



**PERMANENT MISSION OF PAKISTAN
TO THE UNITED NATIONS AND
OTHER INTERNATIONAL ORGANIZATIONS**

56 rue de Moillebeau

1209 Geneva 19

Tel: (4122) 7491930

Fax: (4122) 734 8085

E-mail: geneva@pakistanmission-un.org

No. Pol/SP-Proc/2019

09 January 2020

The Permanent Mission of the Islamic Republic of Pakistan accredited to United Nations Office and other International Organizations in Geneva presents its compliments to the Special Procedures Branch of the Office of the High Commissioner for Human Rights (OHCHR) and with reference to its letter no. AL PAK 8/2019 dated 11 November 2019, has the honour to forward the enclosed response of the Government of Pakistan on case of Mr. Muhammad Ismail.

The Permanent Mission of the Islamic Republic of Pakistan avails itself of the opportunity to renew to the Special Procedures Branch of the Office of the High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.



Special Procedures Branch,
Office of the High Commissioner for Human Rights (OHCHR),
Geneva

**RESPONSE ON THE JOINT COMMUNICATION FROM SPECIAL
PROCEDURES ON MR. MUHAMMAD ISMAIL CASE**

- i. Legal and factual basis for the detention and charges against Mr. Muhammad Ismail, and their compatibility with Pakistan's international human rights obligations under ICCPR.**

According to the police report, a First Investigation Report (FIR) No.47 dated 06-07-2019 under section 11 of Anti-Terrorism Act (ATA) was lodged at Counter Terrorism Department, Peshawar against Professor Muhammad Ismail, Ms. Gulalai Ismail and Ms. Uzlefat Ismail for dubious and unjustified transactions of millions of rupees through their accounts. It has been revealed in preliminary investigation that such funds were used by miscreant elements involved in anti-state, illegal and destabilizing activities. The matter is still under investigation. The case is being pursued in accordance with the law and all necessary due process guarantees are available to the accused, in accordance with international law.

Professor Ismail is not being detained.

- ii. Efforts made to ensure effective access of Mr. Ismail to all necessary medical assistance while in detention.**

Mr. Ismail is free and is not being detained. He is free to avail any medical assistance or treatment as per his requirements or desire.

- iii. Whether or not Ms. Ismail's parents have been placed on the Exit Control List, and if so, on what basis, and its compatibility with Pakistan's international obligations under ICCPR.**

Ms. Ismail's parents have been placed on Exit Control List due to ongoing investigations and judicial proceedings against them regarding the serious charges mentioned above.

- iv. Status of investigations, if any, against Ms. Ismail and her parents.**

The case of Ms. Ismail and her parents is sub-judice; investigations are currently on-going and have not attained finality.

- v. Measures taken to ensure that Pakistan's Hate Speech legislation is compatible with ICCPR.**

Being a progressive and democratic society with vibrant civil society, free media and independent judiciary, necessary checks and balances are in place to protect basic human rights of our citizens and safeguard against infringement of any fundamental freedom.

The Constitution of Pakistan guarantees freedom of expression in line with Article 19 of International Covenant on Civil and political rights (ICCPR) which clearly states that every human being shall have the right to freedom of expression; but subject to certain restrictions as imposed by the law to ensure respect for the rights and reputations of others and for protection of national security or of public order, or of public health and morals. International human rights law does not permit hate speech. Necessary legislation is in place to protect our citizens from hate speech or incitement to violence by anyone.

Our national laws such as Pakistan Electronic Crimes Act, (PECA) 2016 ensure that this particular right may not be misused to violate rights of other citizens through hate speech and for spreading anarchy. Various sections of Pakistan Penal Code (PPC) define penalties against hate mongers and criminalize promotion of enmity and hatred among different societal groups.

Necessary judicial guarantees and administrative mechanism are available to ensure that fundamental freedoms are enjoyed by all our citizens and application of law is done in accordance with our international human rights obligations.

Through a number of judgements, our judiciary has ensured that fundamental freedoms are protected, and freedom of expression or opinion is not violated. At the same time, hate speech has been curbed. In the case of Pakistan Broadcaster Associations v. PEMRA and others, the Supreme Court stated that a balance had to be struck in placing reasonable restrictions on freedom of expression in the maintenance of 'public order'. The Court further held that freedom of expression is a natural fundamental right which cannot be suppressed unless it is being exploited and/or is causing danger to or has the potential to hurt public interest but that the anticipated danger should not be remote, conjectural or far-fetched and that it should have a proximate and direct nexus with the expression. Recently the Supreme Court took suo-motu action and held that speech uttered by members of a religious political party at a sit-in protest in Rawalpindi was tantamount to hate speech and gave various directions including that any person issuing an edict (fatwa) which harms another person or puts him/her in harm's way, should be punished under the applicable law and TV licensees and others who broadcast messages advocating or inciting commission of an offence should be proceeded against by Pakistan Electronic Media Regulatory Authority (PEMRA) in accordance with law.

vi. Steps taken to ensure that human rights defenders in Pakistan are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.

