

**PETITION TO:**  
**UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Mr. José Guevara (Mexico)

Vice-Chair on Communications: Ms. Leigh Toomey (Australia)

Vice-Chair on Follow-up: Ms. Elina Steinerte (Latvia)

Mr. Seong-Phil Hong (Republic of Korea)

Mr. Sètonджи Roland Adjovi (Benin)

**HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY**

**In the Matter of**

Muhammad Ismail, Citizen of the Republic of Pakistan

v.

Government of the Republic of Pakistan

Submitted by

**KURTULUŞ BAŞTİMAR**

**International Human Rights Lawyer**

Ankara

**TURKEY**

## **QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION**

### **I. IDENTITY**

- 1. Family Name: Ismail*
- 2. First Name: Muhammad*
- 3. Sex: Male*
- 4. Age at the Time of Detention: 65 (Date of Birth: 01/04/1955)*
- 5. Nationality: Iranian 6. (a) Identity document (if any): Pakistani*  
*(b) Place of Issue: Islamabad, Pakistan*
- (c) On (date): 07<sup>th</sup> Sept, 2015 (d) No.: 17301-1320725-9*
- 7. Profession and/or activity (if believed to be relevant to the arrest/detention): Human Rights Activist and father of the exiled Human Rights activist Gulalai Ismail*
- 8. Address of usual residence: Mohalla Qamral, Akakhel, Village Marghuz, District Swabi*

### **II. ARREST**

- 1. Date of arrest: 2<sup>nd</sup> February, 2021*
- 2. Place of arrest (as detailed as possible): Anti-Terrorism Court-I, Peshawar, Khyber Pakhtunkhwa, Pakistan*
- 3. Did they show a warrant or other decision by a public authority?*  
*The Court disapproved his application for bail before arrest. My mother was granted bail in the same FIR. (First Information Report).*
- 4. Authority who issued the warrant or decision: Anti-Terrorism Court-I, Peshawar*
- 5. Relevant legislation applied (if known): Section 7A and 11N of Anti-Terrorism Law of Pakistan, and Penal Code Sedition 124-A, and Criminal Conspiracy 120B*

*Date: 6<sup>th</sup> July, 2019*

*The Cybercrime was registered under the PECA (Prevention of Electronic Crimes Act):  
Section 10,11 and 109PPC.*

*Date: 24/10/2019*

### **III. DETENTION**

*1. Date of detention: 2<sup>nd</sup> February, 2020*

*2. Duration of detention (if not known, probable duration):*

*3. Forces holding the detainee under custody: Counter Terrorism Department- Peshawar*

*4. Places of detention (indicate any transfer and present place of detention): Counter  
Terrorism Department, Police Station Peshawar*

*5. Authorities that ordered the detention: Anti-Terrorism Court-I, Peshawar*

*6. Reasons for the detention imputed by the authorities:*

*7. Legal basis for the detention including relevant legislation applied (if known): He has been  
arrested after the disapproval of bail application in the FIR. FIR. 47 dated 6<sup>th</sup> July, 2019  
under 124-A, 120B/11N, 7ATA lodged by the Counter Terrorism Department Peshawar.*

## **BASIS FOR URGENT ACTION REQUEST**

According to eye witnesses he was accosted immediately outside the court premises by unidentified men dressed in black militia uniform. The men grabbed him and forced him into a black vehicle. Muhammad Ismail screamed to nearby witnesses that they inform his lawyer, who he could still see walking away in the distance.<sup>1</sup> Muhammad Ismail contracted COVID-19 in late 2020 and has not fully recovered. He requires constant care and medical supervision, neither of which will be available in an overcrowded jail.<sup>2</sup> Professor Ismail recently tested positive for COVID-19, which his family says has weakened his health significantly, exacerbating the risk to his wellbeing if he is sent to jail. Further, Amnesty International calls for all charges against Professor Ismail to be dropped unconditionally, without delay and for his immediate and unconditional release.<sup>3</sup>

## **IV. DESCRIBE THE CIRCUMSTANCE OF THE ARREST**

### **1. Pakistan's Pattern of Political Repression and Human Rights Abuses**

#### **a. Limitations on Fundamental Human Rights**

Political activists and journalists were targeted and charged under draconian laws, including the Prevention of Electronic Crimes Act (PECA), the Anti-Terrorism Act, and sections of the penal code on sedition and defamation. The government curtailed media freedoms and media workers reported that they were experiencing a growing culture of censorship, coercion and harassment by the authorities.<sup>4</sup>

In February, the Federal Investigative Agency (FIA) launched an investigation into journalists and members of political parties after they changed their social media profile images to that of the murdered Saudi Arabian journalist, Jamal Khashoggi, as a protest against Saudi Arabia's Crown Prince Mohammed bin Salman's official visit to the country.

In April, the FIA charged journalist Shahzeb Jillani with "cyberterrorism" and hate speech for allegedly defamatory comments on social media. In May, a Karachi court quashed the charges citing lack of evidence.<sup>5</sup> The state has enacted Anti Terrorism Act (ATA)<sup>6</sup> which is a vague legislation used as a legal base in the cases of restriction of the right to freedom of expression.

#### **a.1 Pakistan's Criminal Procedure Code**

Further, Pakistan has inadequate regulations in Pakistan's Criminal Procedure Code (CPC), such as Section 173 CPC<sup>7</sup> which precludes superior police officials from ordering the filing of First Information Reports(FIR) on criminal complaints, reinforce impunity of perpetrators of enforced disappearances, by forcing victims' families to take the cumbersome route through

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<sup>1</sup> <https://www.frontlinedefenders.org/en/case/muhammad-ismail-father-woman-human-rights-defender-gulalai-ismail-abducted-peshawar#case-update-id-13236>

<sup>2</sup> Id

<sup>3</sup> <https://www.amnesty.org/download/Documents/ASA3336262021ENGLISH.pdf>

<sup>4</sup> see available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/pakistan/report-pakistan/>

<sup>5</sup> Id

<sup>6</sup> The Anti-Terrorism Act, 1997. Promulgated on 20 August 1997. Act No XXVII of 1997

<sup>7</sup> The Code of Criminal Procedure. 1898, as amended by Act II of 1997

the court system to avail themselves of a second instance. Sections 54 and 151 CPC give police the authority to arrest without a warrant persons suspected of having committed a criminal offence and persons “designing” to commit a “cognisable” offence. Pakistan did, therefore, not comply with UNPO’s 2012 recommendation to revise legislation allowing police to detain individuals without clearly defined charges<sup>8</sup>

In Gilgit-Baltistan, the majority of human rights activists charged with sedition or terrorism for participating in peaceful demonstrations are being tried in front of military anti-terrorism courts outside the scope of the Constitution, which is not applicable in the region, due to the fact that Gilgit-Baltistan is not a part of Pakistan. Gilgit-Baltistan’s Chief Court as well as its Appellate Court, also established by Pakistan outside its Constitution, do not allow for Constitutional matters to be adjudicated by the courts. Judges are, furthermore, appointed by the Ministry of Gilgit-Baltistan and Kashmir Affairs in Islamabad exclusively based on their political and religious affiliations<sup>9</sup> In contravention to state recommendations and stakeholder submissions, there is no independent judiciary<sup>10</sup>, in Gilgit-Baltistan, and military courts,<sup>11</sup> convict local human rights defenders<sup>12</sup> in non-transparent and unfree trials for trumped up anti-terrorism or sedition charges.

