

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/18, 42/22, 35/15, 41/12, 34/5, 34/6 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 detention and prosecution of Mr. **Manzoor Ahmad Pashteen** and around 30 other members or supporters of Pashtun Tahafuz Movement (PTM).

Mr. Manzoor Pashteen is a human rights defender and the chairman of the PTM, a peaceful human rights movement against extra judicial killings, enforced disappearances, unlawful detentions, discrimination and surveillance of the ethnic Pashtun minority in Pakistan. He was born in the region of Pakistan's South Waziristan, formerly referred to as the Federally Administered Tribal Areas (FATA), which borders Afghanistan. His family was one of millions who fled the region during clashes between the Pakistani military and insurgents between 2004 and 2017.

In 2014, he started the Mahsud Tahafuz Movement, a social movement aimed at removing landmines from Waziristan. It was later renamed PTM. Since then he has been a vocal critic of human rights violations by the military and has led public campaigns and peaceful protests calling for accountability and redress for human rights violations by the military.

On 26 January 2018, Mr. Pashteen along with 20 other people started a protest march from Dera Ismail Khan reaching Peshawar two days later and Islamabad on 1 February 2018. The march was joined by other people along the way and, in Islamabad, the group organised a sit-in called "All Pashtun National Jirga". The Jirga condemned the killing of a Pashtun shopkeeper who had earlier been shot dead by the police.

The Pashtun Long March and the subsequent sit-in in Islamabad kicked off the Pashtun Tahafuz Movement (PTM). The protesters asked the Government to set up a judicial inquiry for all the Pashtuns arbitrarily killed in police encounters, end racial profiling, and bring the Pashtun cases of enforced disappearances before a court of law. Most of PTM's supporters are ethnic Pashtuns from the borderlands with Afghanistan and are the largest ethnic minority in Pakistan, constituting 15% of the total population. The movement has been critical of the State's policies in the country's "tribal belt", where massive operations against terrorists were conducted in recent times leading to large-scale displacement and alleged enforced disappearances.

According to the information received:

On 27 January 2020, at around 2 am, Mr. Manzoor Pashteen, along with nine other members of PTM, was arrested in the north-western city of Peshawar. While the other members of PTM, were released from custody on the same day, he was produced before a magistrate in Peshawar following strict security arrangements. The magistrate ordered to send him to Peshawar's Central Jail on a 14-day judicial remand.

Mr. Pashteen was arrested after a First Information Report (FIR) had been registered against him at the City Police Station in Dera Ismail Khan on 18 January 2020. The FIR was filed under sections 506 (punishment for criminal intimidation), 153-A (promoting enmity between different groups), 120-B (punishment of criminal conspiracy), 124 (sedition), and 123-A (condemning the creation of the country and advocating the abolishment of its sovereignty) of the Pakistani Penal Code. According to the FIR, the charges are related to a speech Mr. Pashteen made on 16 January 2020, in which he allegedly referred to the Pakistani Constitution as "wrong" and "against human rights" because it enshrined the rule of the Punjabi majority and stripped members of the Pashtun minority of power.

On 28 January 2020, a district and sessions judge accepted the request of the Dera Ismail Khan police and ordered the transfer of Mr. Pashteen to Dera Ismail Khan Jail. Mr. Pashteen was not present during these proceedings but was represented by his lawyers.

On 28 January 2020, PTM supporters gathered outside the National Press Club in Islamabad and in Bannu, where peaceful protesters denounced the detention of Mr. Pashteen. In Islamabad, the police allegedly used excessive force to disperse the assembly, and arrested 29 protesters. Among the detainees were academics, journalists, writers, social media activists and women human rights defenders. They were all taken to the Kohsar police station in Islamabad, and placed in detention. They were not informed about the charges justifying their arrest. Six of the detainees were held at the Kohsar station, while the others were transferred to four different stations in Islamabad, namely Mir Ali, Tank, Miranshah and Zhob.

The family and legal representatives of the detainees were not informed of the whereabouts of the detainees.

On the night of 28 January 2020, six individuals, including Mr. Mohsin Dawar, a PTM leader and parliamentarian, who had been detained at the Kohsar station, were released. The remaining 23 were held overnight and a FIR was presented to them in the morning of 29 January 2020. The FIR did not mention the names of the six released protesters. The 23 detainees were later that day presented before the Magistrates' Court and were formally charged. The Court denied bail and requested pre-trial detention. They were sent to the Adiala detention centre and were due to be presented before a magistrate on 12 February 2020. None of those detained were permitted access to their lawyers or family members.

The FIR against the 23 individuals included the offence of sedition (S. 124 A), statements aimed at inducing public mischief (Ss. 505 A and 505 B), assault or criminal force against a public servant (S. 353), wrongful restraint (S. 341), rioting and unlawful assembly (Ss. 147 and 149), obstructing an official in his public function (S. 186) and disobeying an order by a public servant (S. 188). The FIR stated that police had informed the protesters that Section 144 of the Criminal Procedure Code (CrPC), which empowered the district administration to implement a temporary prohibition on gatherings of more than five people based on a "public interest" justification, was imposed in the Islamabad territory. The FIR further stated that the protesters had chanted slogans against the Pakistani Army and the State and had chanted in favour of Mr. Manzoor Pashteen. It also stated that protesters had blocked a road.

