

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues

Ref.: AL PAK 8/2022
(Please use this reference in your reply)

27 December 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 44/5, 45/3, 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 death in unclear circumstances of former Senator **Usman Kakar** and calls by the National Assembly Standing Committee on Human Rights as well as a non-governmental organization to the Government to investigate the alleged existence of a "kill list" naming Mr. Kakar, and several other individuals including Mr. **Farhatullah Babar**, a former Senator, and human rights defenders Mr. **Fazal-ur Rehman Afridi** and Ms. **Gul Bukhari**.

The existence of such a "kill list" was raised in [UA PAK 4/2019](#) sent on 29 May 2019. We thank your Excellency's Government for the reply received on 25 June 2019 indicating that no such list exists. In this context, however, we are concerned about new information relating to the death of Mr. Usman Kakar, whose name was allegedly on such a list.

Alleged threats and intimidation against Ms. Gul Bukhari were the subject of communications [AL PAK 4/2018](#), sent on 16 July 2018, and [AL PAK 2/2021](#), sent on 22 January 2021. We thank your Excellency's Government for the replies dated [5 October 2018](#) and [4 May 2021](#) respectively to these communications, but regret that no information has been provided as to whether any person has been arrested or prosecuted in connection with the alleged abduction of Ms. Gul Bukhari.

Alleged intimidation, threats of reprisal and harassment against Mr. Fazal-ur Rehman Afridi, a human rights defender who has repeatedly denounced human rights violations, including enforced disappearances in Pakistan, were referred to in [AL PAK 12/2020](#), sent on 21 December 2022. We regret that no reply by your Excellency's Government has been received.

According to information received

Circumstances of the death of Mr. Usman Kakar

On 17 June 2021, Mr. Usman Kakar, a member of the Pashtun minority, a former Senator and regional leader of the nationalist Pakhtunkhwa Milli Awami Party, and critic of the military, was found in his house in Quetta, Balochistan, with blood flowing from a head injury. The cause of the head injury is unknown. However, there are concerns that he could have been

attacked.

After suffering the head injury Mr. Kakar was taken to a private hospital in Quetta for treatment and later moved to Karachi. On 21 June 2021, Mr. Kakar died in hospital in Karachi.

Mr. Kakar had previously received death threats, and referred to them as coming from intelligence agencies in his final speech in Parliament. In 2018, Mr. Kakar was abducted for several hours along with another activist on the Abbottabad highway, where a group of unidentified individuals opened fire on him upon arrival at a tollbooth. In 2021, during his election campaign, he was interrogated by 16 members of the Frontier Corps who refused to admit that they were detaining him. Persons associated with Mr. Kakar have been warned by military intelligence personnel that they should stay silent on the case, or they would face consequences.

Media reports regarding Mr. Kakar's hospitalization in Quetta indicated that he had suffered a head injury. Computerized tomography scans showed severe brain damage. One of the doctors who observed the autopsy, which was carried out at Jinnah postgraduate medical college, indicated that Mr. Kakar died due to a head injury which could not have been caused by a fall. The "histopathology" report that Mr. Kakar's family later received, did not contain any information clarifying the cause of the injuries and their connection to his death. Samples have been taken for a pathology report. However, the post-mortem report apparently stated that there were no signs of violence on Mr. Kakar's body. There is a CCTV footage of those alleged to be the perpetrators in the attack against Mr. Kakar.

Following Mr. Kakar's death, the Home Department sent a letter to the Registrar of the Balochistan High Court, indicating that the provincial Government had decided to set up a two-member judicial inquiry to investigate his death, constituted under sub-section-1 of Section (3) of the Balochistan Tribunals of Inquiry Ordinance 1969. Two judges were appointed. This was later disbanded after persons associated with Mr. Kakar declined to appear before them citing their lack of trust and questions about the legality of the appointment of this judicial inquiry. No further investigations were carried out after these events, nor were first information reports on his case registered, despite the efforts of persons associated with Mr. Kakar.

Persons associated with Mr. Kakar have been subjected to threats, intimidation and acts of reprisals from Pakistani security services.

Alleged "Kill List"

On 12 August 2022, the National Assembly Standing Committee on Human Rights expressed concern about an alleged “kill list” and asked the Interior secretary to meet individuals who had complained to the Committee, including Mr. Farhatullah Babar. The list of at least ten individuals was published in a Facebook post by the former spokesperson of the Tehreek-i-Taliban Pakistan (TTP).

