

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on minority issues**

Ref.: AL PAK 8/2024  
(Please use this reference in your reply)

10 December 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 50/17, 51/8, 54/14, 52/9, 52/4, 53/12 and 52/5.

In this connection, we would like to follow up and bring to the attention of your Excellency's Government information we have received concerning the **continuous unlawful detention and imprisonment following a secret military trial, the lack of access to a fair trial and an appeal, inadequate prison conditions, and the lack of an effective remedy and reparations for the multiple serious human rights violations including enforced disappearance and alleged torture and ill-treatment, to which Mr. Muhammad Idris Khattak has been subjected to by the Pakistan authorities in the past five years, in relation to the exercise of his rights to freedom of association, of expression and his human rights work.**

Mr. Khattak is a well-known human rights defender and minority rights civil society activist from Pakistan's north-west region. For many years, he was documenting cases of enforced disappearances and other human rights violations, and various humanitarian crises in Khyber Pakhtunkhwa province and the former Federally Administered Tribal Areas. He has defended minority rights for meaningful political participation and against entrenched discriminatory policies and practices. Previously, he has been associated with and worked as a local consultant for international non-governmental human rights organizations.

We would like to refer to previous communications addressed to your Excellency's Government, in which various Special Procedures mandate holders have raised continuous concerns about the numerous serious human rights violations inflicted on Mr. Khattak, including the following communications: AL [PAK 4/2021](#), AL [PAK 11/2020](#) and AL [PAK 8/2020](#). In a [press release dated 4 September 2020](#), we reiterated our call to your Excellency's Government to end the secret detention of Mr. Khattak and to ensure an independent and thorough investigation into the institutional and criminal responsibilities for his disappearance and arbitrary detention, and provide him and his family with reparations. In November 2023, we

reiterated our concerns about Mr. Khattak's ongoing unlawful detention (AL PAK 9/2023). In a [press release dated 15 December 2021](#), we condemned his conviction and sentencing, and reiterated our call that Mr. Khattak and other human rights defenders and civil society leaders, including those belonging to the Pashtun minority, who have been arrested, or subjected to enforced disappearance for their human rights work or for the sole exercise of their rights to freedom of expression, of association or of peaceful assembly, must be immediately released. We regret that no response has been received thus far by your Excellency's Government to address these concerns and provide necessary protections to Mr. Khattak. We thank your Excellency's Government for the earlier responses received on [16 June 2020](#) and [04 February 2021](#). However, we are deeply concerned that no follow up action has been taken by your Excellency's Government to provide effective remedy, accountability and reparations for the serious human rights violation and harm Mr. Khattak has been subjected to, including the serious crimes of enforced disappearance, alleged torture and ill-treatment, and incommunicado detention.

The enforced disappearance of Mr. Idris Khattak was considered by the Working Group on Enforced or Involuntary Disappearances and transmitted to the Government of Pakistan under the Working Group's humanitarian procedure on 4 June 2020. The case was clarified, in accordance with the Working Group's [Methods of Work](#), on the basis of information provided by the Government on 21 May 2021.

According to the information received:

*Enforced disappearance, incommunicado detention and ill-treatment  
(13 November 2019 – 5 December 2021)*

As detailed in a previous communication (PAK 8/2020), Mr. Khattak was abducted near Swabi Exit on the Islamabad – Peshawar Motorway, in Khyber Pakhtunkhwa province, on 13 November 2019, by men dressed in plain clothes, suspected to be members of a military agency. He was taken to an unknown location. After the abduction of Mr. Khattak, some men came to his home and took his laptops, phones and hard disks, with all the information about the projects he had worked on.

On 18 November 2019, the family of Mr. Khattak registered a First Information Report (FIR) at Anbar Police Station and filed a habeas corpus petition in Peshawar High Court on 22 November 2019. On 10 January 2020, the Court ordered the Pakistan Government to report on Mr. Khattak's whereabouts and to produce him in court. However, the Special Procedures mandate holders noted that there has been a lack of cooperation of the Military Intelligence and an unwillingness of the State authorities to comply with the Peshawar High Court's order, as they failed to produce Mr. Khattak in court (AL PAK 11/2020). On 16 July 2020, the Peshawar High Court dismissed the petition citing the lack of jurisdiction over the legal provisions under which Mr. Khattak was being charged.

On 16 June 2020, the authorities acknowledged that Mr. Khattak was being detained by the Military Intelligence and that he would be tried in a military

court, but did not disclose his whereabouts. According to the information made available, Mr. Khattak was charged under section 2(1)(d) of the Pakistan Army Act of 1952 and section 3 of the Official Secrets Act of 1923. His family learned only through a television news announcement that Mr. Khattak had been held in military custody.

Once the authorities acknowledged that Mr. Khattak was in their custody, he was further kept in incommunicado detention and in solitary confinement for over 18 months until 5 December 2021, exposing him to grave risk of torture and being deprived of his basic rights including his due process rights. A number of Special Procedures mandate holders expressed alarm about Mr. Khattak's continued incommunicado detention and that his family had not been granted access for a visit, nor had his lawyer or an independent medical doctor been allowed to examine him (AL PAK 11/2020)<sup>1</sup>. The mandate holders found that the incommunicado detention of Mr. Khattak exposed him and his family to anxiety and stress amounting to cruel, inhuman or degrading treatment, or torture (AL PAK 11/2020).

In September 2020, the brother of Mr. Khattak had filed a written petition in the Peshawar High Court, challenging the legality of his detention and trial, as a civilian, by the military court Field General Court Martial (FGCM), and requesting that Mr. Khattak be produced in court and his military trial be annulled as illegal. The defence lawyer of Mr. Khattak argued that allegations against Mr. Khattak did not amount to the disclosure of official secrets that Mr. Khattak had been charged with, and that the entire prosecution of Mr. Khattak was ill-intent, based on "*mala fide*". On 28 January 2021, the Peshawar High Court rejected the petition, citing that the prosecution was at an initial stage and that there was no conclusive evidence yet to be able to assess if the offence fell under the Official Secrets Act, 1923, confirming that the hearing continued in a military court.