## **a.2 Anti-Terrorism Act(ATA) of Pakistan**

### **Terrorism’s Broad Definition**

A basic flaw in the ATA is the extremely broad definition of terrorist acts, which overburdens the already overstretched police, prosecution, and courts and results in delays in disposal of “real” cases of terrorism. The preamble of the ATA describes the rationale of the law as providing for “the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected there with and incidental there to.” The addition of the words heinous offenses, which are not otherwise defined in the legislation, has widened the application of the ATA to include cases other than terrorism. Although some judges have issued rulings.<sup>13</sup> 1 emphasizing the need for more precise applications of the law based on perpetrators’ intent to carry out terrorizing acts, most high court judges have applied the heinous-offense standard broadly.

As one example, the Lahore High Court declared the murder of a man and woman accused of illicit relations to be a heinous offense and an act of terrorism.<sup>12</sup> According to another 2010 report, in the three ATCs based in Karachi, 199 individuals were on trial for heinous but non-terrorist offenses, compared with only thirty-five members of terrorist groups awaiting trial—meaning fully 83 percent of cases under trial in the ATC(Anti-Terrorism Court)s were not of terrorists, but of normal criminals<sup>14</sup> This suggests a serious impediment to the ATCs’ ability to deal with terrorism cases within the timeframe the ATA gives. The starting point of any attempt to enhance the efficacy of ATA in dealing with cases of terrorism, therefore, is to amend the preamble.

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<sup>8</sup> A/HRC/WG.6/14/PAK/3, 2nd cycle, para 82, UNPO.

<sup>9</sup> See, GBDA. 2016. “Human Rights Violations in Pakistan Occupied Gilgit Baltistan”, p 3

<sup>10</sup> See, A/HRC/8/42, 1st cycle, paras 74, 106.14, Romania.

<sup>11</sup> 4 See, A/HRC/WG.6/2/PAK/3, 1st cycle, para 22, ACHR, HRW

<sup>12</sup> See, A/HRC/8/42, 1st cycle, paras 61, 106.16, The Netherlands; A/HRC/22/12, 2nd cycle, paras 122.56, 122.110, 122.117, Denmark, Spain et al. [repeated].

<sup>13</sup> Published Judgment: PLD2004, Lahore 199.

<sup>14</sup> Bokhari, “Pakistan’s Challenges.”

Beyond the potentially broad mandate set out in the preamble, the ATA definition of a terrorist act is also fairly wide and creates ambiguity on what exactly constitutes a terrorist act. In section 6, subsection 1, the act defines terrorism as “the use or threat of action where

*(a) the action falls within the meaning of sub section (2) and*

*(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society or*

*(c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies. Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.*

Section 6, subsection 2 further lays out seventeen types of actions (or threat of actions) covered under this definition, including those causing death, “grievous violence” or damage to property, kidnapping, extortion, intimidation, and barring public servants from their duties, among others. Section 6, subsection 3 further qualifies this by defining any of these types of actions that involve the use of firearms, explosives, or any other weapon as terrorism, whether or not subsection 1(c) is satisfied. Additionally, subsection 3(a) states that any violation of international conventions on terrorism signed by Pakistan are also considered acts of terrorism under the ATA. By making the conditions of subsection 1(c) optional for classifying a crime as an act of terrorism, the ATA loosens the criteria normally applied to terrorism—that is, a political or ideological motivation that distinguishes it from normal criminal or personal motives of profit or revenge. Thus, the police, prosecution, and Anti-Terrorism Court(ATC)s are overburdened with cases that are not, strictly speaking, terrorism cases, leading to delays in decisions and large-scale acquittals.

### **The ATA’s Overbroad Application in Practice**

Even beyond the broad definitions in the legislation, political and police leadership across Pakistan tend to apply the ATA to criminal cases that do not fall under the act’s ambit. This tendency is fairly widespread in all the provinces and constitutes a serious hurdle to speedy and fair trial of terrorist offenses, diminishing the deterrence value of the criminal justice system. . There are many reasons for this. First, by applying the ATA, the police and the political leadership convey that they are giving more attention to a particular case. Second, at times the offense is so barbaric (such as rape of a minor) that the local community demands to apply the ATA. Third, at times the police apply sections of the ATA to be able to demand higher bribes from the accused to declare them innocent in a terrorism case.<sup>15</sup>

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<sup>15</sup> USIP.ORG , SPECIAL REPORT 377, page 4

In Punjab province, only 4.6 percent of ATA cases the police investigated between 2005 and 2010 involved bomb blasts or suicide attacks, terrorists' signature modus operandi<sup>16</sup> This implies that in almost 95 percent of the cases where the ATA was applied, it was because the offense was perceived to be heinous by the police or the political leadership, rather than necessarily being attacks carried out by terrorists. According to the Punjab Prosecutor General, in 2014, out of a total of 1,195 ATA cases heard by the province's fourteen ATCs of Punjab, 178 (15 percent) were transferred to regular courts because the police had wrongly applied the ATA to these offenses<sup>17</sup>

The situation in Sindh appears to be even more serious. In Karachi, the capital of Sindh province, from January 2013 to December 2013, 391 of 565 cases (69.2 percent) heard by the city's five ATCs were transferred to the regular courts for not falling within the ATCs' ambit.<sup>18</sup> By then the police spent considerable time in investigating these cases, the prosecution on their scrutiny, and the ATCs in hearing them. In Khyber Paktunkhwa, fifty-two cases of 706 cases (7 percent) decided by the ATCs in 2014 were transferred to other courts for wrong application of the ATA by the police.<sup>19</sup>

### **a.3 The right to freedom of expression in Pakistan**

The situation for the right to freedom of expression and media freedom in Pakistan has not improved since the ratification of the ICCPR. The constitutional, legal and institutional framework has, with few exceptions, deteriorated. The enforcement of blasphemy and criminal defamation with anti-terror laws, including trial of civilians by military courts, remain a significant concern. As those laws extend control over the right to freedom of expression online. Killings and attacks on journalists and media workers remain alarming and are characterized by ongoing impunity<sup>20</sup>. Discrimination and harassment against women journalists continues to be a serious problem.

