

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 PAK 7/2023

(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 death threats and legal action against Pakistani journalist, Mr. Arshad Sharif, resulting in his killing in Kenya.**

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:

After the change of government in Pakistan in April 2022, 16 First Information Reports (FIRs) were registered against Mr. Arshad Sharif under sedition and treason charges. The FIRs are reportedly in connection with his reporting of the alleged corruption of the ruling party and his criticism of state institutions.

Between 19 and 20 May 2022, several criminal cases were registered against Mr. Arshad Sharif, after he allegedly spoke to another journalist during which he said that the military should have no role in politics. A total of five FIRs were registered in connection with these cases.

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. No action was taken in response to the letter. 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. He was reportedly receiving threats via phone calls and unknown individuals in plain clothes were often stationed outside his home.

On 5 August, the Counter-Terrorism Department (CTD) of Khyber Pakhtunkhwa Province issued a threat alert that Mr. Arshad Sharif's life was in danger.

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 17 August 2022, the Pakistan Army Major General visited the United Arab Emirates. 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, reporting on alleged corruption scandals of the previous political administration in Pakistan.

In September 2022, the Pakistani Inter-Services Intelligence (ISI) was reportedly in touch with Mr. Arshad Sharif, urging him to stop exposing alleged corruption cases and the role of the military establishment in protecting allegedly corrupt political figures.

On 23 October 2022, Mr. Arshad Sharif was travelling to Nairobi from Kwenia farm (approximately 30 kilometres from Nairobi) with another individual in a Toyota Land Cruiser on an unpaved road. According to police reports, the driver of the Land Cruiser travelling with Mr. Arshad Sharif disobeyed orders to stop at a roadblock and shot at four Kenyan General Services Unit (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 a 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 before he was killed. 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 post mortem 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 post mortem investigation in Kenya has not verified whether Mr. Arshad Sharif was subjected to physical attacks before he was shot, and the inconsistencies in the post mortem investigations persist.

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. However, due to the transnational nature of the case, a formal investigation is said to be beyond the scope of the FFT.

On 27 October 2022, the Director General of the Inter Services Public Relations (ISPR) and the Director General of the ISI held a Joint Conference in which they stated that there was no threat to Mr. Arshad Sharif's life in Pakistan and that he had a good relationship with the army and ISI.

On 5 December 2022, due to public outrage, 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), including officials from the ISI, the Intelligence Bureau (IB), the Federal Investigation Agency (FIA), and the police, 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.

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 6 December 2022, the CJP directed the Islamabad authorities to register a FIR for the killing of Mr. Arshad Sharif. Over one month prior to this, Mr. Arshad Sharif's mother had applied for registration of the First Information Report (FIR) pertaining to the killing of her son with the Islamabad authorities, to no avail. The FIR was registered on behalf of a complaint filed by the Station House Officer (SHO). No investigation has been initiated on the FIR to date.

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.

On 9 March 2023, the SJIT issued a progress report to the Supreme Court of Pakistan. The Supreme Court remarked that the progress of the investigation had been stalled, and that it was considering forming a Judicial Commission to investigate the killing of Mr. Arshad Sharif.

On 13 June 2023, the Supreme Court of Pakistan held a hearing on the case of Mr. Arshad Sharif's death. Reportedly, the Supreme Court is of the opinion that the Pakistan Government should be given a chance to pursue the case

bilaterally, before involving international bodies in the case. As a result, a bilateral mutual legal assistance treaty is being negotiated between Pakistan and Kenya, though this may take a considerable amount of time. The hearing was adjourned until 10 July 2023.

Since his death, Mr. Arshad Sharif's wife and journalist, Ms. Javeria Siddique, has been facing threats and intimidation in Pakistan. Two social media smear campaigns were launched against Ms. Javeria Siddique, the most recent of which began on 6 February 2023, that alleges that she remarried during the 4 months and 10 days of mourning prescribed by Islam since her husband's death. There are concerns that this smear campaign may incite religious persecution of Ms. Javeria Siddique, with the aim of ceasing her pursuit of the case of her husband's death.

