

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
UA PAK 6/2019

26 July 2019

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 36/6, 41/12, 40/16, 35/15, 34/18, 34/5, 34/19 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention of women's human rights defender Ms. **Gulalai Ismail**, criminal legal proceedings against her, as well as the harassment of her family members and friends through house-raids, the opening of criminal proceedings against her parents, allegations of torture of her associates and the suspension of the NGO Aware Girls.

Ms. Gulalai Ismail is a women's human rights defender. As the co-founder and Chairperson of the non-governmental organisation Aware Girls, she campaigns against violence and discrimination against women in Khyber Pakhtunkhwa, challenging oppression of women in the province and building women's empowerment. She is also the Chairperson of the Youth Peace Network, which provides training on human rights for young people, and has campaigned to end impunity around extra-judicial killings in Pakistan.

Ms. Ismail has long advocated for peace building in the Khyber Pakhtunkhwa province and repeatedly spoken out about patterns of human rights violations connected to military activity in Pakistan. This has included travel to meet, express solidarity with,

and collect the accounts of family members of victims of enforced disappeared and women and girls who have been victims of sexual violence and harassment.

A previous communication was sent by several Special Procedures' mandate holders to your Excellency's Government concerning Ms. Ismail on 29 May 2019 (case no. PAK 4/2019), to which a reply by your Excellency's Government was received on 25 June 2019. Whilst we appreciate the reply by your Excellency's Government to this communication, we raise concern as to information communicated therein which strongly appears to conflate the legitimate and crucial human rights work of Ms. Ismail with incitement to hostility against the State. Further to this, the response outlines that Ms. Ismail is being held in police custody on a remand granted by a civil magistrate. In such a case, the family of the individual involved would ordinarily be informed of these circumstances. However, Ms. Ismail's family has reportedly not been informed of any such procedures and the human rights defender's current whereabouts are unknown. In response, we would like to take this opportunity to restate the importance and legitimacy of protecting the work of Ms. Ismail as a human rights defender, and raise further concerns in light of the new information received and outlined below.

According to the information received:

On 14 May 2018, the NGO Aware Girls, was suspended by the Social Welfare Directorate and the organisation's bank accounts were frozen. This was done without the legal procedures established for this purpose. The decision was subsequently challenged before the appropriate Court, wherein the Social Welfare Directorate was ordered to call a board meeting with the end of either reinstating the NGO's existing Board of Directors or for requesting that the NGO hold new elections to its board within two months. The Social Welfare Directorate of Peshawar, allegedly in response to pressure from security agencies, has yet to implement the court order.

On 24 May 2019, a raid was carried out on Ms. Ismail's family residence in Islamabad by between 50 and 60 state security personnel, including members of the Inter-Services Intelligence (ISI), members of the anti-terrorist unit of the Pakistan police force, and ordinary police officers. The raid was reportedly conducted in connection with two First Information Reports (FIRs) filed against Ms. Ismail under the Pakistan Penal Code and the Anti-Terrorism Act, as detailed in communication PAK 4/2019.

On 27 May 2019, a second raid on the property was carried out by ISI agents and members of the police, during which the mobile phone of one Ms. Ismail's family members was seized and others were warned not to share videos of the raid online.

On 28 May 2019, a defamation complaint was lodged against Ms. Ismail through the Judicial Magistrate of Shahzad Town, Islamabad, by a retired subidar of the Pakistani army. The complaint was lodged in reference to a speech Ms. Ismail made in Islamabad earlier in May 2019, calling for accountability following the kidnapping and murder of a 10-year-old girl in Shahzad Town the same month, the same speech which led to the filing of the two separate FIRs against this human rights defender. Whilst this action against Ms. Ismail was reported in the media, no information on the complaint was shared with the human rights defender. On the same date, as raised in the previous communication sent concerning Ms. Ismail, a second piece of administrative information concerning Ms. Ismail was transmitted through the media without the human rights defender's prior knowledge of it, in this instance concerning her alleged "blacklisting", which reportedly restricts her ability to travel outside of Pakistan.

On 4 June 2019, a third raid on the property was carried out, on this instance by police officers. The phones of two other members of Ms. Ismail's family were seized during the raid, along with a CCTV system installed at the home. On the same date, the Islamabad residence of a friend of Ms. Ismail was raided and electronic equipment seized.