#### ***Impact of blasphemy laws on freedom of expression***

The blasphemy laws were introduced during British era, which is partially correct as section 295 was introduced at that time. However, sections 295 B and C of the Pakistan Penal Code (PPC), which carries the death penalty, were introduced after that period under a military dictatorship.

ii. The PPC contains four types of blasphemy<sup>21</sup> prohibition: • Section 295-C of Penal Code provides the death penalty, life imprisonment and/or fine for "whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him)";

Article 295- B stipulates life imprisonment for "whoever wilfully defiles, damages or desecrates a copy of the Holy Qur'an";

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<sup>16</sup> "NCMC Report: Pakistan Witnesses Rise in Rape Cases," Awaz.tv, October 10, 2013, [www.awaztoday.com/News\\_NCMC-report-Pakistan-witnesses-rise-in-rape-cases\\_1\\_37932\\_PoliticalNews.aspx](http://www.awaztoday.com/News_NCMC-report-Pakistan-witnesses-rise-in-rape-cases_1_37932_PoliticalNews.aspx) (Accessed 04 February 2021)

<sup>17</sup> Prosecutor General Punjab in discussion with author, January 2015.

<sup>18</sup> Prosecution General Sindh in discussion with author, January 2014.

<sup>19</sup> AIG Legal, KPK, interview by author, June 12, 2015.

<sup>20</sup> <http://www.pakistanpressfoundation.org/wp-content/uploads/2016/11/Report-on-Impunity-November-1-2016.pdf>

<sup>21</sup> <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html#f108>

Article 295- A stipulates imprisonment of up to ten years, and/or fine for “whoever, with deliberate and malicious intention of outraging the 'religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs”;

Article 295 of the Pakistan Penal Code stipulates an imprisonment of up to two years, and/or fine for “Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction damage or defilement as an insult to their religion”As identified in the Rabat Plan of Action, and in the Human Rights Committee’s General Comment No.34, prohibitions on blasphemy are incompatible with international human rights law.<sup>22</sup>

On 24 March 2017, the Federal Investigation Agency (FIA) arrested three persons on blasphemy charges related to social media posts<sup>23</sup> Earlier, the Interior Ministry informed the Islamabad High Court that one arrest had been made, while the names of several others have been put on the Exit Control List (ECL). While placing names in the ECL, international standards of due process were not followed. In relation to the case of five kidnapped bloggers<sup>24</sup>, a petition was filed to The Islamabad High Court (IHC) against them for blasphemy. In the first hearing on 27 February 2017, the Islamabad High Court ordered the Pakistan Telecommunications Authority (PTA) to block social media pages deemed to be blasphemous. On 31 March 2017 IHC ordered PTA to remove all blasphemous content from the internet and requested extradition of the blogger who left the country.

In a report submitted to the Supreme Court in January 2016, the Pakistan Telecommunication Authority (PTA) stated that it had blocked about 84,000 websites containing objectionable content while 400,000 obscene websites were circulated to all the Internet Service Providers for blocking at the domain level. PTA has also blocked 937 Uniform Resource Locators (URLs) and 10 websites of banned organisations for abuse of the internet and social media<sup>25</sup>

Further, on 11 August 2016 Parliament passed the “Prevention of Electronic Crimes Act (PECA) 2016” with potentially severe chilling effects on online freedom of opinion and expression. The law was passed without significant input from civil society stakeholders and the process was characterised by a general lack of transparency. The prioritisation of security over civil liberties has created many problematic aspects that demand the law to be repealed or reformed. Vague definitions and broadly framed offences allow for wide interpretation of the law. For example, Section 9 of the Act criminalises the ‘glorification of an offence or the person accused or convicted of a crime relating to terrorism or activities of proscribed organisations’. Terms such as ‘glorification’ are unclear and fail to meet the requirement of legality under international human rights law.

#### **a.4 The right to freedom of Movement in Pakistan**

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<sup>22</sup> [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT\\_CCPR\\_CSS\\_PAK\\_27665\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_CSS_PAK_27665_E.pdf)

<sup>23</sup> <https://www.dawn.com/news/1322531>

<sup>24</sup> [https://www.nytimes.com/2017/01/20/opinion/bring-pakistans-missing-bloggers-home.html?\\_r=0](https://www.nytimes.com/2017/01/20/opinion/bring-pakistans-missing-bloggers-home.html?_r=0)

<sup>25</sup> <http://www.pakistanpressfoundation.org/937-urls-10-websites-of-proscribed-groups-blocked/>



The Exit Control List (ECL) is a list of Pakistani citizens who are "wanted criminals and individuals under investigation".<sup>26</sup> According to Country Reports on Human Rights Practices for 2002, "after coming to power, the Musharraf Government increased the use of the ECL, reportedly to prevent those suspected of loan defaults or corruption from leaving the country"<sup>27</sup>

The ECL includes the individual's full name, father's name, temporary and permanent residential and business addresses, national identity card and passport numbers and photograph.<sup>28</sup> It is made public and is used at exit points by immigration authorities to prevent the departure of these individuals from Pakistan.<sup>29</sup> This is done by immigration authorities who review pre-flight manifests of all international flights and compare the list of passenger names against those on the ECL "at least" three hours prior to flight departures.<sup>30</sup>

The government prohibited persons on an exit control list from departing the country. The stated purpose of the list prevented departure from the country of "persons involved in antistate activities, terrorism, or related to proscribed organizations and those placed on the orders of superior courts."

The extensive, if not unprecedented, use of the Exit Control List (ECL) was widely observed. It appeared to be used as a tool against suspects before their convictions, even when it seemed clear they did not intend to flee. Many of the prominent cases from earlier in the year had ties to the PML-N, while in December a number of PPP associates were included. Activists, especially PTM associates, were also targeted.

The increasingly arbitrary and politically motivated use of the ECL was noted by several officials. In March, around the time the National Accountability Bureau (NAB) started demanding the inclusion of the Sharifs on the ECL, the Cabinet, under the former Prime Minister, formed a subcommittee to review names on the list. In October a Senate standing committee called for a reform of ECL policy to prevent misuse.

