

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Dr. Miriam Estrada-Castillo (Ecuador)

Vice-Chair: Mr. Mumba Malila (Zambia)

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Mr. Mathew Gillett (New Zealand)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
**Rohan Ahmad, Usman Ahmad,
and Tariq Ahmad Shehzad,**
Citizens of Pakistan

v.

Government of the Islamic Republic of Pakistan

PETITION FOR OPINION

Pursuant to Human Rights Council Resolutions
1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 2006/102, 6/4, and 24/7

Submitted by:

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December 12, 2022

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR
DETENTION**

I. PETITIONER 1

a. Identity

1. *Family Name*: Ahmad
2. *First Name*: Rohan
3. *Sex*: Male
4. *Age at the Time of Detention*: 32
5. *Nationality*: Pakistan
6. (a) *Identity document (if any)*: National Identity Card
(b) *Place of Issue*: Unknown
(c) *On (date)*: Unknown
(d) *No.*: 35202-6198978-3
7. *Profession and/or activity (if believed to be relevant to the arrest/detention)*: Petitioner 1 is an active member of the Ahmadiyya Muslim Community.
8. *Address of usual residence*:
House No. 58-E-1
Wapda Town, Lahore
Pakistan

b. Arrest

1. *Date of arrest*: May 26, 2020
2. *Place of arrest (as detailed as possible)*: Rohan Ahmad was arrested at his home in Lahore.
3. *Forces who carried out the arrest or are believed to have carried it out*: Federal Investigation Agency (“FIA”) Cybercrime Wing of Lahore
4. *Did they show a warrant or other decision by a public authority?:* No, because the offences were cognizable (*i.e.*, offences for which an arrest warrant is not required under Pakistan law).
5. *Authority who issued the warrant or decision*: N/A.
6. *Reasons for the arrest imputed by the authorities*: Authorities allege that Petitioner 1 was engaged in “spreading blasphemous and edited verses of Holy Quran through his Whatsapp No. 0322-4374750 on different Whatsapp groups . . .”¹
7. *Legal basis for the arrest including relevant legislation applied (if known)*: Pakistan Code of Criminal Procedure, Article 54 (Arrest without Warrant)

c. Detention

1. *Date of detention*: May 26, 2020

¹ Search Warrant U/S 33 of PECA Act 2016, Lahore District Court, (May 26, 2020), on file with author.

2. *Duration of detention (if not known, probable duration)*: Petitioner 1 has been detained since the date of arrest and remains in detention at the time of submission.
3. *Forces holding the detainee under custody*: Federal Investigation Agency
4. *Places of detention (indicate any transfer and present place of detention)*: Petitioner 1 was held at the FIA facility in Lahore for approximately 7-10 days before being transferred to District Jail (aka Camp Jail) in Lahore.
5. *Authorities that ordered the detention*: Federal Investigation Agency
6. *Reasons for the detention imputed by authorities*: The government allege that Petitioner 1 was engaged in spreading blasphemous and edited verses of Holy Quran.
7. *Legal basis for the detention including relevant legislation applied (if known)*: Petitioner 1 is charged under Prevention of Electronic Crimes Act Article 11 (Hate Speech) and Pakistan Penal Code articles 295-A (Religious Incitement), 295-B (Defiling the Qur'an), Article 295-C (Derogatory Remarks towards the Holy Prophet); and Article 298-C (Criminalization of Ahmadis Who Claim to be Muslim or Propagate Their Faith).

II. PETITIONER 2

a. Identity

9. *Family Name*: Ahmad
10. *First Name*: Usman
11. *Sex*: Male
12. *Age at the Time of Detention*: 37
13. *Nationality*: Pakistan
14. (a) *Identity document (if any)*: National Identity Card
(b) *Place of Issue*: Unknown
(c) *On (date)*: Unknown
(d) *No.*: 33201-8039037-5
15. *Profession and/or activity (if believed to be relevant to the arrest/detention)*: Petitioner 2 is an active member of the Ahmadiyya Muslim Community.
16. *Address of usual residence*:
Quarter No. 96-A
Darius Sadar, Chenab Nagar
Pakistan

b. Arrest

8. *Date of arrest*: September 29, 2020
9. *Place of arrest (as detailed as possible)*: Petitioner 2 was arrest at the offices of the FIA Cybercrime Wing in Lahore.
10. *Forces who carried out the arrest or are believed to have carried it out*: FIA Cybercrime Wing, Lahore
11. *Did they show a warrant or other decision by a public authority?*: No, because the offences were cognizable.