The Government of Pakistan considers civil society and human rights defenders as partners in its endeavour to promote human rights and fundamental freedoms of its citizens. Through the very nature of their work, human rights defenders face challenges in the performance of their duties and the Government is taking all necessary measures to provide them security and an enabling environment to carry out their work.

Any allegations or reports of any harassment or violation are promptly investigated by the relevant authorities. The complainants have the right to seek redressal of grievances from the superior courts under Articles 199 and 184 of the Constitution.

Necessary institutional checks are in place and strict action is taken against instance of abuse of power by State functionary under the law.

Our free media with more than 100 channels provides additional safeguards to protect the human rights defenders. Any report of alleged harassment of any human rights defender is immediately taken up by the national media and followed by all stakeholders especially the public Social media and cyber space is available as well and human rights defenders openly express their views/concerns.

A Pakistan Citizens Portal App has been launched under the directions of the Prime Minister. This app is available online and provides quick grievance redressal mechanism to all our citizens. Due to its efficiency and effectiveness in responding to administrative issues, it has been lauded by all stakeholders.

Complying with its international obligations, and in accordance with Paris Principles, Pakistan has established an independent National Commission for Human Rights (NCHR). NCHR is playing an important role to highlight issues faced by human rights defenders and ensure that the State is providing them required security protection. It promptly investigates any complaint of abuse of power or infringement of fundamental freedom. The NCHR has issued 'Policy Guidelines for the Protection of Human Rights Defenders', after detailed consultations.

According to the Policy Guidelines, the NCHR shall assist all human rights defenders individually and in groups in carrying out their core functions, which includes the dissemination of information on human rights; investigating and documenting human rights violations; providing support to victims of human rights violations; taking appropriate legal actions against perpetrators of human rights violations; making demands for justice; and assisting other human rights defenders, international organizations, other regional and international human rights networks, UN agencies, and Human Rights Treaty enforcement bodies. The NCHR shall also support human rights defenders to engage and network with other human rights groups nationally, regionally and at the international level and recognizes the right of the human rights defenders to approach and work with other human rights groups, UN agencies and human rights treaty enforcement bodies.

vii. Information about compliance of Pakistan's counter-terrorism efforts comply with UN Security Council resolutions 1373(2001), 1456(2003), 1566(2004), 1624(2005), 2178 (2014), 2341(2017), 2368 (2017), 2368 (2017), 2370(2017), 2395(2017) and 2396(2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180.

The Government of Pakistan is committed to promote and protect human rights and fundamental freedoms of all its citizens in all circumstances, including in its fight against terrorism. Article 8 of the Constitution of Pakistan establishes the “non-derogatory” nature of fundamental rights enshrined in the Constitution. Therefore, all counter terrorism laws in Pakistan have been framed in the context of this provision. Moreover, any measure taken by the executive to counter terrorism is subject to judicial review and scrutiny. The oversight of the judiciary ensures “checks and balances” against potential abuse of power by law enforcement agencies. Moreover, the independence of our judicial system is a well recognized fact. Our vibrant civil society and free media provide further checks on any abuse or infringement of any fundamental freedom.

The NCHR is also playing its part in protecting the basic human rights and fundamental freedoms. The primary functions and powers of the NCHR include, among others, to conduct investigations into allegations of human rights abuse(s), either on petitions filed by individuals or institutions, or through suo-motu action; review existing and proposed legislation in relation to human rights principles; carry out research and advise on policy matters pertaining to the situation of human rights in Pakistan; contribute to national human rights awareness-raising and advocacy initiatives in the country.

Pakistan’s anti-terrorism legislation is in accordance with country’s international obligations under UNSCR 1373 and others. In 2010, Article 10-A was incorporated in the Constitution of Pakistan by the 18th Amendment, which ensures Right to Fair Trial and reads as follow: “For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process”. Additionally, Investigation for Fair Trial Act, 2013 was passed and rules were enacted by the Parliament to provide that the law enforcement agencies use their authorities within permissible limits and in accordance with the law.