### **a.5 The right to Association in Pakistan**

Several NGOs came under attack in 2007. According to the United Nations' IRIN news service, at least seven NGOs were bombed in North-West Frontier Province alone. Drivers and staff members were also beaten up or threatened in the province. In Pakistani-administered Kashmir, up to 49 NGOs and international offices, including a UN office, suspended their activities in earthquake-affected Bagh district in May due to threats and physical violence, temporarily halting projects worth over \$82 million.

Several NGOs were targeted by Islamist groups for employing female staff members. NGOs and religious and community leaders in Bagh reached a resolution in June, when they agreed to accept the international code of conduct followed by NGOs worldwide. With respect to

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<sup>26</sup> (Pakistan Newswire 9 Dec. 2002; Country Reports 2002 31 Mar. 2003, Sec. 2.d; UK Apr. 2003, Sec. 6.111)

<sup>27</sup> (31 Mar. 2003, Sec. 2.d; also see The Pakistan Newswire 9 Dec. 2002).

<sup>28</sup> (Dawn 16 July 2001).

<sup>29</sup> (Pakistan Newswire 9 Dec. 2002; Country Reports 2002 31 Mar. 2003, Sec. 2.d; UK Apr. 2003, Sec. 6.111)

<sup>30</sup> (Dawn 16 July 2001)

NGO operations in areas of Baluchistan that were struck by Cyclone Yemyin in June, Pakistani bureaucratic obstacles significantly delayed the import of goods for the relief effort. The rules particularly affected materials needed for NGO infrastructure in the area and supplies that came from India. In addition, the government hampered relief efforts by requiring that relief materials be sent through government agencies.<sup>31</sup>

## **2. The Prison and Detention Center Conditions in Pakistan**

Prison conditions often were extremely poor. Overcrowding remained a serious problem, largely due to structural issues in the criminal justice system that led to a high rate of pretrial detention. According to the Federal Ombudsman, as of November the total nationwide prison population stood at 77,275 in 114 prisons across the country. The capacity of these prisons is 57,742, putting the occupancy rate at 130 percent over capacity.

Inadequate food and medical care in prisons continued to cause chronic health problems. Malnutrition remained a problem, especially for inmates unable to supplement their diets with help from family or friends. In many facilities, the sanitation, ventilation, lighting, and access to potable water were inadequate. Most prison facilities were antiquated and had no means to control indoor temperatures. A system existed for basic and emergency medical care, but bureaucratic procedures slowed access.

Prisoners with disabilities usually lacked adequate care. Representatives of Christian and Ahmadi Muslim communities claimed that prison inmates often subjected their members to abuse and violence in prison. Civil society organizations reported that prison officials frequently subjected prisoners accused of blasphemy violations to poor prison conditions. NGOs reported that many individuals accused of blasphemy remained in solitary confinement for extended periods, sometimes for more than a year. The government asserted this treatment was for the individual's safety, in view of the likelihood that prisoners accused of blasphemy would face threats from the general prison population.

## **3. Background information regarding Mr. Muhammad Ismail**

### **Cybercrime Case against Professor Mohammad Ismail for Speaking against Government Institutions**

**On 24 October 2019,** On 24 October 2019, Ismail was forcibly abducted from outside the Peshawar High Court by unidentified men. Ismail was later handed over to Federal Investigation Agency's Cyber Crimes Unit. Ismail was reproduced in the court only after immense international pressure including a letter of Senator Charles E. Schumer and Senator Richar J. Durbin of the United States and Statement of State Department, by the Alice G Wells<sup>1</sup>. The US State Department issued a statement on twitter showing concern over the abduction of my father. The U.S. State Department's Bureau of South and Central Asian Affairs acting assistant secretary, Alice Wells, had earlier expressed her concern about the family. "We are

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Freedom House, *Freedom of Association Under Threat - Pakistan*, 21 November 2008, available at: <https://www.refworld.org/docid/492a751928.html> [accessed 4 February 2021]

concerned by reports of the continued harassment of Gulalai Ismail's family, and her father's detention, We encourage Pakistan to uphold citizens' rights to peaceful assembly, expression, and due process." Wells said on Twitter.<sup>2</sup>

Ismail was charged under the Pakistan Electronic Crimes Act for "hate speech" and "spreading false information against government institutions" and detained for more than a month in conditions that may amount to cruel, inhuman and degrading treatment before his release on conditional bail on 25 November 2019.

**On 25 November 2019**, the Peshawar High Court granted conditional bail to Muhammad Ismail.

**On 20 April 2020**, human rights defender Muhammad Ismail was summoned for a court hearing after the Federal Investigation agency filed an appeal at the Peshawar High Court to revoke the conditional bail that was granted to the defender on 25 November 2019. Muhammad Ismail, is facing charges under the Pakistan Electronic Crimes Act, and currently on conditional bail.

**29<sup>th</sup> Jan, 2021:** After almost weekly hearings on the bail cancellation appeal of the FIA, the High Court asked my father to stop the use of social media, otherwise, his bail would be cancelled. The court didn't dismiss FIA's appeal of bail cancellation, to use it as a blackmailing tool against my father.

***Case Under the Anti-Terrorism Laws against Mohammad Ismail (Terrorism, Financial Terrorism, Sedition and Criminal Conspiracy)***

**On 16<sup>th</sup> July, 2019** we both, Muhammad Ismail and Uzlifat Ismail along with their daughter were booked in a malicious terror financing case under section 11 ATA i.e. terror financing. Gulalai's work for human rights was conflated with terrorism. According to the FIR lodged on 16<sup>th</sup> July, 2019, the parents of Gulalai Ismail have received money in their bank accounts from their daughter Gulalai Ismail and have used it for the support of terrorist activities. According to the FIR, the FIR was registered based on the report of intelligence agencies and Counter Terrorism FIA. Muhammad Ismail and Uzlifat Ismail were granted bail in this case by the court. They also submitted a quashment appeal in the High Court. Both are currently on bail.

**21<sup>st</sup> May Speech:** On 21<sup>st</sup> May, 2019 Gulalai Ismail participated in a protest against the murder and rape of Farishta condemning the increasing sexual violence linked to militarization. 3 cases were filed against Gulalai Ismail after the 2 minute speech. The charges mentioned in the FIRs accused Gulalai of incitement of hate and violence against state institutions and delivering seditious speech. The FIR mentions sections 124-A (sedition), 153-A (promoting enmity between different groups, etc.) 500 (punishment for defamation) of the Pakistan Penal Code, as well as sections 6 and 7 of the Anti-terrorism Act, 1997.

