise to the sentence, the Pakistan Penal Code § 295C the pertinent text of which was reproduced by the source reads as follows: "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 (PBUH). . .shall be punished with death, or imprisonment for life, and shall be also liable to fine."

It is submitted that in October 1990 the Federal Shari`at Court ruled that "the penalty for contempt of the Holy Prophet (PBUH)...is death." Under Pakistani law, the Federal Shari`at Court is a religious body whose rulings are binding on the Government of Pakistan. Thus, life imprisonment is no longer an available sentence for persons convicted of blasphemy under § 295C; the only possible punishment available for anyone convicted of blasphemy under section 295C is death. Moreover, according to the Pakistan Criminal Proceedings Code, judges presiding at blasphemy trials must be Muslims. This is the only section in the Pakistan criminal system for which the religious qualification of the judge is prescribed.

12. Summarising its position the source points out that the detention of Mr. Masih is arbitrary. He was accused and convicted largely because he belongs to a religious minority, on the basis of a provision of the law which is itself clearly discriminatory. Therefore his conviction implies a violation of Mr. Masih's rights to equal protection and non-discrimination.

It is submitted that Mr. Masih requested written documentation regarding the charges and evidence against him. He was not provided by such documentation or evidence. During the proceedings he was never informed of his rights. It is also submitted that by refusing to conduct an independent investigation and by allowing the testimony of a single, biased witness, the court shifted the burden of proof onto the defendant to prove he did not commit the alleged offence. This burden-shifting was reinforced by the requirement that judges hearing blasphemy cases be Muslims.

Moreover, the threats and atmosphere surrounding his trial and appeal denied him any chance of having a fair trial. The source considers that the courts hearing the case and appeal were unable to make their decisions in an independent and impartial manner, because the judges themselves felt their personal integrity and safety was at risk. The source reminds that Judge Arif Iqbal Hussain Bhatti was assassinated on 19 October 1997 in his Lahore office after acquitting two persons accused of blasphemy.

13. The description by the Government of the facts of the case giving rise to Mr. Masih's conviction are quite close, but more detailed than that of the source. According to the Government Muhammad Akram informed the local Police that on 14 October 1996 at 1500 hours Ayub Masih was sitting in front of the house of Hakim Machhi. The complainant along with Zulfigar Arshad Bhatti and Muhammad Akram were also present there. Ayub Masih said that his religion was right while the religion followed by them was false. Moreover, he stated that the religion preached by Muhammad (P.B.U.H.) was absolutely false. He urged that they read the book written by "Salman Rushdie" in which he has unveiled the true face of Hazrat Muhammad (P.B.U.H.) and stated that the complainant and witnesses should accompany him to Karachi so that he could make them read the book by Salman Rushdie. After reading it, they would understand that their Prophet about whom they have so much respected preached a false religion. Then he stated that he wanted to give information to the complainant and witnesses regarding his own religion so that they could note the shortcomings of their religion, Islam, and also realize that they were following the religion preached by a wrong person. During all this conversation he did not pronounce the name of the Holy Prophet (P.B.U.H.) with due honour and said that their prophet was a liar. Upon hearing these derogatory remarks the complainant was overcome with emotions along with witnesses. He caught hold of the accused and produced him before Police.

14. The Government did not comment and refute the allegations of the source on how proceedings against Ayub Masih were conducted.

15. The Working Group finds that the procedure conducted against Ayub Masih did not respect the fundamental rights of a person charged. He was not provided with documentary or other evidence against him. This prevented him to properly prepare his defence; he was not informed of his rights as an accused. The verdict against him was based on the testimony of a single, biased witness. The threats by extremists against him and his defence lawyer during trial and appeal, and the hostile atmosphere - characterised inter alia by the fact that the complainant shot

on him in the court without apparently being sanctioned by the court - intimidated accused and counsel alike, thereby restricting the effectiveness of the defence. All this was coupled with the fact that under Pakistani law blasphemy cases insulting the Muslim religion are compulsorily heard by Muslim judges, which undermines the credibility that a fair and impartial trial is being conducted. These serious deficiencies in proceedings where capital punishment is not only provided by law as an alternative penalty, but compulsory, if the accused is found guilty, basically deprives the procedure of its requisite fair character.

16. On the basis of the foregoing, the Working Group renders the following opinion:
The deprivation of liberty of Ayub Masih is arbitrary, being in contravention of Articles 9 and 10 of the Universal Declaration of Human Rights and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Ayub Masih. The Working Group believes that under the circumstances either retrial, or granting pardon or commutation would be an appropriate remedy. The Working Group recommends the Government the consideration of the ratification of the International Covenant of Civil and Political Rights.

Adopted on 30 November 2001