

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on extrajudicial, summary or arbitrary executions

Ref.: AL KEN 5/2024
(Please use this reference in your reply)

3 January 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 52/9, 53/4 and 54/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the lack of accountability and justice for the killing of Pakistani journalist Arshad Sharif, in Kenya, two years after his death.**

Mr. **Arshad Sharif** was an investigative journalist, writer and television news presenter in Pakistan. He was the host of the program Power Play on ARY News, and was the News Director for AAJ News. Prior to joining AAJ News, Mr. Arshad Sharif was the Director of News at Dunya News and hosted the program Kyun. Mr. Arshad Sharif's work focused on denouncing and exposing alleged corruption scandals of the previous political administration in Pakistan.

We draw attention of your Excellency's Government to the previous allegation letter on the killing of Mr. Sharif sent by several Special Procedures mandate-holders on 5 October 2023 ([AL KEN 2/2023](#)). We deeply regret that your Excellency's Government has not provided a response to this letter, and we encourage you to do so.

Following the ruling of the High Court of Kenya in Kajiado on 8 July 2024, we are writing again to urge your Excellency's Government to take immediate measures to ensure the full accountability and bring to justice those responsible for the killing of Mr. Sharif.

According to the information received:

On 20 October 2022, journalist Arshad Sharif arrived in Kenya, having fled his home country Pakistan after receiving several alleged death threats and having a criminal case opened against him in apparent retribution for his journalistic work.

On the night of 23 October 2022, while Mr. Sharif was travelling to Nairobi from Kwenia farm (approximately 30 kilometers from Nairobi) with another individual in a Toyota Land Cruiser, he was shot in the head and killed.

The police issued contradictory statements regarding the shooting. According to police reports, the driver of the Land Cruiser travelling with Mr. Sharif disobeyed orders to stop at the roadblock and shot at the General Service Unit (GSU) officials, after which Mr. Sharif was shot dead by Kenyan police. However, according to a statement by the Kenyan authorities, the shooting may have been the result of a mistaken identity while attempting to track a stolen Mercedes SUV.

On 24 October 2022, the Kenyan Independent Policing Oversight Authority (IPOA) announced an investigation into Mr. Sharif's death. Sources claim that the IPOA completed the investigation into the killing of Mr. Sharif in June 2023. Since then, the investigation has been closed and no report has been published.

On 25 October 2022, the Prime Minister of Pakistan issued a special Fact-Finding Team (FFT) to proceed to Kenya to ascertain the facts of the case, in response to public outrage in Pakistan concerning the killing of Mr. Sharif. On 6 December 2022, the FFT published its findings and concluded that Mr. Arshad Sharif's death was the result of a planned and targeted assassination by transnational actors and not a case of mistaken identity.

On 5 December 2022, the Supreme Court of Pakistan took *suo moto* notice of the case of Mr. Sharif's killing. The Government of Pakistan constituted a Special Joint Investigation Team (SJIT), at the direction of the Supreme Court. The investigation was reported to have been impeded due to the lack of cooperation from the Governments of Kenya and the United Arab Emirates, which Mr. Sharif visited prior to arriving in Kenya.

On 14 January 2023, a request for Mutual Legal Assistance (MLA) to the Governments of Kenya and the United Arab Emirates were issued twice, though no responses were received. It is alleged that SJIT was denied permission to interview witnesses and conduct a thorough inspection of the crime scene in Kenya.

According to the information we have received the Kenyan Government never issued an apology nor tried to reach out to the family.

On 18 October 2023, the relatives of Mr. Sharif and two journalists filed a civil complaint before the High Court of Kenya in Kajiado against the GSU over the arbitrary and unlawful killing of Mr. Sharif and the consequent failure to investigate by the Kenyan Authorities.

On 8 July 2024, the High Court of Kenya in Kajiado ruled that the use of lethal force in Mr. Sharif's death was "unlawful and unconstitutional" and labelled his killing as "arbitrary" and "un-proportionate". The ruling stated that Kenyan authorities had acted unlawfully and violated Sharif's right to life and condemned the Kenyan State to paying 10 million shillings in compensation to Sharif's family. Additionally, the High Court ruled that Kenya's director of public prosecutions and IPOA had violated Mr. Sharif's rights by failing to prosecute the two police officers involved. The court

ordered both bodies to “conclude investigating, [and] take appropriate action including disciplinary action and prosecution of the police officers who shot and killed Arshad Sharif at Kajiado County Kenya on 23rd October 2022 if found culpable”.