After that a dozens of military operation styled raids were conducted on Gulalai Ismail's family home, her relatives and friends. The driver of Gulalai was detained and tortured for eight hours to get info about Gulalai, a friend name Syed Musharaf Shah was abducted on his way back to Islamabad by the agencies, and was tortured brutally including electrocution to get out info about Gulalai. On 27<sup>th</sup> may, 2019 the news were aired on media that Gulalai Ismail has been blacklisted, despite already being on ECL.

**On 27<sup>th</sup> May, 2019** Geo aired a news that a writ petition was heard in High Court to delete and block Gulalai Ismail's social media accounts. According to the blog of Geo TV:

“Hearing another related petition seeking to delete and block social media accounts of PTM member Gulalai Ismail, the court sought replies from Pakistan Telecommunications Authority (PTA), Pakistan Electronic Media Regulatory Authority (PEMRA), the Federal Investigation Agency (FIA), and the federal Ministry of Interior.

Giving his remarks in the case, Justice Amir Farooq said that it was necessary for PEMRA to take appropriate action if anybody talks against religion, the state or its institutions.”<sup>3</sup>

**UN Letter Mentioning Gulalai Ismail's Name on a State Kill List:** On 29<sup>th</sup> May, 2019 a special working group mandated by several conventions wrote a letter to Pakistan showing serious concern over the presence of a “Kill List” which has names of total 15 people including Gulalai. The letter mentions as follows:

“We also express very serious concern at the alleged existence of a state ‘kill list’ containing the names of 15 individuals including Ms. Gulalai Ismail. The charges brought against her appear to be directly related to her legitimate work defending human rights of the Pashtun community. We are also concerned by her reported short-term enforced disappearance in February 2019, her inclusion in a no fly list and the surveillance of persons associated with her.”

**FIR against Parents of Gulalai Ismail on 16<sup>th</sup> July, 2019:** After the state authorities failed to arrest or harm Gulalai Ismail, they lodged a malicious terror financing FIR against her and her parents accusing them of financial terrorism. The parents of Gulalai Ismail got pre-arrest bail from the ATC, Peshawar and also submitted a quashment petition in the Peshawar High Court.

**On 2<sup>nd</sup> July, 2020 Gulalai Ismail and her parents were discharged,** after attending court dates almost every week, Muhammad Ismail, Uzlifat Ismail and Gulalai Ismail were relieved from the court pre-trial on the basis of lack of evidence of the allegations put forth by the Counter Terrorism Department of the Federal Investigating Agency. Throughout during the one year, the court kept on asking CTD, FIA to produce evidence in support of the accusations. In every court date, CTD, FIA would ask for more time and they would receive time from the court. **Justice Syed Asghar Ali Shah** discharged Gulalai Ismail and her parents on 2<sup>nd</sup> July, 2019 from the malicious case after the prosecutor failed to submit any evidence in the court. Before the Judge discharged Professor Ismail and his family, he asked the prosecutor to read out the conclusion of the CTD, FIA report on the basis of which the FIR was lodged. **The CTD, FIA report had clearly said that they haven't found any terrorist activity or link to terror financing during their investigation** and would not be a witness against us in the court.

In an attempt to prove Gulalai and her family terrorists, the prosecutor presented the 2 minute video speech of Gulalai from 21<sup>st</sup> May. The judge remarked that when human rights abuses occur, what else would people do if they won't protest? It is the right of the people to protest against human rights violations and if a citizen is blaming an institution for any kind of rights violation, then their claims should be investigated rather than booking activists in cases. The judge reminder the prosecutor to learn from the experience of "Bangladesh". (However, the written decision hasn't encapsulated it and rather has called the matter sub-judice, and therefore shouldn't be re-agitated in this case).

In the landmark decision, Justice Syed Asghar Ali Shah remarked,

*"If judicial forums are abused for the purpose of ulterior motive or incompetence of state organization, as discussed above, this will not be failure of judicial system alone but of civilized society at large. Therefore the accused facing trial Muhammad Ismail and Mst. Uzlifat Ismail are discharged under u/s265 of C.r.P.C."*

Additional clauses of Sedition (124A, 124B), and terrorism (ATA 7) were added to the FIR too somewhere during the process, as the court judgement includes new clauses as well not mentioned earlier in the FIR.

**After the Discharge, CTD, FIA on the behest of ISI made a mockery of Justice:** However, CTD on the behest of the security agencies made a mockery of the justice by submitting new tons of fabricated statements of different proxies as evidence of terrorism against and reopened the case. Fabricated statements have been taken from proxies of Pakistan security agencies including Jesh e Muhammad and individuals dealing with weapons and vehicle bargains in attempt to allegedly link Gulalai Ismail and her parents with terrorist outfits, terrorism and financial terrorism.

The case was re-opened in the ATC (not in High Court) in front of another Judge, though legally, the case should be heard again only by the same judge who has previously made the decision. On 30<sup>th</sup> September, 2020 in the light of the new fabricated evidence parents of Gulalai Ismail were indicted for charges of actively aiding two TTP attacks, on a church (2013) and a Shia mosque (2015), in Peshawar, claiming they funded them and provided resources. The statements regarding alleged involvement of Gulalai's parents have been recorded eight and five years respectively after the attacks, only after the court discharged the parents of Gulalai Ismail on the basis of lack evidence. It speaks much about the fabrication of the charges.

### **1st February, 2021**

On Monday, 1<sup>st</sup> February 2021, the Anti-Terrorism court dismissed the pre-arrest bail application of Mohammad Ismail in the in the FIR. 47 dated 6<sup>th</sup> July, 2019 under 124-A, 120B/11N, 7ATA lodged by the Counter Terrorism Department Peshawar. He has been moved to the Counter Terrorism Department police station.

### **Placement of Parents of Gulalai Ismail on Exit Control List:**

Muhammad Ismail and Uzlifat Ismail have been placed on Exit Control List so that they could not join their children who live in United States. Separating them from children in this old age when they need support and care of children is cruel.

**September 19<sup>th</sup>, 2019**, Uzlifat Ismail mother applied for renewal of her passport. On 16<sup>th</sup> October, 2019 when she went to receive her passport she was informed that her passport renewal request had not been processed because her name is on Exit Control List. Both Uzlifat Ismail and Mohammad Ismail had been placed on Exit Control List discreetly and illegally, even without sending any notification to them. Later, an Exit Control List notification was sent to Uzlifat Ismail in February 2020, but back dated as 18<sup>th</sup> October 2019. Besides many other things, the letter mentions that Uzlifat Ismail has been placed on Exit Control List to prevent her from going abroad to speak to human rights organizations, as it will damage the reputation of Pakistan.

