

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues**

REFERENCE:  
AL PAK 4/2021

31 March 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 40/16, 42/22, 45/3, 44/5, 42/16, 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 alleged enforced disappearances, arbitrary arrests, acts of torture and mistreatment, including some cases of inadequate access to medical care while in detention, as well as what appear to be instances of arbitrary legal proceedings against individuals belonging to the Pashtun minority, including several human rights defenders and persons associated to them.

**Mr. Alam Zaib**, also known as Alam Zaib Mehsud, is a human rights defender and focal person of the Pashtun Tahafuz Movement (PTM) who worked on enforced disappearances, extra-judicial killings, torture and landmines victims in Khyber Pakhtunkhwa, Pakistan, which he raised publicly and reported to different international bodies, including UN human rights mechanisms.

**Mr. Ali Wazir** is a human rights defender, a member of the National Assembly of Pakistan (MNA) and a senior leader of the Pashtun Tahafuz Movement, who has been advocating for civil and political rights for the Pashtun minority.

**Mr. Aqal Noor** was a member of the Pashtun minority.

**Mr. Muhammad Ismail** is a human rights defender and a focal person of the Pakistan NGOs Forum. Mr. Ismail was previously the subject of communication PAK 8/2019 sent on 11 November 2019. We thank your Excellency's Government for the response received on 9 January 2020. Mr. Muhammad Ismail is also the father of the respected human rights defender and vocal member of the Pashtun Tahafuz Movement Ms. Gulalai Ismail, who is currently in exile, following a series of threats to her life in Pakistan. Ms. Ismail was previously the subject of communications PAK 4/2019 sent on 29 May 2019, PAK 6/2019 sent on 26 July 2019, and PAK 8/2019 sent on 11 November 2019. We thank your Excellency's Government for the responses

dated 25 June 2019, 4 October 2019, and 9 January 2020.

**Mr. Shereen Zada** is a human rights defender and member of the Core Committee of Pashtun Tahafuz Movement.

**Mr. Idris Khattak** is a human rights defender belonging to the Pashtun minority. He has worked for a number of international non-governmental human rights organisations documenting human rights violations in the Khyber Pakhtunkhwa Province and the former Federally Administered Tribal Areas in Pakistan. Mr. Khattak was previously the subject of communications PAK 8/2020, sent on 11 June 2020, and PAK 11/2020 sent on 31 August 2020. We thank your Excellency's Government for the responses dated 17 June 2020 and 4 February 2021.

**Mr. Nizam Udin, Syed Manullah, Ameen Khan, Abdul Samad and Zaid Ullah** are members of the Pashtun minority.

According to the information received:

*Mr. Alam Zaib*

On 21 January 2019, Mr. Alam Zaib was arrested on Main Road in Clifton, Karachi, by police and military secret service members. He was allegedly hand-cuffed, had his head covered, and then was taken to the Malir Cant Police station in Karachi, where he was beaten and tortured over a period of five days. As Mr. Zaib reportedly refused to renounce his activities as the PTM's focal person on enforced disappearances, despite being tortured, it is alleged that the colonel of the station decided to register a First Information Report (FIR) against him and to bring him before a court.

On 26 January 2019, Mr. Zaib was charged with raising anti-State slogans and using foul language against national institutions. He was subsequently transferred to a prison, in which he was allegedly put in a small dark cell, reportedly intended for individuals accused of terrorism-related activities and high-profile criminals.

On 16 September 2019, after nine months in prison, Mr. Zaib was released on bail by the Supreme Court of Pakistan. The Supreme Court reportedly expressed its dismay that Mr. Zaib had not been granted bail by lower courts and that the trial of Mr. Zaib had still not begun.

Since then, more than 35 criminal cases have been registered against Mr. Zaib. As a result, he allegedly needs to present himself almost every month before the courts. In addition, like other members of the PTM, he is on the Exit Control List, which effectively blocks him from leaving the country. These legal cases have also been financially costly for Mr. Zaib, and his family and personal life have been severely affected. Furthermore, his work as a human rights defender has also been negatively impacted by these proceedings against him, in particular the documentation and reporting of serious human rights violations inter alia to the UN and its human rights mechanisms.