12. *Authority who issued the warrant or decision:* N/A.
13. *Reasons for the arrest imputed by the authorities:* Authorities allege that Petitioner 2 aided and abetted Petitioner 1 in spreading blasphemous and edited verses of Holy Quran.
14. *Legal basis for the arrest including relevant legislation applied (if known):* Pakistan Code of Criminal Procedure, Article 54 (Arrest without Warrant)

c. Detention

8. *Date of detention:* September 29, 2020
9. *Duration of detention (if not known, probable duration):* Petitioner 2 has been detained since the date of arrest and remains in detention at the time of submission.
10. *Forces holding the detainee under custody:* Federal Investigation Agency
11. *Places of detention (indicate any transfer and present place of detention):* Petitioner 2 was held at the FIA facility in Lahore for approximately 7-10 days before being transferred to District Jail (aka Camp Jail) in Lahore.
12. *Authorities that ordered the detention:* Federal Investigation Agency
13. *Reasons for the detention imputed by authorities:* Authorities allege that Petitioner 2 aided and abetted Petitioner 1 in spreading blasphemous and edited verses of Holy Quran.
14. *Legal basis for the detention including relevant legislation applied (if known):* Petitioner 2 is charged under Prevention of Electronic Crimes Act Article 11 (Hate Speech) and Pakistan Penal Code articles 295-A (Religious Incitement), 295-B (Defiling the Qur'an), Article 295-C (Derogatory Remarks towards the Holy Prophet); and Article 298-C (Criminalization of Ahmadis Who Claim to be Muslim or Propagate Their Faith).

III. PETITIONER 3

a. Identity

17. *Family Name:* Shehzad
18. *First Name:* Tariq Ahmad
19. *Sex:* Male
20. *Age at the Time of Detention:* 39
21. *Nationality:* Pakistan
22. (a) *Identity document (if any):* National Identity Card
(b) *Place of Issue:* Unknown
(c) *On (date):* Unknown
(d) *No.:* 33201-1546664-5
23. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Petitioner 3 is an active member of the Ahmadiyya Muslim Community.
24. *Address of usual residence:*
House No. 235
Kehkeshan Colony, Chenab Nagar
Pakistan

b. Arrest

15. *Date of arrest*: September 29, 2020
16. *Place of arrest (as detailed as possible)*: Petitioner 3 was arrested at the offices of the FIA Cybercrime Wing in Lahore.
17. *Forces who carried out the arrest or are believed to have carried it out*: FIA Cybercrime Wing, Lahore
18. *Did they show a warrant or other decision by a public authority?*: No, because the offences were cognizable.
19. *Authority who issued the warrant or decision*: N/A.
20. *Reasons for the arrest imputed by the authorities*: Authorities allege that Petitioner 3 aided and abetted Petitioner 1 in spreading blasphemous and edited verses of Holy Quran.
21. *Legal basis for the arrest including relevant legislation applied (if known)*: Pakistan Code of Criminal Procedure, Article 54 (Arrest without Warrant).

c. Detention

15. *Date of detention*: September 29, 2020
16. *Duration of detention (if not known, probable duration)*: Petitioner 3 has been detained since the date of arrest and remains in detention at the time of submission.
17. *Forces holding the detainee under custody*: Federal Investigation Agency
18. *Places of detention (indicate any transfer and present place of detention)*: Petitioner 1 was held at the FIA facility in Lahore for approximately 7-10 days before being transferred to District Jail (aka Camp Jail) in Lahore.
19. *Authorities that ordered the detention*: Federal Investigation Agency
20. *Reasons for the detention imputed by authorities*: Authorities allege that Petitioner 3 aided and abetted Petitioner 1 in spreading blasphemous and edited verses of Holy Quran.
21. *Legal basis for the detention including relevant legislation applied (if known)*: Petitioner 3 is charged under Prevention of Electronic Crimes Act Article 11 (Hate Speech) and Pakistan Penal Code articles 295-A (Religious Incitement), 295-B (Defiling the Qur'an), Article 295-C (Derogatory Remarks towards the Holy Prophet); and Article 298-C (Criminalization of Ahmadis Who Claim to be Muslim or Propagate Their Faith).

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

Part 1 of this Statement of Facts details the current human rights climate in Pakistan in order to demonstrate the government's patterns of violating the substantive and procedural rights of its citizens. Part 2 of this Statement of Facts details the circumstances surrounding the arrest and detention of the petitioners.

1. Relevant Social, Legal, & Human Rights Context in Pakistan

Despite protections for “the right to profess, practice, and propagate [one’s] religion” in the Constitution of Pakistan,² the Pakistan government has been found to routinely fail to protect these rights for religious minorities.³ International human rights observers have reported that police do not adequately protect religious minorities and those accused of blasphemy from violence.⁴ Furthermore, international observers have reported that the Pakistan government often enables, facilitates, and engages in the persecution of religious minorities.⁵ The government has used legal provisions in the Pakistan Criminal Code relating to religious crimes prosecute and imprison religious minorities on charges related to the peaceful expression of their religious beliefs.⁶

The Pakistan government has singled-out one religious minority, the Ahmadiyya Muslim Community (also called Ahmadis), for particularly harsh treatment under Pakistan law and in practice. The Ahmadiyya Muslim Community is a sect of Islam believing that Mirza Ghulam Ahmad of Qadian was the metaphorical second coming of Jesus Christ and the Mahdi.⁷ The Ahmadiyya Community ostensibly has over ten million members across over 190 countries.⁸ Members of the Ahmadiyya Community have repeatedly been targets of government harassment by Pakistan officials.⁹ The Pakistan Constitution explicitly prohibits members of the Ahmadiyya Community from calling themselves Muslim.¹⁰ Furthermore, the Pakistan Penal Code criminalizes sharing the Ahmadiyya Community’s religion, professing core theological tenants of the Ahmadiyya Community’s beliefs, and identifying members of the Ahmadiyya Community as Muslims.¹¹ The Pakistan government has repeatedly used these criminal code provisions, in addition to criminal code provisions relating to blasphemy, to prosecute and imprison members of the Ahmadiyya Muslim Community.¹² In light of these infringements on Ahmadis’ exercise of their religion, several UN Special Procedures have called for Pakistan government to repeal discriminatory legal provisions against the Ahmadiyya Community and have raised concern about the acts of persecution of members of the community.¹³

² Constitution of the Islamic Republic of Pakistan, art. 20, *available at* https://na.gov.pk/uploads/documents/1333523681_951.pdf.

