

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 2/2023

(Please use this reference in your reply)

5 October 2023

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 and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 52/9 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the killing of Pakistani journalist, Mr. Arshad Sharif, in Kenya. We wish to raise concerns regarding the premature closure of the investigation into said killing and the lack of cooperation during the investigative process on the part of the Kenyan authorities.**

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.

According to the information received:

On 12 July 2022, Mr. Arshad Sharif wrote a letter to the Chief Justice of Pakistan (CJP) and the President of Pakistan concerning alleged death threats against him and his colleagues. The death threats are believed to be in connection with his vocal support of former Prime Minister Mr. Imran Khan and his critique of the Pakistani military.

On 8 August 2022, ARY News aired an interview between Mr. Arshad Sharif and a close aide of former Prime Minister Mr. Imran Khan, during which he made comments which the authorities deemed offensive. On 9 August 2022, ARY News was ordered to be taken off air by the Pakistan Electronic Media Regulatory Authority (PEMRA) for airing "false, hateful and seditious content".

On 10 August 2022, a criminal case was registered against Mr. Arshad Sharif and his colleagues alleging "sedition", "abetting mutiny" and "conspiracy". The accusations are allegedly in connection with the interview aired on ARY News.

On 10 August 2022, Mr. Arshad Sharif fled Pakistan to Dubai due to fears of his arrest. On 18 August 2022, a United Arab Emirates official from the Ministry of Interior reportedly told Mr. Arshad Sharif that he was required to

leave the country within 24 hours, or he would be handed over to the Pakistan authorities under the Extradition Treaty 2004. Mr. Arshad Sharif left Dubai on 20 August 2022.

On 20 August 2022, Mr. Arshad Sharif arrived in Nairobi, Kenya. He continued to carry out his work on YouTube in both Dubai and Nairobi, independent of ARY News, exposing alleged corruption scandals of the previous political administration in Pakistan.

On 23 October 2022, Mr. Arshad Sharif was travelling to Nairobi from Kwenia farm (approximately 30 kilometers from Nairobi) with another individual in a Toyota Land Cruiser on an unpaved road.

According to police reports, at approx. 9.30 p.m., four General Services Unit (GSU) officials mounted a roadblock in response to reports of a Mercedes SUV that was reportedly stolen from Pangani police station in Nairobi, almost 100 kilometers away. According to the Police reports, the GSU training camp in Magadi (neighboring Kwenia farm area), was alerted to this by a Sergeant at the Pangani police station.

According to police reports, the driver of the Land Cruiser travelling with Mr. Arshad Sharif disobeyed orders to stop at the roadblock and shot at the GSU officials, after which Mr. Arshad 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 the stolen Mercedes SUV.

It is alleged that a Pakistan Army Major General was in contact with the brother of the individual travelling with Mr. Arshad Sharif. There are reports that the Major General whose identity has been withheld from this communication had previously sent a Pakistan Army Brigadier to Mr. Arshad Sharif's home prior to fleeing Pakistan, and threatened him to cease his work exposing alleged corruption scandals of the previous political administration in Pakistan.

Mr. Arshad Sharif's body was returned to Pakistan on 25 October 2022. The forensic investigation conducted in Pakistan confirmed injuries to both of Mr. Arshad Sharif's hands, as well as two broken ribs. The postmortem report in Pakistan identified a total of 12 injuries on Mr. Arshad Sharif's body, whereas the report of Kenya identified only two injuries pertaining to gunshot wounds. The doctor who conducted the postmortem investigation in Kenya has not verified whether Mr. Arshad Sharif was subjected to physical attacks before he was shot, and the inconsistencies in the postmortem investigations persist.

On 24 October 2022, the Kenyan Independent Police Oversight Authority (IPOA) announced an investigation into Mr. Arshad Sharif's death. Sources claim that the IPOA had completed the investigation into the killing of Mr. Arshad Sharif over three months ago, and that the investigation has since been closed, although no report has been published. The Director of Public Prosecutions in Kenya assured that his office will fully co-operate and monitor the entire process once the file is submitted to his office, although this has not

happened to date.

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. Arshad 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, thus, is not a case of mistaken identity.

On 5 December 2022, the Supreme Court of Pakistan took suo moto notice of the case of Mr. Arshad Sharif's killing. The Government of Pakistan constituted a Special Joint Investigation Team (SJIT), at the direction of the Supreme Court. The progress of the investigation has reportedly been stalled, due to the United Arab Emirates and Kenyan Governments providing no assistance. The SJIT was allegedly not permitted to examine witnesses or inspect the crime scene in Kenya.

On 4 January 2023, a request for Mutual Legal Assistance (MLA) to the Governments of the United Arab Emirates and Kenya were issued twice, though no responses were received.

Without prejudging the accuracy of the above information, we wish to express our deep concerns regarding the killing of investigative journalist, Mr. Arshad Sharif. The above allegations raise serious concerns about the actions of the Kenyan General Services Unit and their disregard for the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the Code of Conduct for Law Enforcement Officials. As principle 9 of the Basic Principles make clear, law enforcement officials must apply non-violent means before resorting to the use of force and firearms, and intentional lethal use of firearms is specifically prohibited except when it is "strictly unavoidable in order to protect life". The intentional lethal use of firearms against Mr. Arshad Sharif does not appear to meet this strict criterion and thus may amount to arbitrary killing, prohibited under international law. We remind that the right to life is a *jus cogens* norm, also enshrined in international customary law, from which no derogation is permitted.