*Mr. Ali Wazir*

In 2019, Mr. Ali Wazir was arrested by agents of the Pakistani Army, prior to the issuance of a FIR against him. He was reportedly detained in connection with the Khar-Qamar massacre of 26 May 2019, which resulted in the death of 16 PTM workers and the wounding and injuring of 45 others. The FIR against Mr. Wazir, registered after his arrest, charged him with terrorism and sedition. However, the Peshawar High Court annulled the charges and the FIR against Mr. Wazir and released him.

On 7 December 2020, a new FIR against Mr. Ali Wazir was registered by Sindh police on charges of hatching a criminal conspiracy and making derogatory remarks against State institutions. The case was registered under sections 120-B (criminal conspiracy), 153-A (promoting enmity between different groups), 505-B (statements for inducing a person to commit offence against state), 506 (criminal intimidation) and 188 (disobeying order of public servant) of the Pakistan Penal Code.

On 16 December 2020, Mr. Ali Wazir was again arrested by the police while he was returning from a ceremony to commemorate the sixth anniversary of the Army Public School massacre in Peshawar by the Taliban, which had resulted in the killing of more than 150 students.

Mr. Ali Wazir reportedly suffers from poor health, including hypertension, diabetes, and heart problems. Nevertheless, he has allegedly not been provided with adequate medical care while in detention but has instead undergone humiliating physical inspections. In addition, his detention conditions are reportedly inhumane, as he has been held in overcrowded cells and provided food lacking in nutrients. These issues are of particular concern given the COVID-19 pandemic, which is said to be particularly pervasive in prisons in Pakistan.

#### *Mr. Aqal Noor*

On 20 June 2020, Mr. Aqal Noor, a native of Khyber Pakhtunkhwa province and belonging to the Pashtun minority, was allegedly abducted by agents of the Pakistani Army in the district Lakki Marwat, Khyber Pakhtunkhwa. Although persons associated with Mr. Noor had inquired about his whereabouts with the local administration and the Pakistani army, they were reportedly denied further information. They were later informed that he was being held in the internment centre of the Pakistani Army at Lakki Marwat district, and that he would soon be released.

On 22 December 2020, six months after his arrest, the dead body of Mr. Aqal Noor was handed over to his family. The authorities reportedly provided no explanation as to the reason of his death. His chest and abdomen had been opened and it is believed that he had been tortured.

#### *Mr. Muhammad Ismail and Ms. Uzlifat Ismail*

As detailed in one of the previous communications mentioned above (case no. PAK 6/2019), on 12 July 2019 a FIR was filed against Ms. Gulalai Ismail, with her parents, Ms. Uzlifat Ismail and Mr. Muhammad Ismail, 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. Ms. Gulalai Ismail and her parents were accused of fundraising or providing money or other forms of assistance to fund or sponsor terrorist activities. On 13 July 2019, Ms. Uzlifat Ismail and Mr. Muhammad Ismail 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.

It also seems that Ms. Ismail’s parents have been placed on the Exit Control List, without being formally notified about this decision. This was unofficially communicated to them on 16 October 2019, when an immigration official refused to renew the passport of the mother of Ms. Ismail.

In July 2020, one year after the start of the hearings, Ms. Gulalai Ismail and her parents were granted pre-arrest bail by the court, which dismissed the case citing a lack of evidence.

Several months later, a new FIR was filed against Mr. Ismail alleging that he was associated with the bombings of a Church and Imam Bargah. The Counter-Terrorism Department claimed to have testimonies from “extremists” claiming that the scooter used in one of the bombings had been acquired from Mr. Ismail. Soon after the case had been filed, Ms. Gulalai Ismail went into exile in the United States. Ms. Uzlifat Ismail and Mr. Muhammad Ismail stayed in Pakistan and were granted pre-arrest bail. On 2 February 2020, their pre-arrest bails were rejected by the Pakistani Anti-Terrorism court, as it considered that they were prima facie connected with the commission of the offence. Officers of the Counter-Terrorism Department, then handcuffed Mr. Ismail and took him into custody, where he remained for three days,. The FIR brought against him includes charges under Sections 11-N, 124-A, 120-B of the Pakistan Penal Code, which relate to sedition and criminal conspiracy, and 7(g)(i) of the Anti-Terrorism Act of 1997.