During this time, Mr. Khattak had extremely limited contact with the outside world. One of his daughters was only allowed to visit him once in a short and supervised meeting on 7 October 2020, and there had been no contact between him and his family or his lawyer since then, during the time of his prolonged incommunicado detention. While in solitary confinement, Mr. Khattak was allegedly subjected to ill-treatment including being blindfolded and forced to walk until he collapsed or hit a wall. He still has a scar on his forehead due to this incident.

### *Charges*

The official charges are still not made available by the military authorities to Mr. Khattak, his defence lawyer or his family. According to the information made available in an earlier judgment of the Peshawar High Court of 28 January 2021 (W.P.No.4271-P/2020), Mr. Khattak was charged for alleged offences on eight counts related to "communicating to any other person information calculated to be directly or indirectly useful to an enemy,

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<sup>1</sup> See also <https://www.ohchr.org/en/press-releases/2020/09/un-experts-pakistan-must-end-enforced-disappearance-human-rights-defender>

punishable under section 3 of the Official Secrets Act, 1923” that is “for any purpose prejudicial to the safety or interests of the State” under section 3 of the Official Secrets Act as well as section 59 of the Pakistan Army Act, 1952. In all eight charges, Mr. Khattak was accused of communicating with an alleged “official of MI-6/Secret Intelligence Service (SIS) of United Kingdom,” on different occasions in 2009 and allegedly providing him with information regarding Pakistani military operations in different areas of Pakistan’s tribal areas in the Khyber Pakhtunkhwa province or elsewhere. We note that the alleged offences relate to alleged meetings in 2009 with an individual who was a well-known academic and peace-building expert in the region and a former UN and EU official in Afghanistan, and they took place at a time when the Pakistan army was involved in intensified armed conflict against local Taliban and other armed groups in the concerned locations, causing humanitarian crisis including mass displacement of large numbers of civilians.<sup>2</sup>

### *Trial by military court and conviction*

In December 2021, the FGCM at Mangla tried Mr. Khattak in a secret trial, on charges under the Pakistan Army Act and Official Secrets Act, 1923. As a result, Mr. Khattak has been convicted and sentenced to 14 years of “rigorous imprisonment”.

His defence lawyer reportedly only met him twice before the trial proceedings began, and during the military trial Mr. Khattak had restricted access to legal assistance. The meeting was filmed, they were continuously accompanied by an army officer, and they were not permitted to speak in their native language Pashto. His family was not allowed to attend the trial.

According to the information provided, the trial proceedings were “deeply flawed” throughout the process. According to the available information and the concerns raised by Mr. Khattak’s lawyer in the appeal filed against his conviction, there appear to have been a number of serious shortcomings during his trial process at the FGCM, including:

- i) The reliance for the conviction on an alleged “confession statement” by Mr. Khattak recorded on 21 April 2020, five months after his abduction and during the time of his enforced disappearance; given these circumstances, Mr. Khattak’s defence lawyer raised serious concerns about the voluntary nature of the “confession” and its truthfulness, and that the “statement” appeared to have been tampered with.
- ii) Mr. Khattak’s family and lawyer were denied throughout the trial access to information about the exact charges and status of Mr. Khattak’s case, preventing his adequate defence. The summary of the evidence, confession statement, charge sheet, calendar of witnesses and their statements recorded during investigations and other relevant materials necessary for the preparation of the defence were withheld, despite numerous appeals by Mr. Khattak and his lawyer for these to be

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<sup>2</sup> See for example <https://news.un.org/en/story/2009/07/306772>

provided. The family reported being “kept in the dark” and relying on media updates to learn about the case status, and later about Mr. Khattak’s conviction.

- iii) The proceedings failed to examine all alleged evidence, as the prosecution failed to exhibit and produce all alleged evidence during the trial proceedings; and there were no independent witnesses produced to testify during the trial. The lawyer defending Mr. Khattak raised serious concerns about the impartiality of the court and the trial, and systematic violation of Mr. Khattak’s right of presumption of innocence. According to the information received, the prosecutor was also acting as the investigating officer, and was guiding the witnesses, prejudicing the proceedings. Despite a number of applications by the accused and his defence lawyer, none have been accepted by the military court.

After the trial, Mr. Khattak was sent to a civilian prison in Jhelum district for one month, still without access to his family. In December 2021, he was transferred to Central Jail, Rawalpindi (referred to as “Adiala Jail”). The family was not informed of the place of imprisonment of Mr. Khattak; they learned of his transfer to Adiala Jail through their own research.

### *Appeal*

On 21 December 2021, the defence lawyer of Mr. Khattak filed an appeal in the Appellate Court of Field General Court Martial (FGCM), General Headquarters Rawalpindi – against the judgement conviction and sentencing of Mr. Khattak to 14 years by the FGCM Mangla. The Appeal, citing the grounds of serious fair trial shortcomings and human rights violations mentioned above, called for the judgment convicting and sentencing Mr. Khattak to be annulled and that Mr. Khattak be acquitted of all charges and be released. The Appeal application also argued that the military court does not have the jurisdiction to try the offences with which Mr. Khattak was charged, since section 59 of the Pakistan Army Act, 1954 has been amended removing the court martial as the appropriate tribunal to try such offences.

After almost a year of delay in commencing the appeal proceedings, another petition was filed in October 2022 on behalf of Mr. Khattak in the Lahore High Court, Rawalpindi Bench, requesting that a hearing date be provided by the Appellate Court of the FGCM. The Lahore High Court, Rawalpindi Bench, requested the military court to set the appeal hearing as soon as possible; however, the hearing started only six months later, in April 2023.