Following calls from non-governmental organizations for the Government to “investigate the ‘kill list’ recently issued by the Taliban and ensure that all those concerned are provided security,” the National Assembly Standing Committee on Human Rights considered the kill list.

These actions relate to a series of social media posts, the first issued on 21 June 2021, by a former militant and member of TTP, who surrendered to the authorities in April 2017. He claimed in a media interview to have been released from prison following an agreement with the security services. The tweets referred to a “kill list” maintained by Pakistani security agencies and that he had been requested to lead a “death squad” to eliminate “some individuals”. The former militant referred by name to two brigadiers who he said made these remarks and claimed that he was told when he expressed reservations about eliminating individuals that it was the only way to secure his release. Reportedly, the “kill list” contains the names of a number of individuals, including Mr. Usman Kakar, as well as human rights defenders Mr. Fazal-ur Rehman Afridi, and Ms. Gul Bukhari, and former Senator, Mr. Farhatullah Babar.

While we do not wish to prejudge the accuracy of these allegations, we are raising concern about the death of Mr. Usman Kakar, its circumstances and the alleged existence of a “kill list” containing his name, as well as those of Mr. Fazal-ur Rehman Afridi, Mr. Farhatullah Babar and Ms. Gul Bukhari. It has been alleged that several individuals were placed on this list due to their legitimate work defending human rights of the Pashtun minority and reporting on gross human rights violations – including enforced disappearances – in Pakistan.

We are disturbed by the fact that immediately prior to his violent death, Mr. Kakar reported in his last speech in Parliament, that he had received death threats, that he drew public attention to these threats in his last speech in Parliament, and that nevertheless but that no serious investigation had been ordered into these threats, and no protective measures offered to him. In this regard, we highlight that the duty to protect the right to life requires States to take special measures to protect individuals threatened with death.

We also raise concern about the discrepancy in the autopsy report and the observations of the doctors who supervised the post-mortem, and the failure to carry out an effective investigation into Mr. Kakar's death. Similarly, we raise concern about the abduction of Mr. Kakar in 2018 and the lack of proper investigation into it to explain what happened and to identify the perpetrators. We highlight the need for an impartial investigation into all suspected unlawful killings, through which information is constantly shared with the family members in line with international standards, and in particular the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by Economic and Social Council resolution 1989/65, and the Revised United Nations

Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the *Minnesota Protocol on the Investigation of a Potentially Unlawful Death* (2016)).¹ A failure to conduct a proper investigation is regarded, in itself, as a violation of the right to life.

Finally, we are disturbed by the attempts at intimidation against persons associated with Mr. Kakar, allegedly due to their involvement in and demands to initiate investigations into his death. We call for immediate action to be taken to protect them from threats to their lives and well-being or intimidation of any kind in the future.

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 information about whether any investigation and judicial or other inquiry has been undertaken in relation to the death of Mr. Usman Kakar and whether these were conducted in compliance with the Minnesota Protocol. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is compatible with your Excellency's Government international human rights obligations under the International Covenant on Civil and Political Rights (ICCPR).
3. Please explain why no investigation has been launched into the death threats against Mr. Kakar, despite the fact that he referred to such threats from secret services in his last speech in Parliament. In this context, please provide further information on the reported existence of a so called kill list and the measures undertaken to investigate such allegations.
4. Please provide details of the measures taken to protect persons associated with Mr. Kakar from any acts of intimidation, threats and harassment when inquiring about the status of the investigation or seeking to participate in the investigative steps surrounding Mr. Kakar's death.
5. Please provide detailed information on the practical measures that have been taken to ensure the physical and psychological integrity of Mr. Fazal-ur Rehman Afridi, Mr. Farhatullah Babar and Ms. Gul Bukhari.

¹ <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

6. Please provide information about the measures taken to ensure that human rights defenders, including those advocating for the rights of the Pashtun minority and reporting gross human rights violations – including enforced disappearances – in Pakistan, are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical or other harassment.

We would appreciate receiving a response within 60 days. Past 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 prevent any irreparable harm to the life and personal integrity of Mr. Fazal-ur Rehman Afridi, Mr. Farhatullah Babar and Ms. Gul Bukhari; 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.

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Aua Baldé

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

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 the above alleged facts and concerns, we would like to refer your Excellency's Government to the right to life as set out in article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Pakistan on 23 June 2010. We stress that the right to life constitutes a supreme right from which no derogation is permitted under any circumstances pursuant to article 4(2) of the ICCPR.