On 4 February 2021, Ms. Uzlifat Ismail went to the Counter Terrorism Department police station in order to visit her husband, but was told that he was no longer in their custody. She was reportedly not given any further information regarding his whereabouts. On the same day, members of the Counter Terrorism Department searched their house, allegedly without any warrant. These officials confiscated mobile phones and laptop computers, and allegedly brought papers and receipts into the house which they placed in a file and photographed. Given the multiple cases filed against Mr. Ismail, there are concerns that this may be yet another attempt to fabricate evidence against him and prolong his incarceration.

On 6 February 2021, Mr. Ismail was presented to a court. The Counter Terrorism Department police asked to extend the physical remand for a further 14 days, which the judge denied, and Mr. Ismail was transferred to Peshawar Central Jail. On 8 February 2021, Mr. Ismail applied for bail in the Anti-Terrorism Court in Peshawar. On 15 February 2021 the bail application was heard by the Anti-Terrorism Court, but was once again denied.

It is reported that, because of his poor health condition, including hypertension, heart, kidney, and spinal cord issues, Mr. Muhammad Ismail

was moved to the medical facility of the Peshawar Central Jail, where he has remained to date. However, he is said to be sharing the space at the jail's medical facility with around 60 other detainees and has reportedly been forced to sleep on the floor and provided with poor quality food. Furthermore, Mr. Ismail appears to not have fully recovered from the COVID-19 virus, which he contracted in late 2020, and is consequently reported to require constant medical supervision. His overall situation, combined with his age of 66 years, makes Mr. Ismail's physical and mental integrity particularly vulnerable to serious deterioration.

In addition to actions taken directly against Mr. Ismail, the organisation he is associated with has also allegedly been the subject of retaliation measures from the authorities. The bank account of the Pakistan NGOs Forum, an alliance of several NGOs chaired by Mr. Ismail, as well as that of several smaller NGOs which are part of the alliance, have recently been frozen. These actions taken against Mr. Ismail are believed to be aimed at silencing his daughter Ms. Gulalai Ismail.

*Mr. Shereen Zada*

On 19 November 2020, prior to the issuance of a FIR against him, Mr. Shereen Zada was allegedly arbitrarily arrested by police and personnel of the secret services and was then held incommunicado in custody for three days. He was later released after a writ-petition was sent to the Court of Additional Session Judge V – Swabi. A FIR, under section 506 (criminal intimidation), was reportedly registered against him only on the day of his release.

On 28 December 2020, Mr. Zada received a hand-written order of attendance summons, under the Section 160 GPC in an Enquiry No. 1029/20, dated 16 November 2020, from an Enquiry Officer named Danyal Tajik of Federal Investigation Agency (FIA) in Peshawar. Mr. Zada received this attendance summon to explain his version of his human rights work on social media, particularly on Facebook.

On 30 December 2020, a representative of Mr. Zada visited the FIA office in Peshawar on his behalf, as Mr. Zada feared that he could be arrested. Soon after, a court dismissed the FIR against him and asked the FIA to provide explanation as to why Mr. Zada had been summoned.

On 4 January 2020, Mr. Zada received a similar attendance summons from the FIA due to a new FIR registered against him by an unknown person. It is reported that this FIR relates to his activities on social media as a member of the PTM. Mr. Zada received this order of attendance summons after the fixed date and was therefore unable to appear before the FIA.

It is reported that Mr. Zada and persons associated to him are frequently threatened by members of Inter-Services Intelligence with “dire consequences”, including “abduction, torture, and death threats”.

*Mr. Idris Khattak*

As detailed in one of the previous communications mentioned above (case no. PAK 8/2020), on 15 June 2020, Mr. Idris Khattak was abducted by unidentified individuals in Khyber Pakhtunkhwa and taken to an unknown location. The exact whereabouts of the human rights defender remain unknown at the time of the sending of this communication. The Government's response confirmed that Mr. Khattak was in the custody of law enforcement authorities, but it did not disclose the exact location of his detention.