During the period of 3 years, since submitting the appeal challenging Mr. Khattak’s sentence and imprisonment, there have been three appeal hearings in total held by the Appellate Court of FGCM, General Headquarters Rawalpindi (in April 2023, in August 2023 and on 1 November 2024). During the hearings, the president of the court, a Major General, requested the military prosecuting lawyer to present the evidence on the case. During the hearing in August 2023, the prosecution lawyer was given a week per his request to

prepare a response. More than one year afterwards, there was no update despite the numerous requests by Mr. Khattak's family and his defence lawyer. On 1 November 2024, another appeal hearing took place, during which the military prosecution lawyer requested a further two weeks to respond to the president of the court to produce the requested evidence on the case. However, a month later, there are still no updates on the outcome of the proceedings. According to the information received, the president of the Appellate Court of FGCM, General Headquarters Rawalpindi, noted during the last appeal hearing that Mr. Khattak should be released unless there is compelling evidence by the military against him, for which he should be tried by the civilian court. Mr. Khattak was given this time an opportunity to speak on his behalf and present his defense statement.

The appeal proceedings at the court martial have been held in a very restricted environment, with only the defence lawyer being allowed to accompany Mr. Khattak. The family remains isolated from participating and having any channels for communication with the military court for receiving or requesting updates on the outcomes of the proceedings. No written information from the trial and the appeal process of the trial records, proceedings and outcomes have been provided to the family or the lawyer. Throughout the military court appeal process (which is ongoing), neither Mr. Khattak, nor his defense lawyer and his family, have been provided the official charges, summary of the evidence, confession statement, or other relevant materials, despite numerous requests.

The High Court and the Supreme Court of Pakistan have stopped the hearing on Mr. Khattak's case, until the proceedings at the court martial appellate are completed and the final decision is issued. Until then, Mr. Khattak does not have access to appeal and to have his conviction and sentence reviewed in the higher civilian tribunals or the Supreme Court.

#### *Detention conditions*

Mr. Idris Khattak, currently imprisoned in Adiala Jail in Rawalpindi, Barrack 8/2, is reportedly facing overcrowded and inadequate conditions, leading to significant deterioration of his fragile health; he is also being denied access to adequate health care. Mr. Khattak is 61 years old and suffers from diabetes, severe back pain and poor eyesight; these conditions have become worse in the past year. He is sharing accommodation with over 70 detainees, and his multiple requests for a transfer to another cell have not been responded to. Despite his age, which exceeds the retirement age of 60 in Pakistan, he has been required to work extended hours at a carpet-making factory, further resulting in significant deterioration of his health. He was also not provided proper bedding which has led to more complications with his back, and he received a blanket only after going on a hunger strike, but the blanket was inappropriate and created further health complications of his skin.

His family is extremely worried that Mr. Khattak is being denied access to appropriate nutrition and adequate medical treatment, jeopardizing his deteriorating health. In March 2023, Mr. Khattak was referred to a

neurosurgeon for an MRI scan due to his severe back pain. On 30 March 2023, when he was taken to the prison hospital, the prison guard refused to remove his iron shackles despite a senior paramedic having agreed to exempt him from wearing them; as a result, he was unable to undergo the MRI examination. On another occasion, in October 2023, Mr. Khattak was again denied access to medical treatment as he was required to be referred to Islamabad for a treatment, despite the prison doctor's recommendation for this treatment. The isolation and harsh conditions of Mr. Khattak's detention have had not only a detrimental impact on his physical health and well-being but they have also taken a severe emotional toll on him.

In 2023, another petition had been filed on behalf of Mr. Khattak in the Lahore High Court, Rawalpindi Bench, requesting an improvement of his prison conditions, but until now there has been still no hearing on this. The family also has requested the transfer of Mr. Khattak closer to his hometown, in Peshawar Central Prison, as the long travel distance for visits has caused great economic hardship on his family, but this request has similarly not been responded.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are deeply concerned about the systematic apparent egregious abuses and serious human rights violations to which Mr. Khattak has been continuously subjected in the past 5 years, including enforced disappearance, incommunicado detention, torture and ill-treatment, prolonged pre-trial detention and conviction and long imprisonment following a secret trial by a military court. We reiterate our serious concern that Mr. Khattak's detention and conviction appear to have been a direct retaliation for his legitimate activities as a human rights defender and minority rights activist, including in particular for the exercise of his rights to freedom of expression and association, which are protected by the International Covenant on Civil and Political Rights (ICCPR) acceded to by Pakistan on 23 June 2010. As such, Mr. Khattak's detention from the start appears to be unlawful. According to article 9 of the ICCPR, the arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression and freedom of association, is arbitrary (CCPR/C/GC/35, para. 17).

We reiterate also our concerns raised earlier about the systematic abuse of counter-terrorism and security legislation against human rights defenders and activists advocating for the rights of the Pashtun minority (AL PAK 4/2021). We recall that counter-terrorism and security legislation should not be used against individuals exercising their fundamental freedoms, or to suppress civic space and minority rights broadly. We remain deeply concerned that legitimate human rights and civil society activities are being conflated with illegal activities and that civil society activists' work on exposing alleged wrongdoings and human rights violations is being criminalized. In the case of Mr. Khattak, we recall that the alleged offences related to reporting about activities by the security forces took place at a time of armed conflict between the Pakistan military and the Tehrik-e-Taliban Pakistan ("Pakistani Taliban") and other armed groups, during which serious human rights abuses and humanitarian law violations against the civilian population were widely reported by international non-governmental organizations. In such circumstances, the legitimate role of civil society, journalists, and human rights defenders includes the documentation and

reporting of the conduct of all parties in relation to alleged human rights violations and abuses as well as humanitarian impacts on the civilian population, and exposing wrongdoings with a view to help identify those responsible. Reporting such information must not be considered a criminal offence; it is an essential part of the exercise of the right to freedom of expression and to seek, receive and impart information, protected under article 19 of the ICCPR. In this regard, we would like to also recall that it is incompatible with the international law and standards under article 19(3) of ICCPR to invoke laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute researchers, human rights defenders, or others, for having disseminated such information (CCPR/C/GC/34, paragraph 30). Moreover, we would like to also recall that under article 19 of the ICCPR, it is the responsibility of the State, when invoking any of the legitimate ground for restriction of freedom of expression, such as to protect national security, to demonstrate the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat (CCPR/C/GC/34, paragraph 35).