Until today, no arrests have been made, and no charges have been filed by the Office of the Director of Public Prosecutions.

The Independent Policing Oversight Authority (IPOA) has reportedly appealed the judgement and filed an application to stay the High Court decision. The hearings are expected to take place in the first half of 2025.

Without wishing to prejudge the accuracy of the allegations above, we express our deep concern regarding the lack of accountability and justice after two years of Mr. Sharif’s killing and despite a ruling of the Kenyan High Court. The prolonged delay, now exceeding two years, in the investigations without bringing those responsible for the killing of Mr. Arshad Sharif to justice constitutes a breach of Kenya’s obligation to investigate this killing in a prompt, effective, impartial, independent and exhaustive manner. The failure to prosecute is particularly disturbing given the clear findings of the Kenyan High Court.

We recall that the right to life is a supreme *jus cogens* norm, applicable to all persons at all times and that cannot be derogated under any circumstance, in light of article 4(2) of the ICCPR. Further, we would like to draw your Excellency’s Government’s attention to the fact that, according to international law, State authorities have an obligation under international human rights law to prevent violations of the right to life and to conduct impartial and effective investigations on any violation of such kind. Allegations concerning an attack against civilians must be investigated, and where there is sufficient evidence, persons responsible for the commission of the offence or ordering of the offence must be prosecuted. Further, these investigations of potentially unlawful.

We note with concern and regret the inconsistencies that have developed throughout the investigations, namely the results of the postmortem investigations and the circumstances of Mr. Sharif’s killing as well as the lack of response to the requests for Mutual Legal Assistance submitted twice by the Government of Pakistan in January 2023. We express our serious concern over the inaction of the Kenyan Office of the Director of Public Prosecutions, even after the ruling of the High Court of Kenya in Kajiado. This failure to engage with the Government of Pakistan or to act on the decision of its own national court raises serious questions regarding the commitment of the Kenyan authorities to ensuring a thorough and transparent investigation into the matter. We urge your Excellency’s Government to cooperate with other transnational actors in the effective investigation into the killing of Mr. Sharif without further delay.

We emphasize that full satisfaction in this case must include a prompt and thorough investigation by the government to verify the facts and publicly disclose the truth. This should involve an accurate accounting of the legal violations committed, sanctions against those responsible, and a comprehensive effort to ensure accountability for those involved in the planning and execution of this crime. It is

essential that the full investigation and all steps taken to uncover the truth and provide justice for the victim and his family adhere to the relevant international standards, including those articulated in [the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions \(Minnesota Protocol \(2016\)\)](#). We remind that the right to life is a *jus cogens* norm, also enshrined in international customary law, from which no derogation is permitted.

Under international law, an investigation and a proceeding into such a matter must be prompt, effective, thorough, independent, impartial, and transparent. The preliminary investigation conducted by the Kenyan Independent Policing Oversight Authority into Mr. Sharif's death appears to fall short of these fundamental requirements. We also recall that Mr. Sharif's family has the right to be duly informed, consulted, and represented throughout the entire investigation. We would also like to point that the ruling of the High Court of Kenya in Kajiado on the killing of Mr. Sharif only took place as a result of legal action initiated by his family.

In line with the recent landmark ruling of the High Court of Kenya in Kajiado, we call on the Kenyan authorities to conclude the investigation into the killing of Mr. Sharif, in accordance with human rights law and standards, including the Minnesota Protocol, and to take all necessary measures to ensure full accountability for all those responsible or involved in his killing.

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 clarify the reasons for the delay of Your Excellency's Government, now exceeding two years, in bringing those responsible for the killing of Mr. Arshad Sharif to justice.
3. Please indicate the measures taken to conduct a prompt and exhaustive investigation into Mr. Sharif's killing, in compliance with international standards, including the *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (the Minnesota Protocol). If such investigation, after two years from the killing of Mr. Sharif, is not underway, please explain the reason(s). If the investigation has concluded, please indicate its results in detail, including the identification of the alleged perpetrator(s). If the alleged perpetrator(s) has or have been identified, please also indicate if any criminal sanctions or disciplinary measures

have been imposed on them.