We would like to refer your Excellency's Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

We would further like to refer to Human Rights Committee General Comment no. 35 which states that the right to personal security obliges States to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. It further notes that States must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury. We would further like to refer to Human Rights Committee General Comment No. 36, wherein the Committee stated that the obligation upon State parties to respect and ensure the right to life extends to reasonably foreseeable threats, including those emanating from private persons and entities. Following the Committee, State parties must respond "urgently and effectively"² in order to protect individuals who find themselves under a specific threat, including by adopting special measures such as the assignment of around-the-clock police protection. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life.³

We urge your Excellency's Government to adopt measures to provide protection. In this regard, the Human Rights Committee has noted in the case of *William Eduardo Delgado Páez v. Colombia*, (Communication No. 195/1985) that the right to security is not limited only to situations of formal deprivation of liberty. States cannot ignore known threats to the life of persons under their jurisdiction, just because he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. This was reiterated in the case of *Luis Asdrúbal Jiménez Vaca v. Colombia* (CCPR/C/74/D/859/1999).

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, para. 38), which observes that the jurisprudence on the implementation of the due diligence principle and its

² General Comment No. 36, *Human Rights Committee*, para 23.

³ *Ibid*, para. 7

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)).

We would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency's Government to ensure the thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions, in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9. This rule was reiterated by the Human Rights Council in Resolution 17/5 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4). The Council added that this includes the obligation "to identify and bring to justice those responsible ... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions."

In its General Comment No. 36, the Committee stated that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the *Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)*)⁴, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates and should be independent, impartial, prompt, thorough, effective, credible and transparent. According to the Minnesota Protocol on the Investigation of Potentially Unlawful Death "investigators and investigative mechanisms must be, and must be seen to be, independent of undue influence" at all stages and must be "independent of any suspected perpetrators and the units, institutions or agencies to which they belong" (para.28). The Minnesota Protocol further highlights that investigations "must be

⁴ <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

transparent, including through openness to the scrutiny of the general public and of victims' families" who have the right to take part in the investigations, and to obtain available information on the causes of death (para. 32); family members should be entitled to have a representative present during the autopsy (para.37); and cardio-respiratory arrest or respiratory failure are examples of modes of death but cannot conclude the immediate cause of death (para. 267 (c)). Failure to investigate violations of the Covenant and to bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR /C/21/Rev.1/Add.13, paras. 15). We also refer to the report on Medico-legal Death Investigations (MLDIs) (A/HRC/50/34) by the Special Rapporteur on extrajudicial, summary or arbitrary executions, indicating that the bereaved families and next of kin should be informed in a timely and appropriate manner about the investigation, its progress and its findings and that should be protected from any threat resulting from their participation in the investigation (paras. 92 and 94).

We would like to remind you that the legitimate role of human rights defenders is recognised by international law and referred to 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 articles 1 and 2 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, point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- 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.

We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We would further like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. 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.

We recall that, in its resolution 7/12, the Human Rights Council urged Governments to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected. Adequate safeguards against reprisals are of outmost importance considering the reported lack of access to appropriate means of communication in many cases of reprisals which should in no circumstances be restricted or withdrawn and should be exercised freely (A/HRC/21/18 paragraphs 14 and 17). We also reiterate that the State has the primary responsibility of ensuring that persons who cooperate with the United Nations and its mechanisms in the field of human rights are protected and to ensure that all alleged acts of reprisals and intimidation are promptly and impartially investigated, perpetrators brought to justice and victims provided with appropriate remedies. We stress that public officials who make public statements which place human rights defenders at risk should be held accountable (A/HRC/45/36, para. 135). We also take this opportunity to recall Principle 14 of the Guiding principles for the search for disappeared persons, which refers to the safety conditions in which searched should be carried out (CED/C/7).

In its 2013 country visit report (A/HRC/22/45/Add.2) and its 2016 follow-up report to the mission to Pakistan (A/HRC/33/51/Add.7) the Working Group on Enforced or Involuntary Disappearances observed the widespread practice of and impunity for enforced disappearances and the elevated number of cases of threats, reprisals and harassment against families of disappeared persons and human rights defenders who work on issues related to enforced disappearance in Pakistan. We emphasize that impunity can have a multiplying effect, which causes additional suffering and anguish to victims of enforced disappearances and their families. In this context, the Working Group 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 disappearances could be perpetrated and that reparations are provided for the victims of such acts ((A/HRC/22/45/Add.2) paras. 91 and 99).