On 10 June 2019, the houses of two of Ms. Ismail's relatives in Peshawar, Khyber Pakhtunkhwa, were raided by officers from the ISI, the Pakistan Intelligence Bureau and members of the counter-terrorism unit of the Pakistan police force, along with regular officers from the Peshawar and Islamabad police forces. During the raid, female members of the families were threatened at gunpoint, and a male member was detained, transferred to a local police station, and interrogated for approximately two hours.

On 4 July 2019, Ms. Ismail's family home in Islamabad was raided on three separate occasions by members of multiple law enforcement and state security agencies. During the second raid on the property, an associate of Ms. Ismail's family was detained and interrogated at an unknown location for approximately eight hours, during which time they were allegedly subjected to several acts of torture and assault including their being injected with unidentified substances, beaten with a pistol and punched in the head. Further to this, whilst detained, the individual was threatened with death and the kidnapping and killing of their children if they refused to provide information concerning Ms. Ismail and her family. They were also informed that other members of Ms. Ismail's family would be abducted in forthcoming raids.

On 5 July 2019, at approximately 3 am, a friend of Ms. Ismail was detained by members of multiple law enforcement agencies and brought to an unidentified location in Lahore, Punjab province. Whilst detained, the individual in question

was interrogated as to the location of Ms. Ismail. During this time, the individual was allegedly subjected to torture by means of electric shocks, along with death threats against their family members. The individual in question was released after being held for approximately 13 hours.

Further to these instances of raid, detention and interrogation, on 12 July 2019 a new FIR was filed against Ms. Ismail, with her parents named as co-respondents, by the counter-terrorism department of the Peshawar police. The FIR was filed under section 11/N of the Anti-Terrorism Act, accusing the human rights defender and her parents of fundraising or providing money or other property with the intention or reasonable cause to suspect that it be may be used for the purposes of terrorism.

On 13 July 2019, Ms. Ismail's parents were granted interim pre-arrest bail, to be renewed at three-day periods.

We express grave concern as to the above-detailed allegations, which we fear amount to the intensification of the previously communicated harassment of Ms. Ismail carried out in response to her human rights work and in particular her advocacy for justice, accountability, and military and police responsibility concerning crimes committed in Pakistan. We raise serious concern for her safety, in particular given ongoing doubts as to her whereabouts, and for the safety of her family members, friends and associates in light of the raids, threats and torture to which they have allegedly already been subjected. We fear that the filing of a new FIR against Ms. Ismail under the Anti-Terrorism Act further conflates her legitimate human rights work with terrorism, and risks undermining the work of human rights defenders in Pakistan more broadly through the criminalisation of human rights activities and the stigmatisation thereby of the exercise of human rights. Serious concern is also expressed in relation to the alleged suspension of the NGO Aware Girls and the freezing of their bank accounts, which we fear may lead to stigmatization of civil society actors working on sensitive issue in Pakistan.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government's attention to articles 6, 7, 9, 12, 17,19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the State of Pakistan on 23 June 2010, which provide for the right to life and security of person, the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, the right to freedom of movement, the right to freedom from arbitrary or unlawful interference with one's privacy, family, home or correspondence, the right to freedom of expression and the right ro freedom of association.

We furthermore wish to draw to your Excellency's Government articles 2, 12 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Pakistan on 23 June 2010, which place an obligation on states to prevent acts of torture or cruel, inhuman or degrading treatment or punishment occurring on their territory, or on any other territory under their jurisdiction, and to ensure a prompt and impartial investigation into allegations when there is grounds to believe that such acts have occurred.

We would also like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of jus cogens, as mirrored, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

We would further wish to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10).

In this regard, we would like to bring to your Excellency's Government's attention that in his report to the General Assembly on impact of counter-terrorism measures on civil society, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)).

We would similarly like to draw the attention of your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Further to this, we wish bring to the attention of your Excellency's Government several further provisions of the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles, 6, 8, 9(3)(a), 12 and 13.

We would also like to refer your Excellency's Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and

Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide “effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats”. In its General Comment no. 36, the Human Rights Committee indicates that States parties must enact a protective legal framework which includes effective criminal prohibitions on all manifestations of violence or incitement to violence that are likely to result in a deprivation of life, such as death threats. Also, that States parties must take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders, including the creation and maintenance of a safe and enabling environment for defending human rights.