Further, we are deeply concerned that the above allegations point to multiple serious human rights violations related to Mr. Khattak's right to a fair trial and to fair proceedings before an independent and impartial tribunal, and the right not to be deprived arbitrarily of liberty in accordance with articles 9 and 14 of the ICCPR, and articles 9 and 10 of the Universal Declaration of Human Rights (UDHR). The continuous denial by the court martial and military prosecuting authorities of providing information of the evidence, the official charges and the trial records to Mr. Khattak's defence lawyer and family, have seriously undermined and violated the principle of "equality of arms" throughout the proceedings. This principle requires that the same procedural rights are to be provided to all the parties, which is a key element guaranteed under article 14 of ICCPR to ensure fair trial and for ensuring there is sufficient time and facilities allowing the accused to adequately prepare his defence.

Moreover, the limited and obstructed meetings of Mr. Khattak with his defence lawyer prior to and during the trial further violated his fair trial rights for ensuring adequate defence. Furthermore, it is deeply concerning that for the conviction of Mr. Khattak the court martial appears to have relied on an alleged confession statement which had been recorded while Mr. Khattak was held in military custody and during the time of his enforced disappearance and incommunicado detention. As previously stated, these conditions exposed Mr. Khattak to a threat of torture and ill-treatment and undue psychological pressure, and of itself may amount to torture or other cruel, inhumane or degrading treatment or punishment, and such statements must be excluded from the admissible evidence. We recall that the right of the accused not to be compelled to testify against oneself or to confess guilt is guaranteed under article 14 of the ICCPR, and that it is prohibited to treat an accused person in a manner that may constitute torture or cruel, inhuman or degrading treatment or punishment in order to extract a confession, and that statements or confessions obtained in such manner must be excluded from the evidence, except if such material is used as evidence that torture or other treatment have occurred (CCPR/C/GC/32, para. 41).

We are further deeply concerned that Mr. Khattak's right to presumption of innocence appears to have been systematically jeopardized throughout the process, with his enforced disappearance and prolonged time of incommunicado pre-trial detention, as well as the manner in which the proceedings were conducted. Furthermore, we are concerned about the continuous undue delays, due to the apparent lack of cooperation by the military prosecuting authorities, and lack of transparency and independence of the appeal proceedings, the lack of official information and the denial of providing the necessary documentation and materials, further obstructing and violating his rights to fair trial and his right to have his conviction and sentence reviewed by a higher tribunal, in contradiction with article 14, paragraph 5 of the ICCPR. Furthermore, we are concerned that the undue delays of the appeal proceedings seem intentional to obstruct the right of Mr. Khattak to appeal in a civilian higher court, and to prolong his unlawful detention. We would like to recall also that imprisonment after a manifestly unfair trial is arbitrary, and violates article 9 of the ICCPR (CCPR/C/GC/35, paragraph 17).

We are also concerned that the authorities have failed to ensure that Mr. Khattak has access to a fair and public hearing by a competent, independent and impartial tribunal established by law, which is guaranteed under article 14(1) of the ICCPR. We reiterate that civilians should not be tried by military tribunals as such tribunals are inconsistent with the fair trial and due process standards, and effectively deny civilians their fundamental human rights protections. The Special Rapporteur on freedom of peaceful assembly and association has previously raised concerns that the trial and imprisonment of activists and protesters by military courts places them outside the protection of the civilian judiciary system and infringe on their basic rights, including due process and fair trial rights, legitimizes abuses against them and prevents them from obtaining remedy for human rights violations such as arbitrary detention, enforced disappearance, and torture (A/HRC/53/38). We would like to recall also the recent judgement by the Supreme Court of Pakistan declaring that the trials of civilians under the Army Act, 1952 are “*ultra vires* the Constitution and of no legal effect” and further declaring that any action or proceedings under the Army Act are and would be of no legal effect”<sup>3</sup> In this judgement, the Supreme Court of Pakistan observed that the process in a military court, among other serious shortcoming, was entirely inconsistent with fair trial and due process rights, and that there is no access to an independent right of appeal for cases tried by the military court as the right of appeal also lies to a court of appeals consisting of the Chief of Army Staff or one or more officers designated by him.

We are concerned that despite the reasonable grounds for believing that Mr. Khattak has been subjected to enforced disappearance and incommunicado detention, and allegations of torture and ill-treatment, there has been still no investigation and redress for these grave abuses. Despite the number of court hearings, including in the civilian justice system, concerning Mr. Khattak's detention by military authorities, there has been no consideration of his enforced disappearance and the circumstance of his unlawful arrest. We reiterate that enforced disappearance is one of the most serious violations of international human rights law and its prohibition, along with the corresponding obligation to investigate and prosecute those responsible, have attained the status of *jus cogens*. The prohibition of enforced

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<sup>3</sup> See Supreme Court of Pakistan Judgement , published on 09.01.2024, on Constitution Petition Nos.24, 25, 26, 27 & 28 and 30 of 2023.

disappearance is absolute and 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.

We are further concerned that the prolonged imprisonment of Mr. Khattak and the lack of access to fair trial and due process rights, as well as his previous enforced disappearance and incommunicado detention, have caused grave anxiety, and inflicted serious emotional, psychological and socio-economic tolls on Mr. Khattak's two daughters and the entire family.

In regard to the current prison conditions of Mr. Khattak, we are deeply concerned that he has not had appropriate access to health care and that he had been subjected to conditions detrimental to his health, in contravention with State's obligations under article 12 of the International Covenant on Economic, Social and Cultural Rights (ratified by Pakistan on 17 April 2008). The right to health is essential to ensure the right to life as protected under article 6 of the ICCPR, and States have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, including during detention and imprisonment, and States assume the responsibility to care for their lives and bodily integrity. (CCPR/C/GC/36, para. 25).