³ *See* U.S. State Department, *2021 Report on International Religious Freedom: Pakistan*, (June 2, 2022), *available at* <https://www.state.gov/reports/2021-report-on-international-religious-freedom/pakistan/>.

⁴ *See id.*; *see also*, Human Rights Watch, *World Report 2021: Pakistan*, *available at* <https://www.hrw.org/world-report/2021/country-chapters/pakistan#72d33e>.

⁵ Human Rights Watch, *World Report 2021: Pakistan*, *available at* <https://www.hrw.org/world-report/2021/country-chapters/pakistan#72d33e>.

⁶ *See* Human Rights Watch, *World Report 2021: Pakistan*, *available at* <https://www.hrw.org/world-report/2021/country-chapters/pakistan#72d33e>; U.S. State Department, *2021 Report on International Religious Freedom: Pakistan*, (June 2, 2022), *available at* <https://www.state.gov/reports/2021-report-on-international-religious-freedom/pakistan/>.

⁷ *See* Ahmadiyya Muslim Community, *Al Islam*, www.alislam.org/ahmadiyya-muslim-community/.

⁸ *Id.*

⁹ Amnesty International, *Pakistan, Persecution of Ahmadis Must End As Authorities Attempt to Shutdown US Website*, (Feb. 3, 2021), *available at* <https://www.amnesty.org/en/latest/press-release/2021/02/pakistan-persecution-of-ahmadis-must-end-as-authorities-attempt-shutdown-of-us-website/>.

¹⁰ Constitution of the Islamic Republic of Pakistan, art. 260(3)(b), *available at* https://na.gov.pk/uploads/documents/1333523681_951.pdf.

¹¹ Penal Code of the Islamic Republic of Pakistan, arts. 298-B, 298-C, *available at* <https://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

¹² *See* Human Rights Watch, *World Report 2021: Pakistan*, *available at* <https://www.hrw.org/world-report/2021/country-chapters/pakistan#72d33e>; OHCHR, *Pakistan must repeal discriminatory measures leading to persecution of Ahmadis, say UN experts*, (July 25, 2018), *available at* <https://www.ohchr.org/en/press-releases/2018/07/pakistan-must-repeal-discriminatory-measures-leading-persecution-ahmadis-say?LangID=E&NewsID=23401>.

¹³ OHCHR, *Pakistan must repeal discriminatory measures leading to persecution of Ahmadis, say UN experts*, (July 25, 2018), *available at* <https://www.ohchr.org/en/press-releases/2018/07/pakistan-must-repeal-discriminatory-measures-leading-persecution-ahmadis-say?LangID=E&NewsID=23401>.

2. The Case of Rohan Ahmad, Usman Ahmad, and Tariq Ahmad Shehzad

a. *Petitioners' Background*

Mr. Rohan Ahmad (Petitioner 1), Mr. Usman Ahmad (Petitioner 2), and Mr. Tariq Ahmad Shehzad (Petitioner 3) are members of the Ahmadiyya Muslim Community. Petitioner 1 is a devotee of Ahmadiyya Muslim Community and works as a missionary for the Ahmadiyya Community, operating out of the Ahmadiyya Community's office in Rabwah, Pakistan. Petitioner 2 is a lifelong devotee of the Community, and he volunteers for the Ahmadiyya Community's Youth organization, Majlis Khuddam Ul Ahmadiyya ("MKA"), serving as the national director of religious education for MKA in Pakistan. Petitioner 3 is also a lifelong devotee and is a vice principal at Nusrat Jehan College in Rabwah, which is a college affiliated with the Ahmadiyya Muslim Community.

b. *Criminal Complaint & Initial Investigation*

On May 15, 2020, Muhammad Shakil, a resident of Lahore, filed a criminal complaint to the Pakistan Federal Investigation Agency ("FIA") against Petitioner 1.¹⁴ In the complaint, Shakil alleged that on September 27, 2019 Petitioner 1 had sent him a message on WhatsApp inviting him to take part in an essay writing and general knowledge competition held by the Ahmadiyya Community's Youth organization, MKA.¹⁵ In the complaint, Shakil further alleges that in the following weeks Petitioner 1 sent him 4-5 SMS messages that linked to websites containing literature of the Ahmadiyya Community.¹⁶ The complaint specifically mentions two books, "Tafseer e Saghir," which is a translation of the Quran with commentary from Mirza Mahmood Ahmad, and "RoohaniKhazain," which is a collection of writings of Mirza Ghulam Ahmad. In the complaint, Shakil claimed the books contained content that is blasphemous to Islam and the Prophet of Islam.¹⁷ However, the complaint does not identify which portions of the texts amount to blasphemy.¹⁸ Furthermore, the complaint does not specify why he waited approximately eight months before reporting these events to authorities.