As described in another previous communication mentioned above (case no. PAK 11/2020), Mr. Khattak was still disappeared in August 2020 and information indicated that Mr. Khattak he was being held by the Military Intelligence officials under section 2(1) of the Pakistan Army Act 1952 and section 3 of the Official Secrets Act. In its response, the Government denied that Mr. Idris Khattak was being held incommunicado or in otherwise secret detention. The Government further stated that due process mechanisms and judicial guarantees were provided to Mr. Khattak, while indicating that meetings between him and persons associated with him were facilitated. However, the Government confirmed that he was being tried in the Trial Court on charges of espionage and unlawful activities.

On 13 January 2021, the Peshawar High Court held a hearing on the petition challenging Mr. Idris Khattak's detention before the General Court Martial. On 28 January 2021, the Court dismissed the petition. Accordingly, it seems that the proceedings against Mr. Idris Khattak before the Military Courts will soon resume.

*Mr. Nizam Udin, Mr. Syed Manullah, Mr. Ameen Khan, Mr. Abdul Samad and Mr. Zaid Ullah*

On 3 September 2020, an improvised explosive device, for which the Pakistani Taliban has reportedly claimed responsibility, killed three and injured four agents of the Pakistani Army. It is reported that following this incident, the Pakistani Army imposed a curfew in the area and conducted a number of arrests. Among those arrested were Mr. Nizam Udin, Mr. Syed Manullah, Mr. Ameen Khan, Mr. Abdul Samad and Mr. Zaid Ullah, all members of the Pashtun minority. The arrests were conducted on the street or inside their houses, without any warrants from a court. After they had been allegedly beaten by soldiers, Mr. Udin, Mr. Manullah, Mr. Khan, Mr. Samad and Mr. Ullah were taken into a former school building, reportedly used by the Pakistani Army as a prison. The five individuals were detained incommunicado for varying periods, from one to four nights. While detained they were allegedly subjected to severe forms of physical and psychological ill-treatment. Before their release, they were threatened to be taken back to prison if they reported what had happened to them.

Without prejudging the accuracy of the information received, we express serious concern as to the aforementioned allegations of enforced disappearances, arrests and criminal accusations brought against the aforementioned individuals, which appear to have been made in retaliation for their human rights work, their ties with the PTM and the Pashtun minority more broadly. We are also concerned by the alleged enforced disappearance and subsequent death of one individual in detention. We reiterate that an enforced disappearance is one of the most serious violations of

international human rights law and may often amount to the crimes of torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life, which are unequivocally prohibited under international law.<sup>1</sup> Should these allegations be confirmed, they would be in violation of articles 6, 7, 9, 14, 16, 19 and 27 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Pakistan on 23 June 2010, which guarantees the rights to life, not to be arbitrarily deprived of liberty, not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, to be protected from enforced disappearance, to fair proceedings before an independent and impartial tribunal and to freedom of opinion and expression, as well as the rights of persons belonging to minorities.

We are particularly concerned that the number of complaints received illustrate an alarming pattern of what appears to be an arbitrary use of the legal system to harass, intimidate, threaten and retaliate against human rights defenders and members of the Pashtun minority who are seeking to expose alleged wrongdoing or human violations committed by the Pakistani authorities. The seemingly systematic abuse of counter-terrorism and security legislation against human rights defenders advocating for the rights of the Pashtun minority is particularly troubling. We recall that counter-terrorism legislation and related penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and peaceful association, or to suppress minority rights more broadly. These rights are protected under the ICCPR and non-violent exercise of these rights is not a criminal offence. In this regard we also respectfully reiterate our concerns about the FIRs filed against the aforementioned individuals, that seem to conflate their legitimate human rights work with terrorism, and risk undermining, and potentially criminalising, the work of human rights defenders in Pakistan more broadly. We regret that these concerns were already previously addressed to your Excellency's Government in previous communications (e.g. PAK 6/2018 and PAK 10/2019). While we acknowledge the prominent work of the judiciary in dismissing some meritless charges, we nevertheless remained concerned about the potentially chilling effect that harassment and pressure against these human rights defenders may have on civil society in Pakistan in general. We further note that judicial intervention often comes at the point where serious harms have already occurred and do not seem to function to prevent misuse of security and counter-terrorism laws to sanction human rights work. Finally, we also express particular concern towards the repeated allegations of acts of reprisals against individuals and organisations who document and report enforced disappearances and other serious human rights violations to the UN and its human rights mechanisms.