Finally, we are deeply concerned that the unlawful detention of Mr. Khattak and his harsh sentence and imprisonment, for the exercise of his legitimate rights as an activist and human rights defender and his right to freedom of expression, has had a chilling effect for civil society and journalists in Pakistan, especially those advocating individually or in association for the rights of forcibly disappeared persons and for Pashtun minority rights, and are engaged in investigating, monitoring and reporting on alleged violations, committed by the military and security forces. Hence, we are deeply concerned about the disproportionate impact on civil society's exercise of the rights to freedom of association and freedom of expression, which also constitute a violation of these rights.

We would like to recall that the enforced disappearance, detention and sentencing of Mr. Khattak are part of what appear to be a systematic targeting, including through the misuse of the legal system to harass, intimidate and silence activists working on Pashtun minority rights and on enforced disappearance, including by victims' associations, as previously raised by a number of Special Procedures mandate holders (AL PAK 4/2021). We further recall the observations by the Special Rapporteur on freedom of peaceful assembly and association, that criminalizing civil society activists for their legitimate work, through instrumentalizing harsh and vague security and anti-terrorism laws, has a stigmatizing effect against the activist, his family, community and the whole civil society sector as a broad effect, as it creates an environment of fear and intimidation thereby imposing undue restriction on the exercise of these fundamental freedoms (A/79/263). It further jeopardizes activists' right to access to justice, as activists have been mischaracterized as "criminals" instead of being provided with an effective remedy for the serious abuses they suffered as a result of this criminalization. We recall that the lack of access to justice for abuses against civil society is further restricting the right to freedom of association and is contrary to the States' obligation for ensuring an enabling environment for the effective enjoyment of these fundamental freedoms.

The above concerns strongly underline the unlawful and arbitrary nature of Mr. Khattak's detention from the beginning and throughout the process, in addition to violating numerous other fundamental rights.

We reiterate our call for Mr. Khattak to be immediately and unconditionally released, and to be provided with full and adequate reparation for all human rights violations he has been subjected to and the harm suffered due to the enforced disappearance and prolonged arbitrary and unlawful detention and violation of his fundamental rights and freedoms. Reparations should include compensation, restitution, rehabilitation, including restoring the dignity and rights of Mr. Khattak harmed due to his criminalization.

In view of the urgency of the matter, given the deteriorating health condition of Mr. Khattak due to the prolonged unlawful detention, we urge your Excellency's Government to immediately release him while the case is formally concluded, and to take all the necessary measures to prevent any irreparable damage to the life and personal integrity of Mr. Khattak, by ensuring also that he has immediate access to adequate and prompt medical care.

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 on the measures that have been taken to protect and prevent any irreparable damage to the life and physical and psychological integrity of Mr. Khattak, including immediate access to adequate health care, in light with State's duty of care to protect the lives of individuals deprived of their liberty.
3. Please provide a copy of the written judgement by the Field General Court Martial (FGCM) at Mangla, outlining the legal grounds and reasoning for convicting and sentencing Mr. Khattak, as a civilian, to 14 years "rigorous imprisonment", under the Pakistan Army Act 1953 and the Official Secrets Act of 1923. Please also provide further detailed information on the reasons why the trial of Mr. Khattak was not conducted before a civilian court.
4. Please explain how the charges and the sentence, apparently related to Mr. Khattak's human rights work and minority rights activism, are compatible with international human rights law and standards, including protecting and enabling the rights to freedom of expression

and of association, and the safety and security of human rights defenders.

5. Please provide information on the safeguards guaranteeing Mr. Khattak's access to fair trial, and how his trial as a civilian in the military court, the rejection of providing the trial materials and official charges to his defence lawyer and family, have been compatible with the right to fair trial and to a public hearing by a competent, independent and impartial tribunal established by law, in accordance to the international human rights norms and standards, and in particular articles 9 and 14 of the ICCPR.
6. Please provide information on the appeal proceedings currently conducted at the Appellate Court of FGCM, General Headquarters Rawalpindi, reviewing the lawfulness of Mr. Khattak' conviction and sentence, and please explain how the continuous delays of the appeal proceedings are justified and compatible with the right to have one's conviction and sentence reviewed by a higher tribunal as provided by international human rights law. Please explain also how the denial to provide access of Mr. Khattak's lawyer to a duly reasoned, written judgement of the trial court, to trial transcripts and to other relevant documents complies with the effective enjoyment of this right.
7. Please provide detailed information on what steps have been taken to ensure that the prison conditions of Mr. Khattak meet the international human rights standards enunciated in the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including the provision of adequate medical care without discrimination on the grounds of prisoner's legal status, and to be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation. Please indicate why Mr. Khattak has been denied the possibility to change his work in prison given his deteriorating medical condition.
8. Please provide detailed information about any investigations that have been conducted and the results if available, or if such investigations are planned, in order to provide prompt, adequate and effective remedy, reparations and to bring the perpetrators to account, including those who ordered the crimes, for the enforced disappearance, incommunicado detention and allegations of torture and ill-treatment to which Mr. Khattak had been subjected while in the military custody. Please explain why if such investigation has not been conducted yet.
9. Please provide information regarding any steps taken to ensure that human rights defenders, civil society, ethnic minority rights activists, political activists and journalists, including those vocal on issues of enforced disappearances in Pakistan, can carry out their legitimate work freely and have adequate protection against possible acts of intimidation, reprisals and violence, and that the perpetrators of such acts are effectively prosecuted. Please provide information on any

measures taken to ensure non-repetition of violations against civil society and human rights defenders, including for strengthening institutional and legal safeguards to protect them from criminalization, including by the military justice system and the misuse of anti-terrorism and security laws; and on the mechanisms that are in place to monitor and protect them from judicial harassment and reprisals.