#### **Bank Accounts Frozen:**

The Bank accounts of Mohammad Ismail have been frozen illegally, making it difficult for Mohammad Ismail to make any money transactions for his daily life needs.

#### **4. Accusation against Mr. Muhammad Ismail**

First, Muhammad is accused of Anti State activities and terror financing by providing to the terrorists, having bank accounts with the aim of supporting terrorists under Article 11/N Anti-Terrorism Act

Second, published and disseminated anti state material through different media for the

purpose to incite religious sectarian and ethnic hatred in the state and gave

special projections to hostile country India and other terrorists extremity concerned in terrorism inside Pakistan under 11-W Anti-Terrorism Act (ATA)

Third, accused aide and abetted the offences committed by the terrorism on 22-09-2013 and 13-02-2015 while attacking upon Saint John Church near Murad Shah Baba Ziarat and Immaia Mosque Phase 5 Hayatabad situated in Peshawar respectively by providing arms, ammunition and vehicle, thus you thereby committed an offence of abetment punishable u/s 21(i) Anti-Terrorism Act(ATA)

Fourth, illegal act of supporting terrorists and their proscribed organizations to finance them and in pursuance of the agreement, received an amount in US Dollar from hostile country India on 16-04-2015 and 16-12-2015 for using in the terrorism thus you thereby committed an offence punishable u/s 120-B Pakistan Penal Code (PPC)

Fifth, further provided to different terrorists to facilitate them in different terrorism resultantly the terrorists continuously waged war against Pakistan in different areas while you accused alongwith your absconding co-accused abetted the waging of such war under Article 121 Pakistan Penal Code(PPC)

Sixth, attempted to excite and bring into hatred as well as attempted disaffection towards the government establishment by law in Pakistan under Article 124/a Pakistan Penal Code(PPC)

## **V. LEGAL ANALYSIS**

### **DEPRIVATION OF LIBERTY UNDER CATEGORY-I**

A detention is arbitrary under Category I when there is no legal basis or justification for it<sup>32</sup> The Working Group has found lack a legal basis for the purposes of Category I when the government fails to support its legal basis for the detention with “enough factual specifics to indicate the substance of the complaint, such as the wrongful act<sup>33</sup> and when the Government uses vague and/or overbroad laws to prosecute an individual.<sup>34</sup> In the present case, detention of Mr. Muhammad is arbitrary under Category I because the Government lacks any substantive evidence to justify his detention and because the Government charged Muhammad under a vague and overbroad provision of the Pakistan Criminal Code.

Mr. Muhammad is accused of Anti State activities and terror financing by providing to the terrorists, having bank accounts with the aim of supporting terrorist under the provisions of Anti-Terrorism Act which, as mentioned above is a vague and broad legislation.

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<sup>32</sup> A Category I deprivation of liberty occurs “[w]hen it is impossible for the government to invoke any legal basis under domestic law for detaining the individual . . . .” Report of the Working Group on Arbitrary Detention, 16th session, A/HRC/16/47, Annex 8(b) (Jan. 19, 2011), <https://documents-ddsny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement>

<sup>33</sup> Hoang Duc Binh v. Vietnam, UN Working Group on Arbitrary Detention, Opinion No. 45/2018, paras. 42-43 (Oct. 1, 2018), <https://undocs.org/A/HRC/WGAD/2018/45>.

<sup>34</sup> 61 Individuals v. United Arab Emirates, UN Working Group on Arbitrary Detention, Opinion No. 60/2013, para. 22 (Nov. 22, 2013), <http://hrlibrary.umn.edu/wgad/60-2013.html> ; Judicaël et al. v. Republic



Article 15(1) of the International Covenant on Civil and Political Rights (“ICCPR”)<sup>35</sup> and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)<sup>36</sup> both guarantee individuals the right to know what the law is and what conduct violates the law. In its General Comment No. 35, the Human Rights Committee states that “[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application<sup>37</sup> Moreover, the Human Rights Committee finds that a law “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. ..<sup>38</sup>

In the present case, provisions of Anti-Terrorism Act(ATA) is formulated in a vague way. The government failed to prove how and in which way, having bank account and daily bank transaction both domestically and internationally caused supporting or financing terrorism. As a result, provision of ATA as well as Pakistan Penal Code’s vagueness permits the Pakistani authorities to arbitrarily apply those Articles, as is the case for Muhammad Accordingly, his detention is arbitrary under Category I because the law that provides the purported basis for his detention, Articles(11-N, ATA) and Articles 120-124 of the Criminal Code, is vague in violation of the ICCPR and UDHR.

## **DEPRIVATION OF LIBERTY UNDER CATEGORY- II**

A detention is arbitrary under Category II of the Working Group’s Revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under

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<sup>35</sup> ICCPR, supra note 51, art. 9(1) (“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”).

<sup>36</sup> UDHR, supra note 51, art. 11(2) (“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”)

<sup>37</sup> UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Persons), UN Doc. CCPR/C/GC/35, para. 22 (Dec. 16, 2014), available at <https://undocs.org/ccpr/c/gc/35>

<sup>38</sup> UN Human Rights Committee, General Comment No. 34: Article 19 (Freedom of Expression), UN Doc. CCPR/C/GC/34, para. 25 (Sep. 12, 2011), available at <https://undocs.org/CCPR/C/GC/34> [hereinafter “General Comment No. 34”].

international law, including the rights to freedom of expression and assembly<sup>39</sup> The Government arrested and detained Muhammad on the basis of his exercise both of these rights.

***a. Muhammad's Detention Is a Restriction on His Right to Freedom of Expression and Assembly***

Article 19(2) of the ICCPR, to which Pakistan is a party, provides that “[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>40</sup> The right to freedom of expression is vital to the work of human rights defenders. In its General Comment 34, the Human Rights Committee explicitly stated that the right to freedom of expression under Article 19 of the ICCPR protects canvassing and discussion of human rights<sup>41</sup>

Article 21 of the ICCPR provides that “[t]he right of peaceful assembly shall be recognized.”<sup>42</sup> This right is also protected by Article 20(1) of the UDHR<sup>43</sup> The Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to assemble peacefully, especially for persons espousing minority or dissenting views or beliefs and human rights defenders<sup>44</sup>

In the present case, the arrest and detention of Muhammad is only due to his activities as a leading professor and human rights activist. This is because Mohammad Ismail, is a human rights activist and has been at the forefront of Pakistani civil society for decades. He is the General Secretary of Pakistan NGOs Forum which is an apex body of Pakistani civil society organizations. The conduct of officials made it clear that the grounds for Muhammad's detention related to his advocacy activities.