As a result of this complaint, a criminal investigation was initiated against Petitioner 1. On May 26, 2020, FIA officials obtained a warrant to search the premises of Petitioner 1's home to look for evidence that he shared "blasphemous and edited verses of Holy Quran through his WhatsApp . . ."¹⁹ The officers proceeded to execute the search warrant.

c. *Arrests & Pre-Trial Detention*

On May 26, 2020, after obtaining a the search warrant, officers from the Federal Investigation Agency ("FIA") Cyber Crimes Unit of Lahore visited the home of Petitioner 1 in Lahore.²⁰ Only one of the officers was in uniform, while the remaining officers were in plainclothes.²¹ Initially, officers failed to identify themselves as government agents, leading the Petitioner and his family to believe that they were being robbed.²² The FIA

¹⁴ *First Informational Report*, Federal Investigation Agency of Pakistan, No. 29/2020 (May 26, 2020), on file with author.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Search Warrant U/S 33 of PECA Act 2016*, Lahore District Court, (May 26, 2020), on file with author.

²⁰ Interview with Confidential Source, on file with author.

²¹ *Id.*

²² *Id.*

officers executed the warrant, confiscating Ahmadiyya literature (including a copy of “Tafseer e Saghir”), mobile phones, a laptop, and a tablet.²³

The officers proceeded to arrest Petitioner 1, without showing a warrant for his arrest.²⁴ During the course of the arrest, officers beat Petitioner 1 and threatened his family.²⁵ Petitioner 1 was taken to the FIA office in Lahore where he was interrogated and held until May 28, 2020, at which point he was transferred to District Jail in Lahore.²⁶

When conducting a search of Petitioner 1’s mobile phone, FIA officers found links to online, publicly available, versions of Ahmadiyya literature, including “Tafseer e Saghir.”²⁷ Furthermore, through interrogation of Petitioner 1 and examination of the seized materials, FIA officials came to believe that Petitioner 2 and Petitioner 3 assisted Petitioner 1 in organizing the competitions and sharing the religious texts.²⁸ The FIA opened a criminal case against Petitioner 2 and Petitioner 3 on suspicion of a criminal conspiracy between the three petitioners.²⁹

On September 29, 2020, FIA officers summoned Petitioner 2 and Petitioner 3 to the FIA office in Lahore.³⁰ Once Petitioner 2 and Petitioner 3 arrived at the station, a prominent Ahmadi antagonist, Hasan Muawiya, was present at the station, seemingly involved in the police action against the petitioners.³¹ While at the station, Petitioner 2 and Petitioner 3 were arrested and their phones were seized and searched.³² FIA officers found that they were in possession of similar books as were the subject of the complaint against Petitioner 1, and moreover that Petitioner 2 and Petitioner 3 had shared these materials with people around the world.³³ FIA officers proceeded to join the investigation of the three petitioners together.³⁴

Petitioner 2 and Petitioner 3 were held at the FIA office in Lahore until October 5, 2020, at which point they were transferred to District Jail in Lahore.

d. Charges

On June 29, 2021, the Court of Session in Lahore confirmed charges against Petitioners.³⁵ Petitioners were each charged under the following criminal articles: The Prevention of Electronic Crimes Act (“PECA”) Article 11 (Hate Speech); Pakistan Penal Code Article 295-A (Religious Incitement); Pakistan Penal Code Article 295-B (Defiling the Qur’an); Pakistan Penal Code Article 295-C (Derogatory Remarks towards the Holy

²³ Decision on Denial of Bail, *Rohan Ahmad, et al. v. The State*, Lahore High Court, Crl.Misc.No.18739-B/2021 & Crl.Misc.No.18744-B/2021, para. 16 (Aug. 8, 2021), on file with author; Interview with Confidential Source, on file with author [hereinafter “High Court Bail Decision”].

²⁴ Interview with Confidential Source, on file with author.

²⁵ *Id.*

²⁶ *Id.*

²⁷ High Court Bail Decision *supra* note 23, para. 2.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Muawiya has pursued dozens of blasphemy cases against members of the Ahmadi Muslim Community in Pakistan. See ‘When the blood starts’: Spike in Ahmadi persecution in Pakistan, AL JAZEERA (July 26, 2021) available at <https://www.aljazeera.com/news/2021/7/26/ahmadi-persecution-pakistan-blasphemy-islam>.

³² High Court Bail Decision *supra* note 23, para. 2.

³³ *Id.*

³⁴ *Id.*

³⁵ Charge Sheet, *The State v. Rohan Ahmad, et al.*, Court of Session, Lahore, Sessions Case No. 46/2021, Sessions Trial No. 26/21 (Sept. 29, 2021), on file with author.

Prophet); and Pakistan Penal Code Article 298-C (Criminalization of Ahmadis Who Claim to be Muslim or Propagate Their Faith).³⁶ The Charge Sheet enumerates the following charges against Petitioners.