10. Please provide detailed information on the existing safeguards in the legal system guaranteeing the protection against enforced disappearances; guaranteeing due process and prompt and effective investigation into enforced disappearances; how these safeguards are effectively implemented, and what are the mechanisms to monitor and control their application.
11. Please provide concrete information on the institutional and criminal justice measures taken to address and prevent the continuous trend of enforced disappearances and arbitrary detention with a view to end the ongoing impunity; to ensure independent and effective investigations and prosecutions of all reports of enforced disappearances of ethnic minority activists and human rights defenders and to ensure that those responsible at the higher level of the chain of command are held accountable and punished; and to provide full reparations to the victims and their families, including guarantees of non-repetition, restitution, compensation, satisfaction and rehabilitation considering the individual and communities' impact of these violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable damage to the life and personal integrity of Mr. Khattak, halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We further urge your Excellency's Government to ensure the protection of civil society, minority rights defenders and political activists from criminalization and stigmatization and to bring an end to these human rights violations, including by ensuring that anyone currently prosecuted or convicted by a military court due to the exercise of their fundamental freedoms is immediately and unconditionally released. While we regretfully note your Excellency's Government appeal filed in November 2023 against the Supreme Court's landmark decision of 23 October 2023 declaring the military court trials of civilians unconstitutional, we remind your Excellency's Government of your responsibility to ensure the protection of fundamental rights, including of fair trial rights and to ensure civil society are never prosecuted for their legitimate work. We further reiterate our calls for civilians currently in military custody and subjected to military trials, if not immediately released, to be transferred to civil courts, and cases involving civilians that have already been adjudicated under

military jurisdiction to be provided the opportunity for appeal in civil courts, to ensure their fundamental rights are fully guaranteed and respected.

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

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Gina Romero

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

Ganna Yudkivska

Vice-Chair on Communications of the Working Group on Arbitrary Detention

Gabriella Citroni

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

Irene Khan

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

Nicolas Levrat

Special Rapporteur on minority issues

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The facts alleged indicate to a number of violations of international human rights law, in particular the rights not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, the rights to life, not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, if the deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person, the right to recognition everywhere as a person before the law, the right to freedom of expression including the right to freedom to seek, receive and impart information, and the right to freedom of association, protected under articles 6, 7, 9, 10,14, 16 19 and 22, read alone and in conjunction with article 2(3), related to the right to be provided an effective remedy of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Pakistan on 23 June 2010.

#### *Freedom of association*

We refer to article 22 of the ICCPR which guarantees and protects the right of anyone to freedom of association with others. Under article 22, States have the obligation not to interfere with the exercise of this right, and any restrictions on this right must be prescribed by law, and be necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that “[t]he right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment.” (A/HRC/20/27, para. 65) The Special Rapporteur further reaffirmed that access to justice is an integral element of the protection of the rights to freedom of peaceful assembly and of association, and obstructed justice for violations related to the exercise of these rights undermines their essence (A/HRC/47/24.2). Further, the Special Rapporteur in his report on advancing accountability and ending impunity, found that broad and ambiguous security-related legislation have been misused and instrumentalized by States as tools to suppress and crack down on activists and protesters, and legitimize abuses by States. The Special Rapporteur has raised concerns about activists and protesters being imprisoned for long terms by military courts, following summary trials, who have been subjected to enforced disappearances, torture and other cruel, inhumane or degrading treatment or punishment, and prolonged arbitrary detention, without remedy. (A/HRC/53/38).

#### *Freedom of expression*

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart

information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. This right applies online as well as offline, and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (CCPR/C/GC/34, para. 11).

Additionally, the Human Rights Committee asserted that laws related to treason and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, should be crafted and applied in a manner that conforms to the strict requirements of article 19(3). It further noted that invoking such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information, is incompatible with article 19(3) (para. 30).

The Committee further states that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23). Recognizing how journalists and persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress” (para. 23).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35). The Human Rights Committee recalled that the relation between right and restriction and between norm and exception must not be reversed. In this regard, the Human Rights Committee stated that the restrictions must be “the least intrusive instrument among those which might achieve their protective function”. (CCPR/C/GC/34, para. 34).

Human Rights Council resolution 12/16 calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; and expression of opinion and dissent, including by persons belonging to minorities or

vulnerable groups.

Furthermore, the Human Rights Committee in its general comment No 32 related to fair trial, also stated that the way criminal proceedings are handled may affect the exercise and enjoyment of rights and guarantees of the Covenant unrelated to article 4, including by causing a chilling effect which unduly restricts the exercise of the right to freedom of expression (CCPR/C/GC/32, paragraph 63).

#### *Human rights defenders*

We would like to bring to your attention 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 draw attention to the following provisions of the UN Declaration on Human Rights Defenders:

- Article 6(b), which provides that everyone has the right, individually or in association with others to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.
- Article 9.1 and 9.2, which guarantees 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 and that everyone, whose rights or freedoms are allegedly violated, has the right to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with the law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.
- Article 12, 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 (articles 12.2 and 12.3).

#### *Arbitrary arrest and detention*

We refer to article 9 of the ICCPR, which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedures as are established by law. According

to the Human Rights Committee in its general comment No. 35 (CCPR/C/GC/35), (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression and freedom of association, is arbitrary. Furthermore, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination such as inter alia based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

In its general comment No. 35, the Human Rights Committee also stated that enforced disappearances in addition to violating numerous substantive and procedural provisions of the ICCPR, it also constitute a particularly aggravated form of arbitrary detention; and that the imprisonment after a manifestly unfair trial is arbitrary (paragraph 17).

Article 9 of the ICCPR also guarantees the right of any individual when arrested to be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him; and anyone arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power, and to be entitled to trial within a reasonable time or to release. According to the general comment No. 35, the right of persons deprived of liberty to be promptly informed of any charges against them applies also to military prosecutions or other special regimes directed at criminal punishment (para. 29). In its general comment No. 35, the Human Rights Committee also stated that “Extremely prolonged pretrial detention may also jeopardize the presumption of innocence under article 14, paragraph 2” and that “Persons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defence” (paragraph 37).

Furthermore, the Human Rights Committee in its general comment No. 35 stated that arbitrary detention by itself further violates other rights (paragraphs 55-56) – such as, extreme forms of arbitrary detention that are life-threatening violate the rights to personal liberty and personal security as well as the right to protection of life, in particular enforced disappearances; arbitrary detention creates risks of torture and ill-treatment; and prolonged incommunicado detention violates article 9 in addition to violating article 7 of the ICCPR.