The alleged facts described above indicate a prima facie violation of the right of every individual to life and not to be arbitrarily deprived of their life, as set forth in article 6 of the International Covenant on Civil and Political Rights (ICCPR).

Mr. Arshad Sharif had reportedly received death threats prior to his death, as well as being implicated in 16 criminal cases, in connection with his work as an investigative journalist denouncing alleged corruption scandals of the previous political administration in Pakistan. Such political expression is permissible speech under article 19 of the ICCPR, as explained in the below Annex. Kenya has the responsibility to protect right to life of all human beings, regardless of the citizenship of the persons concerned, as explained in the below Annex, which your Excellency's Government did not fulfil in the case of Mr. Arshad Sharif. We urge your Excellency's Government to ensure the safety of all journalists in its jurisdiction, and ultimately protect the right to freedom of opinion and expression.

We are also deeply concerned by the lack of a full, transnational, and cooperative investigation into the killing of Mr. Arshad Sharif, in accordance with human rights law and standards. We are further concerned by the inconsistencies that have developed throughout the investigations, namely the results of the postmortem investigations and the motive for the killing of Mr. Arshad Sharif. We urge your Excellency's Government to cooperate with other transnational actors in the effective investigation into the killing of Mr. Arshad Sharif, particularly with the Pakistani Government's efforts to initiate a cooperative investigation. Pursuant to paragraph 16 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 Potentially Unlawful Death (2016)), a State's duty to investigate any potential unlawful death is an essential part of upholding the right to life and extends to "all cases where the State has caused a death or where it is alleged or suspected that the State caused a death". International law requires that the investigation be prompt, effective and thorough, independent and impartial, and transparent, and the preliminary investigation into Mr. Arshad Sharif's death by the Kenyan IPOA seems to satisfy none of these elements. The rights of the family, including to be duly informed, consulted and be represented in the investigation should be respected. Furthermore, the lack of a full investigation into the killing of Mr. Arshad Sharif signals an environment of impunity for violence against journalists which raises serious concerns in relation to the promotion and protection of the right to freedom of opinion and expression, including press freedom.

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 full details of the initial investigation by the Kenyan IPOA into the killing of Mr. Arshad Sharif on 23 October 2022, 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.
3. Please indicate what action is underway to conduct a full investigation into Mr. Arshad Sharif's killing and ensuring accountability, and any step that will be undertaken 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 on the Investigation of a Potentially Unlawful Death (2016)). If such investigation is not underway, please explain why.

4. Please indicate administrative, judicial or other mechanisms through which Mr. Arshad Sharif's family may seek remedies for their loss and harms suffered, and whether and what remedies have been provided to them in this case.
5. Please provide information about measures taken to ensure that journalists and media workers in Kenya can carry out their professional activities in line with international human rights standards and in a safe and enabling environment without fear of harassment, criminalisation, or acts of intimidation of any kind, including threats to their life.

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

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

Please be informed that a similar letter has also been sent to the Government of the Islamic Republic of Pakistan, and a copy of the present letter has also been sent to the Government of the United Arab Emirates.

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 would like to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this right in territories under their control regardless of the citizenship of the persons concerned (E/CN 4/2003/3, para. 55).

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 inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism'. Further, the Human Rights Committee made clear that "It is not compatible with article 19 paragraph 3, for instance, to invoke 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". Article 19 requires the States to guarantee the right to freedom of expression (Id.). It is the States' duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23). In our view such attacks also include the use of the legal and judicial system to instigate and prolong frivolous charges against journalists.

In this respect, we would like to refer to the Human Rights Council resolution 45/18 on safety of journalists adopted on 6 October 2020, in which the Council expressed "deep concerns about all attempts to silence journalists and media workers, including by legislation that can be used to criminalize journalism, by the misuse of overbroad or vague laws to repress legitimate expression, including defamation and libel laws, laws on misinformation and disinformation or counter-terrorism and counter extremism legislation, when not in conformity with international human rights standards, and by business entities and individuals using

strategic lawsuits against public participation to exercise pressure on journalists and stop them from critical and/or investigative reporting”. The resolution also recognised that the development of national legal frameworks that are consistent with States’ international human rights obligations are an essential condition for a safe and enabling environment for journalists.

Attacks on journalism are fundamentally at odds with protection of freedom of expression and access to information. Governments have a responsibility not only to respect journalism but also to ensure that journalists and their sources have protection through strong laws, prosecutions of perpetrators and ample security where necessary (A/HRC/71/373 para. 35).

In this connection, the Human Rights Committee in general comment 34 has held that “under any circumstance, 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. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. (...) All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted (...)”. Furthermore, in her report A/HRC/50/29, the Special Rapporteur for the right to freedom of opinion and expression expressed her concern about the criminalization of journalists including through laws that prohibit the criticism of state institutions or officials, negatively impacting media freedom and damaging democratic discourse and public participation.

By virtue of their position as public figures, and the relevance of their conduct, work and actions to the public interest, it is well established under international human rights law that public figures in the political domain are subject legitimately to public scrutiny and criticism of their conduct, including by journalists. Furthermore, as noted by the Human Rights Committee in its general comment 34 on the interpretation of article 19 of the International Covenant on Civil and Political Rights, “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.”

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

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 would also like to remind your Excellency's Government of the duty 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).

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of jus cogens, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and article 7 of the International Covenant on Civil and Political Rights (ICCPR). In this respect we note that Human Rights Council Resolution 16/23, paragraph 7(b), urges States to hold

responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed”.