

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues

REFERENCE:
AL PAK 11/2020

31 August 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 34/19, 36/6, 35/15, 43/16 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the continued incommunicado detention and risk of torture and ill-treatment faced by human rights defender, **Idris Khattak**.

Concerns regarding the disappearance of Mr. Khattak on 13 November 2019, his whereabouts and fate were raised by Special Procedures mandate holders in a previous communication dated 11 June 2020 (UA PAK 8/2020). We thank you for the response received from your Excellency's Government on 16 June 2020. We took note of the confirmation that Mr. Khattak is in state custody facing charges under relevant legal provisions and that the Commission of Inquiry on Enforced Disappearances (COIED) was seized at that time of the matter. We however regret that the response does not address our serious concerns with regards to the implementation, in this case, of Pakistan's international legal obligations especially in confirming that Mr. Khattak is alive and healthy by allowing his family to visit, access to a lawyer and a medical examination by an external doctor independent from government services.

We also note that your Excellency's Government on 2 July 2020 expressed its concern about the alleged leakage of the urgent appeal (UA PAK 8/2020). In this context, we would like to stress that both the Secretariat and Mandate Holders uphold to the highest standard the principles of the Code of Conduct in fulfilling our mandates and can assure your Excellency's Government that any information circulating on social media regarding confidential correspondence did not originate from within the office or the mandate holders.

According to the information received:

On 15 June 2020, the biggest private television channel in Pakistan, Geo News announced in a news bulletin that Mr. Khattak was being held in state custody and charged under the Official Secrets Act (OSA).

On 16 June 2020, the Joint Investigation Tribunal (JIT) in Islamabad, summoned Mr. Khattak's brother. Following a hearing, the JIT closed the case after Military Intelligence acknowledged that they were holding Mr. Khattak under OSA and that they intended to proceed to trial. The COIED has disposed of the case and is no longer seized of the matter.

The Peshawar High Court held proceedings to consider the habeas corpus petition questioning the legality of Mr. Khattak's arrest and detention by Military Intelligence of Pakistan and requesting for Mr. Khattak to be brought to court. In one hearing, the judge asked the legal representative of the military to share all the charges against Mr. Khattak. According to information made available, he is allegedly charged under section 2(1) of the Pakistan Army Act of 1952 and Section 3 of the Official Secrets Act of 1923.

In another hearing the legal representative of the military, when asked by the judge why Mr. Khattak was not present in court, responded by saying that the Military is fearful that he may be killed on his way to the court.

On 16 July 2020, the Peshawar High Court dismissed the petition citing that the court did not have jurisdiction over the legal provisions under which Mr. Khattak was being charged. As a result, neither the family, nor his lawyers nor the civilian courts have any information on the whereabouts of Mr. Khattak.

We reiterate that enforced disappearance is a serious violation of human rights and may well amount to the crime of torture or other cruel, inhuman or degrading treatment or punishment and unequivocally prohibited under international law. We thus express grave alarm at the continued incommunicado detention of human rights defender Mr. Idris Khattak, which exposes both Mr. Khattak and his family to anxiety and stress amounting to cruel, inhuman or degrading treatment, or even torture, and significantly increases the risks to Mr. Khattak's health, well-being and due process rights. We are particularly concerned at the alleged lack of cooperation of the Military Intelligence and unwillingness of the State authorities to comply with the Peshwar High Court's directive to produce Mr. Khattak during the habeas corpus petition hearings. We are also seriously concerned that the family of Mr. Khattak reportedly have not been granted access for a visit, nor has his lawyer or an independent medical doctor been permitted to see or contact him.

We wish to reiterate that, if confirmed, the above allegations would be in contravention of articles 6, 7, 9, 10, 14, and 27 of the International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified on 23 June 2010, as well as articles 1, 2, 3, 7, 9, 10, 13, 17 and 19 of the Declaration on the Protection of all Persons from

Enforced Disappearance adopted by the General Assembly Resolution 47/133 of 18 December 1992.

We therefore urge your Excellency's Government to take action, without delay, in order to provide independent verification of Mr. Khattak's life and well-being, to ensure prompt and adequate access of Mr. Khattak to visits by his family members, as well as by a lawyer and an independent medical doctor of his choice in accordance with rules 58 and 61 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Resolution 70/175, adopted by the General Assembly on 17 December 2015.