We are also concerned that the aforementioned allegations, if correct, would indicate that your Excellency's Government has failed to fulfil its obligations to protect the right to freedom of expression in particular, as guaranteed by Article 19 of the ICCPR. According to international law and standards, it is not compatible with Article 19 paragraph 3 of the ICCPR, for instance, to invoke laws justified by national security, whether described as sedition laws or otherwise, to prosecute human rights defenders (see CCPR/C/GC/34 para 30). Likewise, the arbitrary arrest or torture of individuals because of the exercise of their freedom of expression will under no circumstance be compatible with article 19 (CCPR/C/GC/34 para. 23)

---

<sup>1</sup> See, Communication No. 449/1991, *Mojica v Dominican Republic*, Views adopted by the Human Rights Committee on 15 July 1994, para. 5.7 and Human Rights Committee, General Comment 36, paras 57 and 58.

We further express our grave concern at allegations of threats and acts of intimidation, including enforced disappearances or incommunicado detention, against the aforementioned individuals and associates. With reference to paragraphs 3 and 5 of article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance, we highlight that your Excellency's Government has the duty to ensure that all persons involved in the investigation of cases of enforced disappearance remain protected against ill-treatment, intimidation or retaliation and that any of such acts or forms of interference is appropriately punished. As already communicated to your Excellency's Government in the light of the Working Group on Enforced or Involuntary Disappearance's follow-up report to the Mission to Pakistan (A/HRC/33/51/Add.7 paragraph 26), we reiterate the obligation of the State to adequately address all cases of harassment and retaliation by the relevant authorities and to take proactive measures to guarantee the safety of activists reporting cases of enforced disappearance and conducting human rights advocacy.

In regard to the detention conditions referenced above, we reiterate our deep concern at the alleged death of one individual in detention, and remind that loss of life occurring in custody creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation which establishes the State's compliance with its obligations under article 6 of the ICCPR (Human Rights Committee, General Comment 36). In addition, we note with concern that some of the above mentioned individuals have not had appropriate access to medical care, in contravention with the State's obligations under article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Pakistan on 17 April 2008. The right to health is an essential means to protect the right to life protected by Article 6 of the ICCPR. Article 12 protects the right to health and imposes an obligation on States to respect it by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services. (Committee on Economic, Social and Cultural Rights, General Comment 14, para. 34).

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the practical measures that have been taken to ensure the physical and psychological integrity of the individuals mentioned above, including access to appropriate health care particularly for Mr. Ali Wazir and Mr. Muhammad Ismail.
3. Please provide information on the type of medical care that is being provided to Mr. Muhammad Ismail in relation to his recovery from COVID-19.



4. Please provide detailed legal and factual information on the reason for freezing the bank account of the Pakistan NGOs Forum, as well as those of several smaller NGOs which are part of the alliance.
5. Please provide information on why charges related to terrorist acts and raising funds for terrorist organisations have been levied against the above-named human rights defenders and indicate how this complies with the obligation to pursue counter-terrorism obligations consistent with international law as set out *inter alia in* United Nations Security Resolution 1373, FATF Recommendation 8 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) and the model definition of terrorism provided by the mandate of the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism.
6. Please provide the details and, where available, the results of any investigations, medical examinations, and judicial or other inquiries which may have been carried out, or which are foreseen, to clarify the circumstances of the alleged enforced disappearance, ill-treatment and subsequent death in custody of Mr. Aqal Noor, to bring the perpetrators to justice and to provide prompt and adequate remedies. If no such measures have been conducted, please explain why.
7. Please urgently provide information on the whereabouts of Mr. Idris Khattak.
8. 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 clarify the circumstances of the alleged enforced disappearances and secret detention of Mr. Idris Khattak. Please also provide further detailed information on the reasons why the trial of Mr. Idris Khattak it is not being conducted before a civilian court and how your Excellency's Government is ensuring that Mr. Idris Khattak is given a fair trial before the military court in Mangla.
9. Please provide information on the legal and factual basis for the arrests and charges brought against the individuals mentioned above and how these are compatible with your Excellency's Government international human rights obligations under the ICCPR, particularly towards members of the Pashtun minority. Please provide information on how the right of abovementioned individuals to challenge the legality of detention under article 9 (4) of the ICCPR is ensured for each case mentioned above.
10. More generally, please provide detailed information regarding allegations of harassment, intimidation and retaliation against human rights defenders, especially those associated with the PTM. Please also indicate what measures have been taken to immediately cease acts of reprisals and to provide adequate safeguards in order to protect Mr.

