

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
AL PAK 1/2021

12 January 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/5, 43/16, 41/18, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **attacks on transgender rights defenders in Pakistan Ms Nayyab Ali and Ms Heera Malik and alleged lack of due diligence in response to the reported attacks.**

Ms **Nayyab Ali** is a transgender rights defender. She is co-Chair of the Pakistan Alliance for Ending Violence Against Women and Girls and manages the Khawaja Sira Community Centre in Okara, which provides vocational training, life skills education and driving classes for the transgender community. She has been leading advocacy for the approval of Pakistan's National Transgender Rights Protection Policy and has been a vocal critique of physical attacks on transgender persons and rights defenders in the country.

Ms **Heera Malik** is a transgender rights defender at the grassroots level in Pakistan. Following the outbreak of the Covid-19 pandemic, she was involved in mobilizing relief funding for members of the transgender community, benefitting over 100 transgender women.

A previous communication concerning a serious attack on a transgender rights defender was addressed to your Excellency's Government by three Special Procedures mandate holders on 16 March 2016 (UA PAK 6/2016). We regret that no response was received to this communication, in particular given the severity of the allegations contained therein.

According to the information received:

In recent months, there has been a reported increase in attacks against members of Pakistan's transgender community, including transgender rights defenders. Ms Ali has vocally denounced these attacks, criticising the lack of response from police and impunity for the attackers. After a violent attack on her fellow transgender rights defender, Ms Malik, by two individuals in Islamabad on 31 October 2020, Ms Ali launched a social media campaign demanding justice in the case and subsequently received death threats. The attack against Ms

Malik was reported to the police, however a First Information Report (FIR) was not immediately registered and no actions were taken to provide her with protection.

On 9 November 2020, two unidentified men armed with knives entered Ms Ali's home in Islamabad. The men allegedly bound Ms Ali and beat her for approximately three hours, during which time they forced Ms Ali to sign her cheque book and stole her identity card, bank card, jewelry, laptop and mobile phone. The attackers reportedly threatened Ms Ali that they would kill her if she continued to speak out about violence against members of the transgender community in Pakistan.

On 10 November 2020, an FIR relating to the attack was registered by the Golra Police following pressure from civil society. However, no protection measures were reportedly taken by the Golra Police in response to the attack, to mitigate the risk of another attack against Ms Ali occurring.

On 10 December 2020, Ms Ali was awarded the Franco-German Prize for Human Rights and the Rule of Law as an acknowledgement of her work defending the rights of the transgender community in Pakistan. Following her presentation of the award by the German and French ambassadors to Pakistan, Ms Ali reportedly began to receive new death threats and was forced to relocate for her own safety.

Without wishing to prejudge the accuracy of the information received, we wish to express serious concern at the lack of due diligence in response to the reported attacks against Ms Malik and Ms Ali. We also wish to express our concern at the apparent refusal of the police to register a FIR in response to the death threats received by Ms Malik as well as the alleged intimidation and death threats Ms Ali has received, which would appear to be directly related to her human rights advocacy on behalf of the transgender community in Pakistan, including her criticism of attacks against members of the community and impunity for offenders in such cases. We are also concerned by the apparent inaction of the authorities to ensure the safety and well-being of Ms Malik and Ms Ali by implementing appropriate protective measures, following the attacks against them and given the death threats reportedly received.

In connection to the above-alleged facts and our related 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 comment(s) you may have in relation to the above-mentioned allegations.
2. Please provide information as to any investigations carried out subsequent to the FIR registered by the Golra Police on 10 November 2020 in relation to the alleged attack against Ms Ali. In the case that no investigations have taken place, please provide information as to the

reasons for this, including the grounds upon which the decision not to pursue the FIR was taken if such has been the case.

3. Please provide information as to whether a FIR was registered in relation to the alleged attack against Ms Malik on 31 October 2020 and whether any subsequent investigations took place. In the case that a FIR was not registered or no subsequent investigations took place, please provide information as to the reasons for this.
4. Please provide information on concrete measures taken to ensure that transgender rights defenders in Pakistan are able to carry out their legitimate human rights work in a safe and enabling environment without fear of acts of intimidation, including physical attacks, or harassment of any sort, and to ensure that any attacks to which they are subjected are fully investigated. Please include information on any specific measures taken to offer protection, legal recourse and remedies to Ms Malik and Ms. Ali, and if none was offered the reasons for this.
5. Please provide specific information on the policies and procedures in place in Pakistan to ensure that security agencies and other relevant actors are meeting their due diligence obligation to protect the right to life of those who may be targeted by State and non-State actors.