#### *Enforced disappearance*

We would further like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance of 1992 (General Assembly resolution 47/133), which states that any act of enforced disappearance constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to

life. States are under an obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance, in particular to consider them a continuing offence and to establish civil liability.

The Declaration 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 an autonomous offence 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 or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

In its General Comment on the right to recognition as a person before the law in the context of enforced disappearance (A/HRC/19/58/Rev.1), the Working Group on Enforced or Involuntary Disappearances noted that the crime of enforced disappearance puts the detainee outside of the protection of the law, denies the person of legal existence and prevents the enjoyment of their rights, including due process rights and judicial safeguards, and other fundamental rights and freedoms. In this connection, in its General Comment on article 10 of the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance, the Working Group stipulated that in no circumstances a State interest may be invoked to justify or legitimize secret or unofficial places of detention (E/CN.4/1997/34 paras. 23-24).

Moreover, in a study on enforced disappearances and economic, social and cultural rights, the Working Group on Enforced or Involuntary Disappearances noted that due to the collective character of certain economic, social and cultural rights, enforced disappearances of human rights activists violate their economic, social and cultural rights, the rights of others engaged in related activities, and of the larger community of people who relied on the disappeared person to represent and fight for their rights (A/HRC/30/38/Add.5 paras. 34-40).

In its country visit 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 (para. 91). Moreover, in light of the documented pattern of denials by state authorities to file First Information Reports (FIR) in relation to alleged enforced disappearances, the Working Group underlined that there should be effective

complaints mechanisms and that a program of integral reparation should be set up for all victims of enforced disappearances (paras. 43 and 99). 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 (para. 26).

Finally, we would also like to remind your Excellency's Government that that the absolute prohibition of enforced disappearances and the corresponding obligation to investigate them have attained the status of jus cogens.

We further refer to the Human Rights Committee, general comment No. 36, which stressed that enforced disappearance also constitutes a unique and integrated series of acts and omissions representing a grave threat to life, and results in a violation of the right to life. In its latest concluding observations on Pakistan, the Human Rights Committee requested Pakistan to “(a) Enact legislation to ensure that all forms of enforced disappearances, including those of short duration, are clearly defined in criminal law and that the associated penalties are commensurate with the gravity of the offence, in accordance with international standards, and ensure that the legislative initiatives on enforced disappearances are developed through meaningful informed participation of civil society, including families of the victims; (b) Review the Actions (in aid of Civil Power) Regulation, 2011 with a view to repealing it or bringing it into conformity with international standards and ensure that no one is held in secret or incommunicado detention; (c) Take all measures necessary to combat impunity and ensure that all allegations and reports of enforced disappearances, extrajudicial and summary executions are promptly, impartially and thoroughly investigated by ordinary courts, and that perpetrators are prosecuted and, if found guilty, sanctioned with penalties commensurate with the gravity of the offences; (d) Discover the fate and whereabouts of disappeared persons and, in the event of death, identify them and return their remains; ensure that families are regularly informed of the progress and results of investigations, that they are provided with the official administrative documents, and receive full and adequate reparations; (e) Assess the mandate of the Commission of Inquiry on Enforced Disappearances and the impact of its work, with a view to ensuring an institution that is fully independent, impartial, transparent and effective in advancing access to justice, remedies and reparations for the victims and their families, and in preventing and combatting impunity, and ensure meaningful consultations and informed participation of civil society in this process” (CCPR/C/PAK/CO/2, para. 25).

#### *The right to a fair trial and due process*

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law. As emphasised by the Human Rights Committee in its general comment No. 32, this requirement is an absolute right that is not subject to any exception. It further states that the requirement of independence of the tribunal refers, in particular, to the procedure and qualifications for the appointment of judges, and the actual independence of the

judiciary from political interference by the executive branch and legislature. (CCPR/C/GC/32, paragraph 19).

Article 14(3) of the ICCPR also guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, to be tried without undue delay, to defend themselves through legal assistance of their own choosing, and not to be compelled to testify against themselves or to confess guilt. The Human Rights Committee in its general comment No. 32 also emphasised that all trials in criminal matters must be conducted orally and publicly (paragraph 28); and the access to “adequate facilities” necessary to prepare an adequate defence, must include access to documents and other evidence and all materials that the prosecution plans to offer in court against the accused (paragraph 33). The Human Rights Committee also emphasised that ill-treating person against whom criminal charges are brought and forcing them to make or sign, under duress, a confession admitting guilt, violates also the prohibition of torture and inhuman, cruel or degrading treatment under article 7 in addition to article 14(3)(g) of the ICCPR (CCPR/C/GC/32, paragraph 60). The Human Rights Committee stated in its general comment No. 32 that the provisions of article 14 apply to all courts and tribunals whether ordinary or specialized, civilian or military (paragraph 22).

Article 14(5) of the ICCPR also provides that anyone convicted of a crime shall have the right to have their conviction and sentence reviewed by a higher tribunal according to law. As clarified by the Human Rights Committee, this includes the obligation to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence; and that a review limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the ICCPR (CCPR/C/GC/32, paragraph 48). The Human Rights Committee also emphasised that for this right to be exercised effectively the convicted person should have access to a duly reasoned, written judgement of the trial court, and, also to other documents, such as trial transcripts. It further stated that the effectiveness of this right is impaired, and article 14, paragraph 5 violated, if the review by the higher instance court is unduly delayed (CCPR/C/GC/32, paragraph 49).