On 3 February 2020, the Islamabad High Court granted bail to the 23 individuals held in detention subject to establishing "personal sureties/bonds to the satisfaction of the Deputy Registrar (judicial)" of the court. The Islamabad police chief was absent from the court during the bail hearing. However, the Islamabad City Magistrate informed the court that Section 124-A on sedition had been replaced by Section 7 of the Anti-Terrorism ACT (ATA). On 17 February 2020, the Islamabad High Court resumed the hearing of bail petitions filed by the 23 protesters, all the charges against them were dropped and they have been released.

It is reported that Manzoor Pashteen was released on bail on 15 February 2020.

Furthermore, in the city of Bannu, in Khyber Pakhtunkhwa, a FIR was submitted on 28 January 2020 against nine other individuals who had also protested against the arrest of Mr. Pashteen. The FIR contained provisions related to: waging or attempting to wage war or abetting waging war against Pakistan (S. 121), collecting arms with intention of waging war against Pakistan (S. 122) and concealing with intent to facilitate design to wage war (S. 123), among others.

According to the information received, no violence was committed by protesters against police or security officials. On the contrary, video footage circulated on

social media suggests that the police used force disproportionately both in Islamabad and in Bannu in the policing of the assemblies in question.

Reportedly, PTM members regularly face harassment online, threats to them and their families, with some being dismissed from their jobs. Additionally, its members have been increasingly targeted by public officials, while the movement has been accused of receiving funding from foreign intelligence services.

While we do not wish to prejudge the accuracy of the information received, we wish to express our grave concern as to the above-mentioned allegations, which seems related to PTM's human rights work, especially its advocacy for justice, accountability for military and police conduct. In particular, concerns are expressed at the detention of Mr. Manzoor Pashteen which seems related to his human rights activities. We are also concerned about the application of sedition and other laws to criminalise peaceful protests and expressions that are critical of the Government. We would also like to express concerns that the FIRs filed against members or the PTM risk undermining the work of human rights defenders in Pakistan. We are also concerned about the alleged use of excessive force during the dispersal of the peaceful assemblies held outside the National Press Club in Islamabad and in Bannu.

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. Manzoor Pashteen and the other members or supporters of the PTM, and explain how these are compatible with the international human rights obligations of your Excellency's Government under the ICCPR.
3. Please provide detailed information on what steps were taken to ensure that the above-mentioned detainees were able to meet with family members and legal representation. Please further provide information on what steps have been taken to ensure that fair trial guarantees have been afforded to these detainees in line with international human rights law and standards.
4. Please provide any information regarding the measures taken in order to guarantee, in all circumstances, the physical integrity and psychological

well-being of Mr. Manzoor Pashteen, as well as that of the other above-mentioned human rights defenders detained.

5. Please explain how the use of national security law (sedition) in the context of the exercise of fundamental human rights in these cases is compatible with the international human rights law obligations of your Excellency's Government under the ICCPR specifically with respect to the principles of necessity, proportionality and non-discrimination.
6. Please provide any information regarding the legal and factual basis for the reportedly violent dispersal of the peaceful assemblies held outside the National Press Club in Islamabad on 28 January and in Bannu. Please explain how Section 144 of the Code of Criminal Procedure (CrPC) is compatible with the international human rights obligations of your Excellency's Government under the ICCPR.
7. Please indicate what measures have been taken to ensure that human rights defenders in Pakistan, including those standing up for the rights of minorities, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation or retaliation directed against them or harassment of any sort.

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.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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.

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

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
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Fernand de Varennes
Special Rapporteur on minority issues

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 to articles 9, 12, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by 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, the right to freedom of expression and the right to freedom of peaceful assembly.

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) 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 their 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.

We would further like to draw your Excellency's Government's attention to the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66), which states that "States have an obligation not only to refrain from violating the rights of individuals involved in an assembly, but to ensure the rights of those who participate or are affected by them", including the right to bodily integrity. Additionally it also states that "dispersing an assembly carries the risk of violating the rights to freedom of expression and to peaceful assembly as well as the right to bodily integrity. Dispersing an assembly

also risks escalating tensions between participants and law enforcement. For these reasons, it must be resorted to only when strictly unavoidable” (A/HRC/31/66). Furthermore, the report states that “the principle of legality requires that States develop a domestic legal framework for the use of force, especially potentially lethal force, that complies with international standards (see A/HRC/26/36, para. 56). The normative framework should specifically restrict the use of weapons and tactics during assemblies, including protests, and include a formal approval and deployment process for weaponry and equipment” and that “the use of force by law enforcement officials should be exceptional” (para.51 & 57).

We would also like to bring to the attention of your Excellency’s Government the international standards regarding the protection of the rights of persons belonging to minorities. In particular, article 27 of the ICCPR establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, “to enjoy their own culture, to profess and practice their own religion, or to use their own language”. We also refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

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)).

We would like to bring to the attention of the Government paragraphs 74 to 78 of A/HRC/37/52 and the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism A/HRC/40/52, in particular paragraphs 36, as well as, paragraphs 75 (a) to (i).

Finally, we would 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. We also would like to bring to your Excellency's attention to article 5 which states that "[f]or the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully; (b) To form, join and participate in non-governmental organizations, associations or groups; (c) To communicate with non-governmental or intergovernmental organizations."