We would appreciate receiving a response within 60 days. Passed this delay, 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.

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.

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Victor Madrigal-Borloz

Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection to the above-alleged facts and concerns we would like to refer your Excellency's Government to articles 1, 2 and 3 of the Universal Declaration of Human Rights (UDHR), which provide for the right to equality and freedom from discrimination of any kind, principles which form part of the foundation of the rule of law and human rights, as well as the right to life, liberty and security of person.

The principle of non-discrimination is reaffirmed in all human rights treaties, including article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights, ratified by Pakistan on 17 April 2008. The principle is also provided for in article 2, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Pakistan on 23 June 2010. The jurisprudence, general comments and concluding observations of United Nations treaty bodies have consistently held that gender identity is a prohibited ground of discrimination under international law. Article 2 of the ICCPR, in its third paragraph, also places an obligation upon State parties to ensure an effective remedy for any persons whose rights or freedoms as recognized in the Covenant are violated.

Concerning the International Covenant on Civil and Political Rights (ICCPR), we would also like to draw the specific attention of your Excellency's Government to its article 9, which enshrines the right to security of person enumerated in the UDHR. The scope of this article was elaborated by the Human Rights Committee in its General Comment No. 35. Therein, the Committee reinforced that article 9 guarantees the security of persons, which concerns their bodily and mental integrity, for everyone, including transgender persons.¹ The Committee further stated that States must take retrospective measures in response to violations of the right to personal security, including the enforcement of criminal laws, and respond appropriately to patterns of violence such as violence based on gender identity.²

In connection to this, we would like to underline that the Human Rights Council has repeatedly expressed concern as to acts of violence and discrimination against individuals on the basis of their gender identity (see A/HRC/RES/17/19, A/HRC/RES/27/32, A/HRC/RES/32/2, and A/HRC/RES/40/18). On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has recommended that States, inter alia, prohibit discrimination and protect individuals from violence and discrimination on the basis of gender identity; prohibit incitement of hatred and violence on the ground of gender identity; and hold to account those responsible for related hate speech (A/HRC/29/23, A/HRC/19/41).

In its 2018 report to the Human Rights Council, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity urged States to take measures to protect defenders and supporters of the rights of lesbian, gay, bisexual, trans and gender non-conforming persons from attacks, intimidation and other abuses, and to create safe and enabling spaces for their work (A/HRC/38/43).

1 CCPR/C/GC/35 para 3.

2 Ibid., para 9.

We further refer to article 6 of the ICCPR, which enshrines the right to life and security of the person and to Human Rights Committee General Comment 36, which highlights that States parties must ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State. The obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life.

We would like to reiterate to our Excellency's Government its obligations under the International Convention on the Elimination of Discrimination against Women (CEDAW) through its accession in 1996, in particular Article 7 which provides that States shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country, including the right to participate in non-governmental organizations and associations concerned with the public and political life of the country.

As stressed by the Working Group on discrimination against women and girl's in one of its reports to the Human Rights Council (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommended to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

We would also like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, publicly acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

We would further like to refer to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the Investigation of, accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents (A/HRC/41/36, paragraph 38), which observes that the jurisprudence on the implementation of the due diligence principle and its operationalization by police forces point to consideration of several elements including;

- a) Whether there are credible threats that are objectively verifiable; in other words, whether they are supported by reference to a range of sources of information;
- b) Whether the perpetrators have the intention to implement their threats, whether they are in a position, including physical proximity, and have the capabilities to carry out the threats;

- (c) Whether the risk is immediate, meaning continuing and soon;
- (d) Whether the identity of the victim places the victim in specific situations of vulnerability or risk;
- (e) Whether there are patterns of violence against groups of individuals by virtue of their identities.

The report calls on states to review and, if needed, strengthen policies and procedures to ensure that security agencies and other relevant actors are meeting their due diligence obligation to protect the right to life of those who may be targeted by States and non-State actors for their peaceful expression and activities, both online and offline (para 89 (h)).

Finally, we would like to recall your Excellency's Government 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, otherwise known as the Declaration on human rights defenders. In particular, we would like to draw attention to articles 1, 9 and 12(2) of the Declaration, which state that everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms; that everyone has the right to benefit from an effective remedy in the event of the violation of this or other rights; and that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, discrimination resulting from their exercise of the rights referred to in the Declaration.