With regards to the trial of civilians in military courts, we would like to refer your Excellency’s Government to the observations by the Human Rights Committee and the Committee against Torture that trials of civilians by military or special courts raise serious problems regarding the equitable, impartial and independent administration of justice (Human Rights Committee, general comment No. 36 (2018). The Committee against Torture (CAT) in particular raised concerns in its Concluding observations on the initial report of Pakistan in 2017, with regards to the trial of civilians in the Pakistan military courts in view of the lack of independence of military court judges, which are within the military hierarchy and about the practices of such courts, including the holding of closed trials. (CAT/C/PAK/CO/1, paragraph 12). In the same report, CAT Committee urged Pakistan to “Put an end to the use of military courts for terrorism-related prosecutions, transfer criminal cases brought against civilians from military courts to civil courts and provide the opportunity for appeal in civil courts of cases involving civilians that have already been adjudicated under military jurisdiction;” The Committee also urged the Pakistan

authorities to ensure that all persons deprived of their liberty have access to legal safeguards against torture, including prompt presentation before a magistrate and the possibility of a habeas petition, and to ensure that confessions obtained without the presence of a magistrate are inadmissible as evidence; (CAT/C/PAK/CO/1, paragraph 13(a)).

*Freedom from torture or cruel, inhuman or degrading treatment or punishment*

We also wish to refer your Excellency's Government to articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Pakistan acceded to on 23 June 2010, and which stipulate that no exceptional circumstances, including internal political instability or any other public emergency, may be invoked as a justification of torture. It further states that each State Party shall undertake to prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official. Furthermore, we wish to refer to articles 12 and 13 of CAT, which state that when there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, State parties will conduct a prompt and impartial investigation, and ensure that the same is guaranteed for any individual who alleges he has been subjected to torture. Steps shall also be taken to ensure that the complainant and witnesses are protected against all ill treatment or intimidation as a consequence of his complaint or any evidence given.

*Conditions of detention*

We would also like to refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules"). It provides that "All prisoners shall be treated with respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification." (rule 1). It further provides that these rules should be applied impartially, without any discrimination including on the grounds of political or other opinion, national or social origin; and requires prison administrations to take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings (rule 2). Rule 24 of the Mandela Rules reaffirms that the provision of health care for prisoners is a State responsibility, and that "Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status" (rule 24). Further, rule 97(1) states that "Prison labour must not be of an afflictive nature", and that "Prisoners shall not be held in slavery or servitude". According to rule 59, prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation. Rule 61(1) emphasizes that prisoners should be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice, without delay, interception or censorship and in full confidentiality; and that such consultations should not be within hearing of prison staff.

*Prompt, independent and effective investigations*

Finally, we would also like to remind your Excellency's Government of the obligations of States to ensure prompt, thorough and impartial investigation when there are allegations of human rights violations, and to ensure effective remedy, and any person claiming such a remedy shall have his right determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, in line with article 2(3) of the ICCPR.

The Special Rapporteur on the rights to freedom of peaceful assembly and association reasserted that in line with its obligations, States should initiate prompt, independent and effective investigations whenever serious allegations of serious human rights violations of the rights of activists and in the context of assemblies are reported, in accordance with the necessary standards and to ensure that such investigations examine decisions, orders and omissions, whether of an individual or structural nature, up the entire chain of command related to the alleged violation. (A/HRC/53/38, paragraph 82) The Special Rapporteur further reiterated that in addition to judicial prosecutions and administrative sanctions of perpetrators, full reparations should be provided to repair the harm to the victims and ensure non-repetition.

These should include compensation, restitution, rehabilitation, satisfaction, including restoring the dignity and rights of victims, a public apology establishing the truth and institutional reforms and changes to relevant laws and practices, in line with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The Special Rapporteur emphasized that for achieving justice for serious human rights violations against civil society activists, it is important to have an official declaration or a judicial decision restoring the dignity, reputation and rights of the victims and of persons closely connected with them. (A/HRC/53/38).

Regarding violations concerning unlawful detention, article 9 (paragraphs 4 and 5) further guarantee the right to remedy of anyone detained to take proceedings before a court to decide without delay on the lawfulness of his detention and order his release if the detention is not lawful; and provides that victims of unlawful arrest or detention should be provided with compensation, including financial compensation for the harm (see also CCPR/C/GC/35, paragraph 49). In its general comment No. 35, the Human Rights Committee stated that when the unlawfulness of the arrest or detention arises from the violation of other human rights, such as freedom of expression, the State party may have further obligations to provide compensation or other reparation in relation to those other violations, as required by article 2, paragraph 3, of the ICCPR (CCPR/C/GC/35, paragraph 52).

The Convention Against Torture, stipulates that States should ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, and that the victim obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible (CAT, articles 12 and 14).

With regards to the crime of enforced disappearance, the Declaration on the Protection of all Persons from Enforced Disappearance further stipulates the obligation on States “whenever there are reasonable grounds to believe that an enforced disappearance has been committed” to promptly refer the matter to a competent and independent State authority for a prompt, thorough and impartial investigation, even if there has been no formal complaint, and that “no measure shall be taken to curtail or impede the investigation” (article 13). The Declaration further established the obligations to protect against ill-treatment, intimidation or reprisal all involved in the investigation (article 13). 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 this respect we also refer to the report of the Working Group on Enforced or Involuntary Disappearances on the issue of reparations for victims of enforced disappearance (A/HRC/22/45, paras. 46-68). 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).

The Working Group on Enforced or Involuntary Disappearances asserted that for ensuring the effective investigation of enforced disappearances, considering the distinctive components of an enforced disappearance and the participation of State agents and attempts to conceal information and cover up the crime, any official investigation should be undertaken with the requisite autonomy and independence (A/HRC/45/13/Add.3 para. 95). The Working Group further emphasized that the obligation to provide reparation to victims of enforced disappearances in addition to monetary compensation for damages caused to victims, also includes medical and psychological care and rehabilitation for any form of physical or mental damage, as well as legal and social rehabilitation. Compensation should be adequate and proportionate to the gravity of the human rights violation—such as the period of disappearance or the conditions of detention—and to the suffering of the victim and the family, according to the report (A/HRC/22/45). Further, the Working Group, stated that under the Declaration, States have an obligation to prevent and eradicate enforced disappearances and to provide reparations to all victims of enforced disappearances, taking into account the intrinsic connection between enforced disappearances and economic, social and cultural rights (A/HRC/30/38/Add.5).