These events show that the Government has, as an objective of its investigation and detention of Muhammad, the goal of ending his advocacy efforts. Accordingly, the Government's

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<sup>39</sup> A detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights.” Methods of Work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/33/66, para. 8b [hereinafter “Revised Methods of Work”].

<sup>40</sup> ICCPR, supra note 51, art. 19(2).

<sup>41</sup> General Comment No. 34, supra note 59, para. 11.

<sup>42</sup> ICCPR, supra note 51, art. 21.

<sup>43</sup> UDHR, supra note 51, art 20.

<sup>44</sup> UN Human Rights Council, Res. 15/21, UN Doc A/HRC/RES/15/21, para 1, (6 Oct. 2010), available at <https://undocs.org/A/HRC/RES/15/21>

detention of Muhammad constitutes a violation of his rights to freedom of expression and assembly.

***b. None of the Exceptions under Articles 19 or 21 Apply in This Case***

Although the rights to freedom of expression and assembly are not absolute, none of the exceptions to these rights apply to Pakistan's restriction of Muhammad's rights. Under international law, the rights to freedom of expression<sup>45</sup> and assembly<sup>46</sup> may only be restricted in limited circumstances, and the Human Rights Committee has established a three-part "strict test of justification" in analyzing limitations on such fundamental rights<sup>47</sup> For a given limitation to be permissible, the limitation must (1) be provided for by law, (2) serve an enumerated purpose, and (3) be necessary to achieve that purpose<sup>48</sup> The enumerated purposes for which a Government may restrict these fundamental rights are to protect national security, public safety and public order, public health, and the fundamental rights and freedoms of others.

The Human Rights Committee has emphasized that such restrictions must not "put in jeopardy the right itself."<sup>49</sup> It is not sufficient for a government to merely invoke one of the enumerated exceptions, but must "specify the precise nature of the threat" posed by the protected activity<sup>50</sup> establish a "direct and immediate connection between the expression and the threat," and demonstrate why the limitation was necessary<sup>51</sup> Furthermore, in the case of the right to freedom of expression, the Human Rights Committee has been clear that paragraph 3 never be used to justify "the muzzling of any advocacy of . . . human rights"<sup>52</sup>

The arrest and detention of Muhammad falls well outside any possible legitimate restriction on the right to freedom of expression. As discussed above, the Government targeted Muhammad on the basis of his advocacy and work as human rights defender surrounding. For this reason,

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<sup>45</sup> Article 19(3) of the ICCPR provides that "The exercise of the [right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health and morals." See ICCPR, supra note 51, art. 19(3)

<sup>46</sup> Article 21 of the ICCPR provides that "No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are 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." See ICCPR, supra note 51, art. 21

<sup>47</sup> Park v. Republic of Korea, UN Human Rights Committee, Communication No. 628/1995, UN Doc. CCPR/C/64/D/628/1995, para. 10.3, (3 Nov. 1998)

<sup>48</sup> Shin v. Republic of Korea, UN Human Rights Committee, Communication No. 926/2000, UN Doc. CCPR/C/80/D/926/2000, para 7.2 (16 March 2004).

<sup>49</sup> General Comment No. 34, supra note 59, para. 21.

<sup>50</sup> Sohn v. Republic of Korea, UN Human Rights Committee, Communication No. 518/1992, UN Doc. CCPR/C/54/518/1992, para. 10.4 (July 19, 1992).

<sup>51</sup> General Comment No. 34, supra note 59, para. 35.

<sup>52</sup> Id., at para. 33.

the Government's actions would qualify as an attempt to muzzle Muhammad's advocacy of human rights.

Accordingly, Muhammad's detention does not fall within the scope of the exceptions to the rights to freedom of expression and assembly, and the Government has acted in violation of articles 19 and 20 of the ICCPR as well as articles 19 and 20 of the UDHR, making his arbitrary as defined under Category II.

### **Article 12(2) ICCPR (Freedom of Movement)**

Freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. Thus travelling abroad is covered, as well as departure for permanent emigration. Likewise, the right of the individual to determine the State of destination is part of the legal guarantee. As the scope of article 12, paragraph 2, is not restricted to persons lawfully within the territory of a State, an alien being legally expelled from the country is likewise entitled to elect the State of destination, subject to the agreement of that State.<sup>53</sup>

In order to enable the individual to enjoy the rights guaranteed by article 12, paragraph 2, obligations are imposed both on the State of residence and on the State of nationality<sup>54</sup> Since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel documents. The issuing of passports is normally incumbent on the State of nationality of the individual. The refusal by a State to issue a passport or prolong its validity for a national residing abroad may deprive this person of the right to leave the country of residence and to travel elsewhere<sup>55</sup>

In the present case, Muhammad Ismail and his wife have been placed on an exit control list preventing them from leaving Pakistan. The request of passport of Muhammad was rejected by the government.

### ***No one of the exceptions under Article 12 Apply to the case of Muhammad Ismail***

Article 12, paragraph 3, provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted. This provision authorizes the State to restrict these rights only to protect national security, public order (ordre public), public health or morals and the

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<sup>53</sup> See general comment No. 15, paragraph 9, in HRI/GEN/1/Rev.3, 15 August 1997, p. 21.

<sup>54</sup> See communication No. 106/1981, *Montero v. Uruguay*, paragraph 9.4; communication No. 57/1979, *Vidal Martins v. Uruguay*, paragraph 7; communication No. 77/1980, *Lichtensztejn v. Uruguay*, paragraph 6.1.

<sup>55</sup> See communication No. 57/1979, *Vidal Martins v. Uruguay*, paragraph 9.

rights and freedoms of others. To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant. The law itself has to establish the conditions under which the rights may be limited. State reports should therefore specify the legal norms upon which restrictions are founded. Restrictions which are not provided for in the law or are not in conformity with the requirements of article 12, paragraph 3, would violate the rights guaranteed by paragraphs 1 and 2

Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.