Under the first charge, the Sessions Court alleges that Petitioners “maliciously outraged the religious feelings, prepared and disseminated blasphemous content *i.e.* ‘defiled & desecrated copy of Holy Quran’ through information system or devises which caused the interfere, sectarian racial hatred among the citizen/communities” in violation of both Article 11 of the PECA and Penal Code Article 295-A.³⁷ This first charge being framed under two separate legal authorities, namely the Penal Code and the PECA, is a procedural irregularity.³⁸

Under the second charge, the Sessions Court alleges that Petitioners “with common intention, willfully defiled or desecrated the copy of Holy Quran in the shape of changing content/translation which was barred by the law” in violation of Penal Code Article 295-B.³⁹

Under the third charge, the Sessions Court alleges that Petitioners “with common intention, deliberately and maliciously outraged the religious feelings, prepared and disseminated the blasphemous content *i.e.* derogatory material against the honour of Holy Prophet (PBUH) through information system or devises which caused interference, sectarian racial hatred among the citizen/communities” in violation of Penal Code Article 295-C.⁴⁰

Under the fourth charge, the Sessions Court alleges that Petitioners “with common intention and in criminal conspiracy, intentionally, planned to engage the other in order to prepare and transmit the defile copies of Holy Quran with changed meaning of content through information system and devices and posses himself as Muslim” in violation of Penal Code Article 298-C.⁴¹

For each count, Petitioners were alleged to have acted with common intention and having abetted one another the commission of the crimes, in violation of Penal Code Article 34 (Commission with Common Intention) and Article 109 (Abetment). Additionally, for the fourth charge, Petitioners were alleged to have engaged in a criminal conspiracy in violation of Penal Code Article 120-B (Criminal Conspiracy).

e. *Denial of Bail*

On the date of the confirmation of charges, Petitioners requested a hearing on release on bail before the Sessions Court. On March 9, 2021, the Sessions Court of Lahore denied Petitioners request for release on bail on the grounds that the offences for which Petitioners were charged, namely Penal Code articles 295-A, 295-B, and 295-C, are not eligible for bail under Article 497 of the Pakistan Criminal Procedure Code due to the potential punishments carried by these charges (these offences carry the possibility of a max sentence of imprisonment for 10 years, imprisonment for life, and the death penalty, respectively).⁴² Petitioners subsequently appealed the Sessions Court’s denial of release on bail to the High Court in Lahore. However, on September 26, 2021, the High Court denied Petitioners’ appeal of the bail, affirming the decision of the Sessions Court that the offences with which Petitioners were charged are non-bailable.⁴³ Petitioners subsequently appealed the High Court decision to the Supreme Court, but the Supreme Court also denied reconsideration of the denial of bail.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Interview with Confidential Source, on file with author.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ See High Court Bail Decision *supra* note 23, para. 16.

f. *Pre-Trial Proceedings & Current Status*

As of the time of submission, the criminal trial of Petitioners is pending, as Petitioners and their legal counsel have not yet been provided access to the evidence collected against them by the FIA during the course of the investigation.⁴⁴ In October 2021, Petitioners filed with the High Court in Lahore to request that the government provide access to copies of material evidence prior to the commencement of trial. However, the High Court has yet to rule on Petitioner's request for access to evidence.

Also, at the time of submission, Petitioners remain in detention in District Jail, Lahore. Petitioners are continuing to file new applications requesting reconsideration of the denial of bail before the Supreme Court.⁴⁵ However, these applications have not been granted.

If petitioners are found guilty, they face the possibility of life imprisonment. Furthermore, if specifically convicted of Article 295-C (Derogatory Remarks towards the Holy Prophet), Petitioners may be punished with death.

B. Legal Analysis

The arrest and detention of Petitioners is arbitrary under Categories II, III, and V of the Working Group's Revised Methods of Work.⁴⁶ The detention is arbitrary under Category II because Petitioners' detention resulted from and amounts to reprisal for the legitimate exercise of their rights to freedom of thought, conscience and religion, as well as their right to freedom of expression. The detention is arbitrary under Category III because the Pakistan government's arrest, detention, and prosecution of Petitioners failed to meet minimum standards of due process. Lastly, the detention is arbitrary under Category V because the Pakistan government's arrest, detention, and prosecution of Petitioners resulted from discrimination against Petitioners.

1. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of the Working Group's Revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and freedom of thought, conscience and religion.⁴⁷ The government arbitrarily arrested and detained Petitioners on the basis of their exercise of both these rights.

a. *Pakistan's Detention of Petitioners Violates Petitioners' Right to Freedom of Thought, Conscience and Religion.*

The right to freedom of thought, conscience and religion is protected Article 18 of the International Covenant on Civil and Political Rights ("ICCPR"), to which Pakistan acceded in 2010.⁴⁸ The right to religion is also

⁴⁴ Interview with Confidential Source, on file with author.

⁴⁵ Interview with Confidential Source, on file with author.

⁴⁶ An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty exception on such grounds and in accordance with such procedures as are established by law." International Covenant on Civil and Political Rights, G.A. Res. 2200A(XXI), UNTS vol. 999, p.171, at art. 9(1), (Dec. 16, 1996) [hereinafter "ICCPR"]. An arbitrary deprivation of liberty is expressly prohibited under international law. *Id.*; *See also Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9, (1948) [hereinafter "UDHR"] ("No one shall be subjected to arbitrary arrest, detention or exile."); *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49, at principle 2 [hereinafter "Body of Principles"] ("Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law. . .").