Alam Zaib from any threats to his well-being or intimidation in the future and to carry out credible investigations into pending cases of reprisals.

11. Please indicate what measures have been taken to ensure that human rights defenders, including those working on minority rights are able to carry out their legitimate work, including through the exercise of their right to freedom of opinion and expression in a safe and enabling environment in Pakistan without fear of threats or acts of intimidation and harassment of any sort against either themselves or their families.
12. Please provide details and, where available, the results of any investigation and judicial or other inquiries which may have been carried out, or which are foreseen, in relation to allegations of torture of Mr. Alam Zaib, Mr. Aqal Noor, as well as of Mr. Nizam Udin, Syed Manullah, Ameen Khan, Abdul Samad and Zaid Ullah, to bring the perpetrators to justice and to provide prompt and adequate remedies. If no such investigation measures have been conducted, please explain why.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 letters 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.

We would like to bring to the attention of your Excellency's Government that the case of Mr. Idris Khattak is being considered by the Working Group on Enforced or Involuntary Disappearances under its humanitarian procedure according to its methods of work.

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.

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

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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

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

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

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**

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, 14, 19, 21 and 27 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, liberty and security of person, the absolute and non-derogable right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, 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 rights of persons belonging to minorities.

Loss of life occurring in custody creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation which establishes the State's compliance with its obligations under article 6. Investigations into allegations of violation of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent, and in the event that a violation is found, full reparation must be provided, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction (Human Rights Committee, General Comment 36). The obligations to investigate, identify those responsible for extra-legal, arbitrary and summary executions and to bring them to justice arise also under articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Furthermore, States are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials. State parties must respond "urgently and effectively" in order to protect individuals who find themselves under a specific threat and may be in violation of article 6 even if such threats and situations do not result in loss of life (Human Rights Committee, General Comment 36).

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).

Furthermore, we would like to remind your Excellency's Government that the deprivation of liberty may be rendered as arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.

Moreover, article 9.2 stipulates that the person must be informed, at the moment of the arrest, about the reasons for such deprivation of liberty; in addition, the information about the charges against the person should be provided without delay.

According to Article 9.3, anyone deprived of his or her liberty “shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.” Article 9.4 incorporates the right to initiate proceedings before a court to determine the lawfulness of the detention. These guarantees must be satisfied since the very start of the detention period and irrespective of its duration.

Principle 3 of the United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court upholds the right of any individual who is deprived of liberty in any situation, by or on behalf of a governmental authority at any level including detention by non-state actors that is authorized by domestic legislation, to take proceedings before a court without delay in that State’s jurisdiction to challenge the arbitrariness and lawfulness of his or her deprivation of liberty and receive appropriate and accessible remedies. The 2019 annual report of the Working Group on Arbitrary Detention further reiterates that it is essential to preserve the right of all those deprived of their liberty to challenge the legality of detention, which is a peremptory norm of international law. The right to legal assistance must be ensured from the moment of deprivation of liberty and, in the context of the criminal justice setting, prior to questioning by the authorities.

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). Any 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.

However, Article 19 (3) of the ICCPR should never be used 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.

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 bans 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 also like to remind your Excellency's Government that the right to a fair trial, given by the article 14 of the ICCPR, applies to all courts and tribunals whether ordinary or specialized, civilian or military. While the ICCPR does not prohibit the trial of civilians in military courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. Since the trial of civilians in military courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned, it is important to take all necessary measures to ensure that such trials are in conformity with the article 14 and that they remain exceptional, i.e., limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials (CCPR/C/GC/32 para. 22).