States have often failed to show that the application of their laws restricting the rights enshrined in article 12, paragraphs 1 and 2, are in conformity with all requirements referred to in article 12, paragraph 3. The application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality.<sup>56</sup>

In the present case, Pakistan failed to show how the test of necessity and the requirements of proportionality have been met. Pakistan refused Muhammad Ismail's right to leave his own country with the idea of that such restriction serve the permissible purpose that is not sufficient, in accordance with Article 12(3) ICCPR. In conclusion, the right to free movement of Muhammad Ismail under Article 12(2) was violated.

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<sup>56</sup> CCPR/C/21/Rev.1/Add.9, General Comment No. 27. (General Comments) (Contained in document CCPR/C/21/Rev.1/Add.9)

## DEPRIVATION OF LIBERTY UNDER CATEGORY-III

According to Category III of the Working Group's Revised Methods of Work, a deprivation of liberty is arbitrary "[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character."<sup>57</sup>

Due process is at the core of the right to a fair trial. The minimum international standards of due process are established in the ICCPR, the UDHR, and the Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment (the "Body of Principles"), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules")<sup>58</sup>

### ***a. Pakistan Violated Muhammad's Right Not to Be Subjected to Arbitrary Arrest or Detention***

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that "No one shall be subjected to arbitrary arrest or detention"<sup>59</sup> This right is reiterated by Article 9 of the UDHR<sup>60</sup> The Human Rights Committee has emphasized that the "notion of "arbitrariness" [in Article 9 of the ICCPR] is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality<sup>61</sup>

In the present case, Muhammad's arrest and continued detention is arbitrary because it is unjust, inappropriate, and unreasonable. As noted above, Muhammad was targeted for his human rights actions. Accordingly, the pre-trial detention of Muhammad is unfounded, in violation of Article 9(1) of the ICCPR and Article 9 of the UDHR.

### ***b. Pakistan Violated Muhammad's Right to Release Pending Trial***

Article 9(3) of the ICCPR guarantees an individual's right to release pending trial, establishing that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody . . ."<sup>62</sup> The Human Rights Committee has clarified that "[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. . . ."<sup>63</sup> Moreover, principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.<sup>64</sup>

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<sup>57</sup> Revised Methods of Work, supra note 60, Category III, para. c.

<sup>58</sup> Id. at Category III, paras. 7(a)-(b).

<sup>59</sup> ICCPR, supra note 51, art. 9(1).

<sup>60</sup> UDHR, supra note 51, art. 9.

<sup>61</sup> General Comment No. 35, supra note 58, para. 12.

<sup>62</sup> ICCPR, supra note 51, art. 9(3).

<sup>63</sup> General Comment No. 35, supra note 58, para. 38.

<sup>64</sup> Body of Principles, supra note 51, prin. 38, 39.

In the present case, Muhammad was brought before a judge on February 3, 2021 and ordered to remain in pre-trial detention, where he will stay until trial. The judge did not provide any individualized reasons about Muhammad to justify detaining him, the court would not find any legitimate reasons for detention. Muhammad has no history of violence, and thus is not a threat to society. His name is on the Exit Control List, and thus he does not pose a flight risk. And there is no evidence that Muhammad might destroy if he is released. Accordingly, the pre-trial detention of Muhammad is unfounded, and the denial of his pre-trial release is a violation of Article 9(3) of the ICCPR and principles 38 and 39 of the Body of Principles.

### ***c. The Government Violated Muhammad's Right to a Presumption of Innocence***

Article 14(1) of the ICCPR guarantees the right “to a fair and public hearing by a competent, independent and impartial tribunal<sup>65</sup> One of the key tenets of a fair hearing is the principle of equality of arms, which requires that both parties have the same procedural rights<sup>66</sup> Furthermore, Article 14(2) of the ICCPR guarantees that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty.”<sup>67</sup> This right is reiterated in Article 11(1) of the UDHR<sup>68</sup> The Human Rights Committee has emphasized that States may never “[d]eviat[e] from fundamental principles of fair trial, including the presumption of innocence. . . .”<sup>69</sup>

The government labelled Muhammad Ismail as terror supporter without a fair trial process. No concrete evidence was shown by the government for the accusation other than fundamental and daily action of Muhammad Ismail.

Accordingly, the conviction of petitioners amounts to a violation of his right to a presumption of innocence. For these reasons, the Government violated articles 14(1), 14(2), and 14(3)(d) of the ICCPR and Article 11(1) of the UDHR

### ***d. The Government raided the house of Muhammad Ismail***

Article 17 of the ICCPR prohibits unlawful interference with home privacy, stating that “No one shall be subjected to arbitrary or unlawful interference with his privacy, home or correspondence.” An identical guarantee is provided by Article 12 of the UDHR<sup>70</sup>

On the morning of 4 February 2021, Muhammad Ismail's wife, Uzlifat Ismail, visited the Counter Terrorism Department (CTD )police station in Peshawar with clothes and medication for him. She was informed that Muhammad Ismail was no longer in their custody, and given no further information regarding his whereabouts. Later that same day, the CTD brought Muhammad Ismail bound in chains to the family home. Officers searched the house, and confiscated mobile phones, including that of Uzlifat Ismail.

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<sup>65</sup> ICCPR, supra note 51, art. 14(1)

<sup>66</sup> UN Human Rights Committee, General Comment No. 32: Article 14 (Right to equality before courts and tribunals and to a fair trial), UN Doc. CCPR/C/GC/32, para. 8 (Aug. 23, 2007), available at <https://undocs.org/ccpr/c/gc/32> [hereinafter “General Comment No. 32”].

<sup>67</sup> ICCPR, supra note 51, art. 14(2).

<sup>68</sup> UDHR, supra note 51, art. 11(1)

<sup>69</sup> General Comment No. 32, supra note 88, para. 34.

<sup>70</sup> UDHR, supra note 53, art. 12.

The officers were reportedly witnessed bringing papers and receipts into the house which they placed in a file and photographed. After the raid it was discovered that two laptop computers had been taken by the CTD without any official notice or receipt. Given the ongoing persecution and multiple cases filed against Muhammad Ismail, the family fears that this is yet another attempt to fabricate evidence against the defender and prolong his incarceration. Following the raid, Muhammad Ismail was taken away by the CTD.

Through the arbitrary search of the Applicant's home and seizure of his personal property, Pakistan violated Article 17 of the ICCPR and Article 12 of the UDHR.

## **IN CONCLUSION**

Muhammad Ismail is a human rights defender and a professor. The government of Pakistan has targeted him due to the fact that he works for human rights. As his international counsel, I kindly ask the Working Group on Arbitrary Detention to find the violation of the international human rights with regards to the arrest and detention of Muhammad Ismail and Pakistan must release him unconditionally and immediately.