⁴⁷ Revised Methods of Work, Category III, at para. 8b.

⁴⁸ ICCPR *supra* note 46, art. 18.

protected under Article 18 of the Universal Declaration of Human Rights (“UDHR”) as well as in Article 20 of the Pakistan Constitution. The rights contained in Article 18 of the ICCPR include the “freedom to have or to adopt a religion or belief of [one’s] choice, and freedom, either individually or in community with others and in public or private, to manifest [one’s] religion or belief in worship, observance, practice and teaching.”⁴⁹ In its General Comment No. 22 to the ICCPR, the UN Human Rights Committee explains that Article 18 “encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief...”⁵⁰ Furthermore, the Human Rights Committee has determined that “the freedom to prepare and distribute religious texts or publications” is an activity that is “integral to the conduct by religious groups of their basic affairs,” and accordingly is protected under Article 18 of the ICCPR.⁵¹

In the present case, the activities that serve as the basis of Petitioners’ detention fall well within the scope of the right to freedom of religion. The government’s express grounds for detaining petitioners are the allegations (1) that Petitioners desecrated the Quran and (2) that Petitioners prepared and disseminated “blasphemous content” by sending links to the alleged desecrated Quran.⁵² What the government refers to as a desecrated Quran is the book “Tafseer e Saghir,” which is a translation of the Quran with commentary from Mirza Mahmood Ahmad. “Tafseer e Saghir” is a religious holy book of the Ahmadiyah Muslim Community. This book is used by the Ahmadiyah Community for religious instruction and guidance, in the practice of the members’ religious faith. “Tafseer e Saghir” was not in any way created to insult or blaspheme other Muslims, but instead it is a core component of the Ahmadiyah Community’s practice of their sincerely held religious beliefs. As a result, possessing “Tafseer e Saghir” and other religious texts is protected activity under the right to freedom of religion.

Moreover, Petitioners are detained in relation to publishing “Tafseer e Saghir” and other religious texts online and sharing links to those publications. However, the Human Rights Committee has already determined that distributing religious texts is protected by right to freedom of religion. As a result, the Petitioners alleged publishing and distributing of Ahmadiyah Community religious texts is a legitimate exercise of their right to freedom of religion.

Accordingly, both possession and distribution of “Tafseer e Saghir” and other religious texts is protected under Petitioners’ right to freedom of religion. Thus, detaining Petitioners on the basis of these activities amounts to a restriction on the basis of Petitioner’s right to religion, as protected under Article 18 of the ICCPR and Article 18 of the UDHR.

None of the Article 18(3) Exceptions Apply in This Case

The government may only limit the right to freedom of religion in the circumstances contemplated in Article 18(3) of the ICCPR. Article 18(3) provides that freedom of religion may only be limited by the State when such restrictions are “prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others.”⁵³ The UN Human Rights Committee has been clear that any limitation “must not be applied in a manner that would vitiate the rights guaranteed in article 18.”⁵⁴ Furthermore, limitations on the right to freedom of religion “may not be imposed for discriminatory purposes or applied in a discriminatory manner.”⁵⁵

⁴⁹ *Id.*

⁵⁰ UN Human Rights Committee, *General Comment No. 22, Article 18 (Freedom of Thought, Conscience or Religion)*, UN Doc. CCPR/C/GC/22, para. 9 (July 30, 1993), available at <https://www.refworld.org/docid/453883fb22.html> [hereinafter “General Comment No. 22”].

⁵¹ *Id.* at para. 4.

⁵² Charge Sheet, *The State v. Rohan Ahmad, et al.*, Court of Session, Lahore, Sessions Case No. 46/2021, Sessions Trial No. 26/21 (Sept. 29, 2021), on file with author.

⁵³ *Id.*

⁵⁴ General Comment No. 22, at para 8.

⁵⁵ *Id.*

In the present case, the Petitioner’s continued detention does not fall within the scope of any permissible limitation on the right to freedom of religion. Petitioners’ possession, preparation, and publication of religious texts does not threaten public safety, order, health, morals, or the right of others. As a result, the government cannot justify Petitioners’ detention under any of the enumerated grounds for restricting freedom of religion. Thus, the government lacks a legitimate basis necessary to restrict Petitioners’ rights.

Moreover, Petitioners’ detention is the result of discriminatory action by the government on the basis of Petitioners’ religious belief. The government’s allegation that Petitioners’ possession of “Tafseer e Saghir” amounts to possession of a “defiled Quran” is an explicit refusal by the government to recognize Petitioners’ sincere religious belief as legitimate. The refusal to recognize Petitioners’ religion as legitimate, coupled with the prosecution of Petitioners on the basis of practicing their religion, demonstrates that the detention of Petitioners is imposed for discriminatory purposes. As a result, the government is foreclosed from appealing to Article 18(3) to justify restricting Petitioners’ right to freedom of religion.

