

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
AL PAK 8/2019

11 November 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/5, 42/22, 34/18 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arbitrary detention and prosecution of Mr. **Muhammad Ismail**, the father of women's human rights defender Ms. **Gulalai Ismail**.

As the co-founder and Chairperson of the non-governmental organisation Aware Girls, Ms. Ismail 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 disappearance and women and girls who have been victims of sexual violence and harassment.

Two previous communications were sent by several Special Procedures' mandate holders to your Excellency's Government concerning Ms. Ismail on 29 May 2019 (case no. PAK 4/2019) and on 26 July 2019 (case no. PAK 6/2019). We would like to thank your Excellency's Government for the responses dated 25 June 2019 and 30 September 2019; however, we raise concern as to information communicated therein which strongly appears to conflate the legitimate human rights activities of Ms. Ismail with incitement to hostility against the State. We raise further concerns in light of the new information received and outlined below.

According to the information received:

In the past year, Mr. Ismail has used his social media accounts to raise awareness about the reported human rights violations against his daughter Ms. Ismail.

As detailed in one of the previous communications mentioned above (case no. PAK 6/2019), on 12 July 2019 a new First Information Report (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 forms of assistance to fund or sponsor terrorist activities. On 13 July 2019, Ms. Ismail's parents were granted interim pre-arrest bail. As a condition of the Bail Before Arrest, they were ordered to present themselves to the court every week.

An application to quash the abovementioned FIR is currently pending before the Peshawar High Court.

Without being formally notified, Ms. Ismail's parents have been placed on the Exit Control List, effectively banning them from leaving the country. This was unofficially communicated to them when on 16 October 2019, an immigration official refused to renew Ms. Ismail's mother's passport.

On 18 October 2019, at approximately 1:45am, a group of armed masked men, some in police uniform, and some in plain clothes, arrived at the house of Ms. Ismail's parents and ordered Mr. Ismail to come out. Fearing for his safety, Mr. Ismail refused to come outside and asked the group to come back during the day. The armed men remained on site for an hour before leaving. After the incident, Mr. Ismail temporarily relocated due to fear for his safety.

On 24 October 2019, Mr. Ismail presented himself at the Peshawar High Court to attend a hearing on the case related to the abovementioned FIR. The hearing was postponed. At approximately 3:30pm, as he was leaving the Court premises, he was abducted by a group of unidentified men wearing black uniforms, who forced him into a black vehicle. Following Mr. Ismail's abduction, his family received unofficial information that he had been taken to the Federal Investigation Agency (FIA) Cyber Crimes Unit.

On 25 October 2019, after more than 20 hours during which the whereabouts of Mr. Ismail were unknown, he was presented before the magistrate of Peshawar Session Court, which ordered his placement in preventive detention for 14 days. Mr. Ismail's lawyer was present during the hearing. Mr. Ismail was charged with "cyber terrorism" and "hate speech" under Articles 10 and 11 of the 2016 Prevention of Electronic Crimes Act. As stated in the FIR, Mr. Ismail is being accused of "broaden[ing] hate speech and fake information against Government Institutions of Pakistan" through his Facebook and Twitter accounts.

After the hearing, he was sent to the Peshawar Central Jail, where he is currently detained.

Mr. Ismail suffers from various health issues requiring regular medical attention, including hypertension, severe back pain and skin allergies. He has been denied access to a doctor and is forced to sleep on the floor.

On 26 October 2019, Mr. Ismail's wife appeared before the Peshawar High Court as part of the investigation regarding the FIR lodged against Ms. Gulalai Ismail and her parents on 12 July 2019. During the case hearing, the judge asked the State Prosecutor to provide additional documents for the case file. The next hearing was scheduled for 23 November 2019.

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's family members 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 specific concerns that the detention of Mr. Ismail and the new FIR filed against him are directly linked to his exercise of freedom of expression, in particular his posts made on social media platforms, denouncing the human rights violations committed against his daughter. We further express concern over the charges, which apply hate speech laws explicitly to silence his criticism of the State.