4. Please indicate the measures taken to ensure that those considered allegedly responsible for the killing following the results of the investigation will be promptly brought to justice, as well as to ensure full accountability for all those involved in Mr. Sharif's killing and appropriate reparations for the family.
5. Please indicate the reason(s) for the lack of response to the requests for Mutual Legal Assistance in the investigation of the killing of Mr. Arshad Sharif, submitted twice by the Government of Pakistan in January 2023.
6. Please indicate what actions, if any, has the Kenyan government taken in response to the judgment of the Kenyan High Court in this case. Please indicate also the steps taken to ensure that justice in this case is not delayed, including by extending the length of the judicial process through appeals.

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

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

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

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

Irene Khan

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

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. In particular, the facts alleged, if proved correct, appear to be in contravention with articles 6 and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kenya on 1 May 1972.

Article 6(1) of the ICCPR guarantees the right of every individual to life and provides that this right shall be protected by law and that no one shall be arbitrarily deprived of his life. In general comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right and peremptory norm (*jus cogens*) from which no derogation is permitted even in time of public emergency that threatens the life of the nation (CCPR/C/21/Rev.1/Add.6). The UN Human Rights Committee has further stressed the need for proper precautions to be taken, for limitation of the use of force to the degree strictly necessary and for investigations to be undertaken in the case of suspicious deaths in order to ensure that a loss of life is not "arbitrary" (See Human Rights Committee, *Camargo v. Colombia* (ibid., para. 939)).

We recall that the right to life is a supreme norm of *jus cogens* from which no derogation is permitted under any circumstances, according to article 4(2) of the ICCPR. In this regard, States parties have a duty to refrain from engaging in conduct resulting in arbitrary deprivation of life and must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State, establishing an appropriate framework of laws, institutions and procedures for that purpose. The Human Rights Committee in its general comment No. 36 recalled that the State's duty to protect applies to all persons within its jurisdiction, that is, all persons whose enjoyment of the right to life depends on its power or effective control (CCPR/C/GC/36).

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, protects the freedom of the press as one of its core elements 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). The Committee states that article 19 also covers the right of a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion and a corresponding right of the public to receive media output.

The Committee further asserts 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, including judges and lawyers, 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).

Attacks on journalism are fundamentally at odds with protection of freedom of expression and access to information. In this connection, the Human Rights Committee in general comment No. 34 has also held that under no circumstances “can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.”

I would like to remind Your Excellency's Government of the duty of States to investigate and punish serious human rights violations, as established by the Human Rights Committee in its general comment No. 31, which asserts that failure to take the necessary measures to ensure the investigation and prosecution of such violations may in itself constitute a breach of human rights treaties (CCPR/C/21/Rev.1/Add.13, paras. 15-18). Impunity for such human rights violations can be an essential element contributing to their repetition.

Furthermore, we would like to draw your attention to relevant international principles and norms governing the use of force by law enforcement authorities. Under international law, any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. Moreover, the Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide 8 sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials further restrict the use of firearms. According to principle 9, firearms may only be used in self-defence or defence of others against the imminent threat of death

or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger, and only when less extreme measures are insufficient to achieve these objectives. Principle 9 also stipulates that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. We further recall principle 8, recalling that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

We would also like to recall that “[t]he principles of necessity and proportionality apply to the use of all force, including potentially lethal force. We would also like to draw the attention of your Excellency's Government to principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which provides that, “[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms”.

We emphasize the duty of all States to investigate, prosecute, and punish all violations of the right to life. In general comment No. 31, the Human Rights Committee observed that there is a positive obligation on State Parties to ensure protection of Covenant rights of individuals against violations by their own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13). Similarly, Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989, in particular principle 9, recall that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. We further refer to paragraph 25 of 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)). The Protocol includes guidance on all stages of the investigation process and has detailed guidelines on crime-scene investigation, interviews, excavation of graves, autopsy and analysis of skeletal remains. In this connection, we stress that forensic investigations contribute to combating impunity by providing the evidentiary basis on which prosecutions can successfully be brought against persons responsible for grave violations of human rights law (E/CN.4/2003/135).