As no exception applies to the government’s restriction of Petitioners’ right to freedom of religion, the government’s detention and continued prosecution of Petitioners amounts to a violation of Article 18 of the ICCPR and UDHR.

b. *Pakistan’s Detention of Petitioners Violates Petitioners’ Right to Freedom of Expression*

Article 19(2) of the ICCPR provides, “Everyone shall have the right of freedom of expression; this right shall include 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 his choice.”⁵⁶ The same right is protected under Article 19 of the UDHR. Freedom of expression is also guaranteed in the Pakistan Constitution under Article 19.⁵⁷ The right to freedom of expression as provided in Article 19(2) of the Covenant is not limited by form or subject matter. As General Comment No. 34 explains, the right protected by Article 19(2) “includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others It includes . . . cultural and artistic expression, teaching, and religious discourse.”⁵⁸ Moreover, all forms of expression are covered, including electronic and internet-based modes of expression.⁵⁹

Here, Petitioners are detained, in part, due to their preparation and transmission of religious text related to their membership in the Ahmadiyah Muslim Community. Petitioners’ activity is a form of religious expression that used the internet to convey religious materials and information. This activity falls well within the scope of protected expression under Article 19 of the ICCPR and UDHR. Accordingly, any detention of Petitioners on the basis of such activities amounts to a restriction on their right to freedom of expression.

None of the Article 19(3) Exceptions Apply in This Case

While the right to freedom of expression is not absolute, the government can only place restrictions on the freedom under limited conditions. Article 19(3) of the Covenant provides that freedom of expression may only be restricted when provided by law and necessary for the respect of the rights or reputations of others, protection of national security or public order, health or morals.⁶⁰ The UN Human Rights Committee has held that such government limitations in accordance with Article 19(3) must “meet a strict test of justification.”⁶¹

⁵⁶ ICCPR *supra* note 46, art. 19(2).

⁵⁷ Pakistan Constitution, art. 19.

⁵⁸ UN Human Rights Committee, General Comment No. 34, Article 19 (Freedom of Opinion and Expression). para. 11 (July 29, 2011) [hereinafter General Comment No. 34].

⁵⁹ *Id.*, at para. 12.

⁶⁰ ICCPR *supra* note 46, art. 19(3).

⁶¹ Communication No. 628/1995, *Park v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/628/1995, ¶ 10.3 (1998), <http://hrlibrary.umn.edu/undocs/session64/view628.htm>.

For the reasons stated above with respect to the right to freedom of religion, the exceptions under Article 19(3) do not apply to the present circumstances, as the government lacks a legitimate basis to restrict Petitioners' rights and the government is acting in a discriminatory manner against Petitioners. As no exception applies to the government's restriction of Petitioners' right to freedom of expression, the government's detention and continued prosecution of Petitioners amounts to a violation of Article 19 of the ICCPR and UDHR.

2. Arbitrary Deprivation of Liberty under Category III

According to Category III of the Working Group's Revised Methods of Work, a deprivation of liberty is arbitrary "[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, spelled out in the UDHR 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."⁶² Due Process is at the core of the right to a fair trial. The minimum international standards of due process are established in the UDHR, the Body of Principles for the Protection of All persons under any Form of Detention or Imprisonment (the "Body of Principles"), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules").⁶³

a. *The Government Violated Petitioners' Right Not to Be Subjected to Arbitrary Arrest*

Article 9(1) of the Covenant, which confirms the right to liberty and freedom from arbitrary detention, states, "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."⁶⁴ This right is reiterated by principles 2 and 36(2) of the Body of Principles⁶⁵ and Article 9 of the UDHR.⁶⁶

At the time of each Petitioners' arrest, there was no warrant issued for their arrest. Although the arrests complied with Pakistan criminal procedure, which does not require a warrant for the offences under which Petitioners were arrested, the absence of a warrant requirement under Pakistan law does not exempt the government from its international due process obligations. Moreover, the government maintained the opportunity to obtain a warrant from a judicial authority, particularly in the case of Petitioner 1, as authorities obtained a search warrant for Petitioner 1 immediately prior to his arrest. However, authorities chose not to seek a warrant for arrest. The warrant requirement is a key safeguard to protect against arbitrary arrest, and the government failure to obtain a warrant for the arrest of Petitioners amounts to a violation of Petitioners' procedural rights. Accordingly, Petitioners' arrest was arbitrary in violation of Article 9(1) of the Covenant, Article 9 of the UDHR, and principles 2 and 36(2) of the Body of Principles.

b. *The Government Violated Petitioners' Right to Release Pending Trial*

Article 9(3) of the Covenant provides the right to an individual's release pending trial.⁶⁷ Pretrial detention under this provision should be the exception not the norm, and must be justified based on the circumstances. The UN Human Rights Committee has found that "[d]etention pending trial must be based on an individualized determination that [such detention] 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 . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual

⁶² Revised Methods of Work, Category III, para. c.

⁶³ *Id.*, Category III, paras. 7(a)-(b).

⁶⁴ ICCPR *supra* note 46, art. 9(1).

⁶⁵ UDHR *supra* note 46, art. 9.

⁶⁶ Body of Principles, at principles 2 and 36(2).