In connection with the allegations detailed above we would like to recall the recommendations of the Human Rights Committee in its concluding observations on the initial report of Pakistan, submitted on 23 August 2017 (CCPR/C/PAK/CO/1). In particular, we would like to refer to the Committee’s recommendations that the State should review the Anti-Terrorism Act with a view to aligning the definition of terrorism provided in its article 6 with international standards (para. 22), and, concerning allegations of the widespread use of torture, should bring domestic legislation in line with standards connected to article 7 of the ICCPR and ensure prompt, thorough and effective investigations of all allegations of torture and ill-treatment (para. 26). Further to this, we would like to refer to the Committee’s recommendations concerning freedom of movement, whereby the State was urged to review legislation and policies relating to travel control lists with a view to bringing law and policy in this area into compliance with article 12 of the ICCPR, and to ensure that freedom of movement is not restricted on unjustified grounds (para. 30). Lastly, we would like to recall the Committee’s recommendations concerning freedom of expression, and in particular, that the State should decriminalize defamation and ensure that criminal laws are not improperly used against dissenting voices (para. 38).

We are further drawing your Excellency’s Government’s attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes the prohibition to practice, permit or tolerate enforced disappearances (art.2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3); that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12).

In the context of non-governmental organization's activities, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has argued that "difficulties in the formation and registration of human rights associations; criminal sanctions for unregistered activities; government interference, supervision and monitoring of NGO activities; and difficulties in accessing funding may restrict the right to freedom of association and therefore must reach the very high threshold under article 22, paragraph 2, of the International Covenant on Civil and Political Rights in order to be admissible." (A/64/226, para. 58.)

We further recall the report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39), in which he called upon States to, inter alia, "recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association" (para. 82 (c) and that "regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding" (para. 82 (d). He also urged states "to ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities." (para. 82 (b)).

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has also reminded states of this obligation in his report to the Human Rights Council (A/HRC/23/39), calling upon States "To adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received."

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we reiterate our call made in the previous communication sent on 29 May 2019, and urge your Excellency's Government to take all necessary measures to investigate all these allegations and to ensure the full safety and security of Ms. Gulalai Ismail, her family members, and persons associated with her. We would appreciate a response on the initial steps taken to protect them and safeguard their human rights in compliance with international human rights instruments and standards.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information or comment you may have on the above-mentioned allegations.
2. Please provide detailed information as to the whereabouts of Ms. Ismail, along with information to supplement that already provided by your Excellency's Government in their response to the previous communication sent by various Special Procedures' mandate holders concerning Ms. Ismail's being taken into police custody, in particular the date upon which she was taken into police custody, the place of her detention, whether her family and legal representatives have been informed of her detention and, if so, at which point this was communicated to them, along with information as to the measures taken to ensure Ms. Ismail effective access to legal representation.
3. Please provide information as to the legal basis for the raids carried out at the residences' of Ms. Ismail's family and friends between 24 May 2019 and 4 July 2019, along with the legal basis upon which any materials or objects were seized during these raids and whether any such materials have since been returned to their owners.
4. Please provide information as to the legal basis of the charges filed against Ms. Ismail and her parents in the FIR of 12 July 2019, and how these are compatible with the obligations of your Excellency's Government under the ICCPR.
5. Please provide information as to whether any investigation and judicial or other form of inquiry has been undertaken in relation to the above-detailed allegations of threats, including death threats, made by members of the State security forces against Ms. Ismail's family and associates, as well as the serious allegations of torture. If no inquiries have taken place, or if they have proved inconclusive, please explain why, as well as how this is compatible with the obligations of your Excellency's Government under the ICCPR.
6. Please provide information on why a new FIR under section 11/N of the Anti-Terrorism Act, was filed against Ms. Ismail and her parents accusing them of fundraising or providing money or other property with the intention or reasonable cause to suspect that it be may be used for the purposes of terrorism; and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).

7. Please provide information on the legal basis for the decision to suspend the NGO Aware Girls and freeze its bank accounts. Please explain how these decisions are in compliance with Pakistan's obligations under international human rights law.
8. Further to the response provided by your Excellency's Government to the previous communication sent by various Special Procedures' mandate holders concerning Ms. Ismail (case no. PAK 4/2019), please provide specific information as to the ways in which the Government of Pakistan has constructively engaged with civil society, human rights defenders and journalists, and the issues this engagement has covered.
9. Please indicate what measures have been taken to ensure that human rights defenders, including journalists and other civil society actors, are able to carry out their legitimate work in a safe and enabling environment in Pakistan, without fear of threats or acts of intimidation and harassment of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegation of enforced disappearance mentioned in this communication as a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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