We are further concerned that, after the recognition of custody by state authorities, the JIT and COEID disposed of Mr. Khattak's case prematurely, without conducting an adequate investigation into the institutional and criminal responsibilities for Mr. Khattak's abduction and arbitrary detention, and without ensuring any form of redress, rehabilitation and compensation for the victim and his family. As stated in article 17 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

Finally, we reiterate our most grave concern at the broader failure of the Government of Pakistan to take decisive and effective action with a view to terminate the reported pattern of targeting human rights defenders, including those working on minority issues, with enforced disappearance which, to this day, continues in the country with impunity.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal grounds for the arrest and detention of Mr. Khattak under the Pakistan Army Act of 1952 and the Official Secrets Act of 1923. As a civilian, please specify the charges under which Mr. Khattak is being detained incommunicado and explain

how these measures are compatible with international standards related to the right to liberty and security of the person, enshrined in article 9 of the ICCPR.

3. Please indicate what measures have been taken to ensure that Mr. Khattak's conditions of detention do not amount to torture and other cruel, inhuman or degrading treatment or punishment and meet the Nelson Mandela Rules. Please also provide information on the fundamental safeguards provided by Excellency's Government, including access to lawyers, medical care and contact with family members.
4. Please provide the details and, where available, the results of any investigation and judicial or other inquiries which may have been carried out, or which are foreseen to bring the perpetrators to justice and provision of remedies, concerning the enforced disappearance of Mr. Khattak. If no such enquiries have been conducted, please explain why, and how this is compatible with the international human rights obligations of Pakistan.
5. Please indicate in detail which decisive and effective measures the Government of Pakistan has taken, or intends to take, with a view to terminate the continued pattern of targeting human rights defenders, including those working on minority issues, with enforced disappearance, to compensate the victims and their families, and to put an end to impunity in this regards. If no such measures have been conducted or are foreseen, please explain why, and how this is compatible with the international human rights obligations of Pakistan.
6. Please provide detailed information on what alternative methods have been put in place for Mr. Khattak to maintain frequent and free contact with his family and the outside world and how the authorities have facilitated and encouraged those contacts; as well on the steps taken to ensure that fair trial guarantees have been afforded to Mr. Khattak in light of international human rights standards, that his lawyers have access to all evidence presented against him, and that such guarantees have been maintained during the prevailing public health emergency.

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.

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.

We may 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.

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

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Fernand de Varennes

Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 6, 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified on 23 June 2010; articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ratified on 23 June 2010 and articles 1, 2, 3, 7, 9, 10, 13, 17 and 19 of the Declaration on the Protection of all Persons from Enforced Disappearance adopted by the General Assembly Resolution 47/133 of 18 December 1992.

We refer to Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), which India acceded to on 10 April 1979, which provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted. Moreover, in General Comment No. 31 the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. We further highlight that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life and that states are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate cases of disappearances thoroughly, by independent and impartial bodies (Human Rights Committee, General Comment 36).

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. We would therefore like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988, in which principle 1 provides that All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person. The reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the "Mandela Rules") provide inter alia contact with the outside world (rule 58) and with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter (rule 61).

We would further like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 which indicates that no State shall practice, permit or tolerate enforced disappearances. In addition, the Declaration stipulates the right to be held in an officially recognised place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention (Article 10). The same article of the Declaration establishes the obligation of the detaining authorities 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). The Declaration also establishes the obligation to maintain in every place of detention an official up-to-date register of detained persons (Article 12) and provides 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). In its article 13.3, the Declaration also proclaims that steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

We would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished". We reiterate to your Excellency's Government the call in General Assembly resolution 68/156 (para 28) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

Recognizing that the individual affected is a members of Pashtun minority in Pakistan, we would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN 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 the 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 and in full equality before the law (article 4).

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, adopted by the General Assembly, Resolution 53/144. In particular, we would like to refer to Articles 1, 5, 6, 8, 9, 11, and 12 of the Declaration provide specific protections to human rights defenders, while articles 2, 9, 12, 14 and 15 make particular reference to the role of States and indicate that each State has a responsibility and duty. Specifically we wish to highlight article 2 which stresses the duty to protect, promote and implement all human rights and fundamental freedoms and article 9(2) which allows everyone whose rights or freedoms are allegedly violated, the right to complain to and have that complaint promptly reviewed in a public hearing before an independent,

impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.