We reiterate our concerns that the FIRs filed against Ms. Ismail and her parents conflate her legitimate human rights activities with terrorism, and risk undermining the work of human rights defenders in Pakistan more broadly through the criminalisation of their activities.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law**, attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

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 and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual basis for the detention of, and the charges against, Mr. Muhammad Ismail and explain how they are compatible with the international human rights obligations of your Excellency's Government under the ICCPR.

3. Please provide detailed information as to what efforts have been made to ensure the effective access of Mr. Ismail to all necessary medical assistance while in detention.
4. Please provide information on whether Ms. Ismail's parents have been placed on the Exit Control List, and if so on what basis, and explain how this is compatible with the international human rights obligations of your Excellency's Government under the ICCPR.
5. Please provide information on the status of any investigations against Ms. Ismail and her parents.
6. Please provide information on what measures are being taken to ensure that relevant hate speech legislation is compatible with the international human rights obligations of your Excellency's Government under the ICCPR.
7. Please provide information as to what steps have been 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.
8. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions [1373 \(2001\)](#), [1456\(2003\)](#), [1566 \(2004\)](#), [1624 \(2005\)](#), [2178 \(2014\)](#), [2341 \(2017\)](#), [2354 \(2017\)](#), [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](#), in particular with international human rights law, refugee law, and humanitarian law contained therein.

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

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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(s) responsible for the alleged violations.

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

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

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

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental  
freedoms while countering terrorism

**Annex**  
**Reference to international human rights law**

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 9, 12, 14 and 19 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 liberty and security of person, the right to freedom of movement, the right to fair proceedings before an independent and impartial tribunal and the right to freedom of expression.

We would like to remind your Excellency's Government that according to Article 9(1) of the ICCPR, no one shall be subjected to arbitrary arrest or detention, and no one shall be deprived of his or her liberty except on grounds established by law and following legal procedures. The Human Rights Committee has established in its General Comment N° 35 on article 9 that an arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of opinion, expression, assembly and association, is arbitrary (CCPR/C/GC/35, para. 17).

We would further like to remind your Excellency's Government that the right to freedom of expression protects the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. Any limitation to the right to freedom of expression must meet the criteria established by the Covenant, in particular under article 19 (3). Restrictions must be provided by law, they must be necessary and proportionate, and must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

It is not compatible with the Covenant to apply Article 19 (3) to as a "justification for the muzzling of any advocacy of [...] democratic tenets and human rights", see CCPR/C/GC/34 para. 23. The arbitrary detention of individuals because of the exercise of his or her freedom of opinion or expression is incompatible with the Covenant, see *id.* In this regard, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, calling on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In general, the permissibility of criminalising hate speech is limited by the requirements in Article 19 (3), even when the speech in question falls under the scope of Article 20 ICCPR, see CCPR/C/GC/34 paras. 50 – 52. In his latest report to the UN General Assembly, the Special Rapporteur on the right to freedom of opinion and expression recommends States to:

“(a) Strictly define the terms in their laws that constitute prohibited content under article 20 (2) of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and resist criminalizing such speech except in the gravest

situations, such as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and adopt the interpretations of human rights law contained in the Rabat Plan of Action;

(b) Review existing laws or develop legislation on hate speech to meet the requirements of legality, necessity and proportionality, and legitimacy, and subject such rule-making to robust public participation” (See A/74/486 para. 57)

We would also like to emphasize that any restriction to the right to liberty of movement and the freedom to leave any country, including his/her own must be compatible with paragraph 3 of Article 12 of the ICCPR, which establishes that restrictions are only acceptable if they are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the ICCPR. The imposition of travel ban as a means to limit the exercise of freedom of expression and of association is also not compatible with article 19(3) of the ICCPR.

We would also 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 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 would further like 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.

We would also 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)).

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism would like to bring to the attention of the Government paragraphs 74 to 78 of A/HRC/37/52. In addition, the Special Rapporteur would like to bring to the attention of the Government her 2018 report to the

Human Rights Council A/HRC/40/52, in particular paragraphs 36, as well as, paragraphs 75 (a) to (i).

We would finally like to refer 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- article 9 paragraph 1, which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.