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 also like to emphasize that that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). As stated by the Special Rapporteur on the situation of human rights defenders, misuse of counter terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of religion or belief and freedom of peaceful association and assembly. These rights enjoy international legal protection, and the message of international law is clear and simple: Non-violent criticism of the State or any of its institutions, including the judiciary, cannot be made

a criminal offence in any society governed by rule of law and abiding by human rights principles and obligations. Countering terrorism should not be used as an excuse to suppress peaceful critics, human rights activists and members of minority groups (A/HRC/RES/25/18).

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 further like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which establishes the prohibition to practice, permit or tolerate enforced disappearances (Article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (Article 3); the obligation to criminalize enforced disappearances as autonomous offense in domestic legislation (Article 4) and 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 addition, the Declaration stipulates 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 in order to challenge the legality of the detention (Article 10). In particular, in its paragraphs 3 and 5 of article 13, the Declaration provides that States shall ensure that all persons involved in the investigation of cases of enforced disappearance, including the complainant, counsel and witnesses, are protected against ill-treatment, intimidation or reprisal; and that steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished. Ultimately, the Declaration establishes the obligation to bring perpetrators of enforced disappearances before competent civil authorities for the purpose of prosecution and trial (Article 14) and that victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible (Article 19).

In its country visit report to Pakistan (A/HRC/22/45/Add.2), the Working Group on Enforced or Involuntary Disappearances recommended the establishment of a constitutional, legal and regulatory framework, in particular in relation to the issue of the deprivation of liberty, be in full conformity with international standards in order to ensure that it does not give license to secretly detain or disappear anyone, or that it does not lead in practice to circumstances where enforced disappearances could be perpetrated (paragraph 91). In its follow-up report to the Mission to Pakistan (A/HRC/33/51/Add.7), the Working Group stressed that all cases of harassment and reprisals should be adequately addressed by the relevant authorities and that proactive measures should be taken to guarantee the safety of the family members of the disappeared and of human rights defenders (paragraph 26). On other occasions, the Working Group has also noted that incommunicado detention of persons for prolonged periods without disclosure of their whereabouts amounts to secret detention

and is a form of enforced disappearance (A/HRC/36/39, para. 71).

We underline that an enforced disappearance continues until the fate and whereabouts of the individual concerned are established irrespective of the time passed, and that the family members have a right to truth which means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s) (A/HRC/16/48). We further recall that all victims of enforced disappearances, including relatives of those disappeared whose suffering is rooted in the primary violation against the disappeared person, and anyone who has suffered harm as a direct result of an enforced disappearance, have the right to know the truth and to reparation, including compensation (A/HRC/16/48, para. 39).<sup>2</sup> We highlight that the anguish and sorrow of relatives of disappeared persons may reach the threshold of torture. The right to truth is therefore an absolute right which cannot be restricted and there is an absolute obligation to take all the necessary steps to find the disappeared person (A/HRC/16/48, General Comment, para 4).

We would also 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.

---

<sup>2</sup> See, Communication No. 107/1981, María del Carmen Almeida de Quinteros et al. v. Uruguay, Views adopted by the Human Rights Committee on 21 July 1983, para. 14.



We would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. The Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims, and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.

Furthermore, 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 to article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Pakistan on 17 April 2008. The article protects the right to health and imposes on States the obligation to respect it by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services. (Committee on Economic, Social and Cultural Rights, General Comment 14, para. 34). We further refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015, the "Mandela Rules") which establish States' responsibility to provide equivalence of care to prisoners i.e. the same standards of health care that are available in the community (Rule 24 (1)). They require prisons to pay particular attention to prisoners with special health-care needs (Rule 25 (1)), to ensure continuity of treatment and care (Rule 24.2) and prompt access to medical attention in urgent cases or specialized treatment where needed. Where a prison has its own hospital facilities, they shall be *adequately* staffed and equipped to provide prisoners referred to them with *appropriate* treatment and care. (Rule 27).