⁶⁷ ICCPR *supra* note 46, art. 9(3).

circumstances.”⁶⁸ Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.⁶⁹

Here, Petitioners have been denied release on bail. The grounds for denying bail provided by the courts are that the offences for which Petitioners were charged, namely Penal Code articles 295-A, 295-B, and 295-C, are not eligible for bail under Article 497 of the Pakistan Criminal Procedure Code. As a result, the courts denied bail because denial is mandatory for the above-mentioned charges. Blanket bail denial on the basis of being charged with a particular crime is a violation of the right to release pending trial, and accordingly, the government has violated Petitioners’ due process rights by denying them bail on this basis.

However, even if the courts had considered the factors that are required under international due process norms, there is no evidence to suggest that Petitioners’ pose a threat to public safety as they have never engaged in violent activity in the past. Moreover, there is no evidence that Petitioners could destroy any evidence not already collected by investigators or that petitioners are a flight risk. As such, there were no circumstances present that could reasonably justify the period of detention without trial.

Accordingly, the government violated Petitioners’ rights under Article 9(3) of the ICCPR, as well as principles 38 and 39 of the Body of Principles.

c. The Government Violated Petitioners’ Right to Be Tried Without Undue Delay

Article 14(3)(c) of the Covenant guarantees that each individual subject to arrest shall “be tried without undue delay.”⁷⁰ The UNHRC has explained that, “[a]n important aspect of the fairness of a hearing is its expeditiousness,”⁷¹ and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”⁷² The right to be tried without undue delay is reiterated by Principle 38 of the Body of Principles.⁷³

Here, Petitioners have been held without bail for over two years. As noted above, the government has denied Petitioners release on bail, instead opting to hold them for the length of these pre-trial proceedings. In part, the reason for delay has been due to the government’s failure to provide Petitioners’ counsel access to the evidence collected against Petitioners. The government has not provided any justification for the delay in providing access to investigation materials. However, without providing access to these materials, the trial against Petitioners cannot commence. Petitioners’ have filed a petition with the High Court in Lahore to obtain access to investigators’ evidence, but have not yet received access. As a result, the responsibility for the unjustified delays rests solely on the government. The trial delays, particularly while Petitioners are held in pretrial detention, lack any legitimate justification, and the government has failed to promptly provide a trial for Petitioners.

Accordingly, due to the substantial delays in Petitioners’ trial resulting from the government’s failure to provide access to evidence, the government has violated Petitioners’ right to be tried without undue delay in violation of Article 14(3)(c) of the ICCPR.

3. Arbitrary Deprivation of Liberty under Category V

According to Category V of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary “[w]hen the deprivation of liberty constitutes a violation of international law on the grounds of

⁶⁸ General Comment No. 35, para. 38.

⁶⁹ Body of Principles *supra* note 46, Principles 38 and 39.

⁷⁰ ICCPR *supra* note 46, art. 14(3)(c).

⁷¹ UN Human Rights Committee, *General Comment No. 32, Article 14 (Right to Equality Before Courts and Tribunals and to a fair trial)*, UN Doc. CCPR/C/GC/32, para. 27 (Aug. 23, 2007), available at <https://undocs.org/CCPR/C/GC/32>.

⁷² *Id.*, at para. 35.

⁷³ Body of Principles *supra* note 46, Principle 38.

discrimination based on . . . ethnic or social origin, language, [or] religion . . .”⁷⁴ Importantly, Category V detention occurs when the underlying discrimination “aims towards or can result in ignoring the equality of human beings.”⁷⁵

As noted above, Petitioners’ detention is the result of discriminatory action by the government on the basis of Petitioners’ religious belief. Petitioners were targeted entirely on the basis of their membership in the Ahmadiyah Muslim Community. The government has refused to recognize Petitioners’ religion as legitimate and is prosecuting Petitioners for engaging in peaceful activities that are a component of their religion. It is only because Petitioners are a member of a Muslim sect that is not recognized by Pakistani authorities that Petitioners are detained, and were Petitioners a member the majority religious sect in Pakistan, they would not be a target of prosecution. As a result, the government’s detention of Petitioners is a direct result of the government’s discriminatory attitudes and practices against the Ahmadiyah Community, and thus Petitioners’ detention is arbitrary under Category V.

4. Conclusion

For the above reasons, Petitioners’ arrest and detention violated Pakistan and international law. Petitioners’ practice of their religion and their religious expression is protected under the applicable provisions of the ICCPR and UDHR, as well as other sources of international law. By arresting Petitioners in a manner incongruous with human rights law and subjecting them to a lengthy pre-trial detention, the conditions of which also violated international law, the Pakistan government has arbitrarily detained Petitioners.

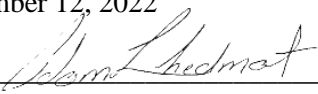
V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THEIR REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THERE WERE NOT TAKEN.

As described in detail above, Petitioners’ legal counsel has filed for Petitioners’ release on bail to the Sessions Court, the High Court, and the Supreme Court. However, at each instance, the courts have refused Petitioners’ bail applications. Petitioners’ legal counsel have also sought access to investigators’ evidence against Petitioners in an attempt to expedite trial proceedings. However, the High Court in Lahore has not yet ruled on that application.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

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Date: December 12, 2022

Signature: 

⁷⁴ Revised Work Methods, para. 8(e).

⁷⁵ *Id.*