Due to the harassment and smear campaign against her, Ms. Javeria Siddique relocated within Pakistan.

Without prejudging the accuracy of the above information, we wish to express our deep concerns regarding the death threats and legal action against investigative journalist, Mr. Arshad Sharif, as well as his killing in Kenya. 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. We urge your Excellency's Government to cease all criminalisation and harassment of journalists carrying out their legitimate work, particularly those whose work is of a political nature. We particularly urge your Excellency's Government to safeguard the right to freedom of expression of journalists who have been outspoken regarding their support of former Prime Minister, Mr. Imran Khan, including concerning his ousting and arrest.

We are further concerned that the threats against Mr. Arshad Sharif and his eventual death are part of a wider trend of intimidations against journalists in Pakistan, particularly those who criticize state institutions. We express our deep concern that despite Mr. Arshad Sharif notifying your Excellency's Government about the alleged death threats in connection with exercising his right to freedom of expression, as well as the Counter-Terrorism Department (CTD) of Khyber Pakhtunkhwa Province issuing a threat alert that Mr. Arshad Sharif's life was indeed in danger, it seems that nothing was done to investigate these claims and to safeguard Mr. Arshad Sharif's life. We urge your Excellency's Government to promptly and thoroughly investigate the alleged death threats received by Mr. Arshad Sharif and his colleagues prior to July 2022, as death threats often precede killings. We also urge your Excellency's Government to promptly investigate the smear campaigns and harassment of Mr. Arshad Sharif's wife, Ms. Javeria Siddique, as we believe that she is being targeted due to her seeking of justice for her husband's death.

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). We remind that the right to life is a *jus cogens* norm, also enshrined in international customary law, from which no derogation is permitted.

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. While we appreciate the attempts made by your Excellency's Government to initiate transnational and cooperative investigations, there is a distinct lack of clarity as to why the investigations have not yet been successful and the perpetrators brought to justice. We are concerned about reports that a Pakistan Army Major General was in contact with the brother of the individual travelling with Mr. Arshad Sharif before his death. We urge your Excellency's Government to initiate a prompt and effective investigation into the killing of Mr. Arshad Sharif, considering all possible actors involved in the circumstances that led to his death. 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. The fact that an investigation has not been initiated on the FIR registered on behalf of a complaint filed by the Station House Officer (SHO), as advised by the CPJ, 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 success in conducting 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 Pakistan.

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 indicate what action is underway under the Supreme Court, to conduct a full investigation into the killing of Mr. Arshad Sharif, 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)). Please also indicate what action is underway, if any, to conduct a full and impartial investigation into the death threats against Mr. Arshad Sharif prior to his death. If such investigations are not underway, please explain why. 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 provide information concerning the factual and legal basis for the charges brought against Mr. Arshad Sharif before his death. In particular, please provide detailed information about the justification for bringing the charges of “sedition”, “abetting mutiny” and “conspiracy” against him and how these charges in the context of Mr. Arshad Sharif’s journalistic work comply with your obligations under the international legal framework of human rights law and standards including, inter alia, Article 19 (1) of the International Covenant on Civil and Political Rights (ICCPR), relating to the right to freedom of opinion and expression.
4. Please provide detailed information on the measures adopted to investigate the alleged smear campaigns and harassment of Ms. Javeria Siddique, in connection with her seeking justice for the death of her husband. In particular, provides precise and detailed information about the measure adopted by your Excellency’s Government to protect Ms. Javeria Siddique and punish those responsible for the smear campaigns against her. In the absence of any investigations by the competent authorities, kindly explain the reasons behind it.
5. 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.
6. Please provide information about measures taken to ensure that journalists and media workers in Pakistan 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 been sent to the Government of Kenya, and a copy of said 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 Pakistan on 23 June 2010.

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.)).

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.”

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).