

**Working Group on Arbitrary Detention**

24 September 2021

Dear Sir,

I would like to refer to the 91<sup>th</sup> session of the Working Group on Arbitrary Detention, during which the Working Group adopted several opinions on cases of deprivation of liberty submitted to it.

In accordance with paragraph 18 of the Working Group's revised methods of work, I am sending to you, attached herewith, the text of Opinion No. 37/2021 (Pakistan) adopted on 9 September 2021, regarding a case submitted by you.

In conformity with its revised methods of work, the Working Group transmits its Opinions to the source of the petitions, forty-eight hours after having transmitted it to the relevant Government.

This Opinion will be published on the website of the Working Group and reflected in its annual report to the Human Rights Council. In the meanwhile, we would encourage you to treat the information given to you by the Working Group on this matter with discretion.

Yours sincerely,



Lucie Viersma  
Secretary  
Working Group on Arbitrary Detention

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its ninety-first session, 6-10 September 2021

#### Opinion No. 37/2021 concerning Muhammad Ismail (Pakistan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 19 April 2021, the Working Group transmitted to the Government of Pakistan a communication concerning Muhammad Ismail. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established 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 (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

## Submissions

### *Communication from the source*

4. Muhammad Ismail is a citizen of Pakistan, born in 1955. He usually resides in the village of Marghuz, Swabi District in Pakistan.

5. The source informs that Mr. Ismail is a human rights activist who has a long-standing record of work on peacebuilding, countering violent extremism, democracy, youth empowerment, rural development, freedom of speech and political empowerment of communities. Mr. Ismail founded several non-governmental organisations, including RISE (Rural Initiatives in Sustainability and Empowerment) and NCCR (NGO Coalition on Child Rights). The latter organisation focused on child rights in the context of child labour, corporal punishment, street children, child sexual abuse and child marriage.

6. In addition, Mr. Ismail served as the Chairperson of the Pakistan National Aids Consortium - a national consortium of organisations working toward the prevention and treatment of HIV/AIDS in Pakistan. He was the co-founder of the Joint Action Committee which sought to counter religious extremism. Prior to his detention, Mr. Ismail was an active member of CIVICUS, an international organisation that supports civic freedoms.

7. The source adds that Mr. Ismail is the father of the human rights activist, Ms. Gulalai Ismail. Ms. Ismail has spoken out against the increasing incidence of sexual violence, citing the case of the rape and murder of a ten-year-old girl. As a result, she was forced to hide for several months and had to eventually flee Pakistan for fear of losing her life. It became known that she was living in exile abroad in September 2019.

### *Proceedings against Mr. Ismail*

#### *(a) First proceedings*

8. The source outlines several cases against Mr. Ismail. The first of these involves alleged cybercrime for speaking against government institutions. On 24 October 2019, Mr. Ismail was forcibly abducted from outside the Peshawar High Court by unidentified men. He was later handed over to the Federal Investigation Agency (FIA) Cyber Crimes Unit. Mr. Ismail was produced in court within 24 hours, on 25 October 2019. On 24 October 2019, the United States Department of State had issued a statement seeking his release.

9. According to the source, Mr. Ismail was charged under the Pakistan Electronic Crimes Act with “hate speech” and “spreading false information against government institutions”. He was detained for more than a month in conditions that may amount to cruel, inhuman and degrading treatment.

10. On 25 November 2019, the Peshawar High Court granted conditional bail to Mr. Ismail and he was released. On 20 April 2020, he was summoned for a court hearing after the FIA filed an appeal at the Peshawar High Court to revoke the conditional bail.

11. On 29 January 2021, after almost weekly hearings on the FIA appeal to revoke the conditional bail, the High Court ordered Mr. Ismail to stop using social media, otherwise his bail would be cancelled. The source alleges that the Court did not dismiss the FIA’s appeal in order to pressure Mr. Ismail. The hearings concerning this case are ongoing.

#### *(b) Second proceedings*

12. The second case against Mr. Ismail was brought under the Anti-Terrorism Act for the alleged crimes of terrorism, financial terrorism, sedition and criminal conspiracy. The source explains that this case was launched as a result of the human rights advocacy work of Ms. Gulalai Ismail. On 21 May 2019, she participated in a protest condemning increasing sexual violence linked to militarisation. Three cases were filed against her after her two-minute speech. The charges mentioned in the First Information Reports (FIRs) accused her of

incitement of hate and violence against State institutions and delivering seditious speech. According to the source, the FIR mentions section 124-A (sedition), section 153-A (promoting enmity between different groups), and section 500 (punishment for defamation) of the Pakistan Penal Code, as well as sections 6 and 7 of the Anti-Terrorism Act 1997.

13. The source alleges that numerous military operation-style raids were subsequently conducted on Ms. Ismail's family home. Her relatives and friends have also allegedly been subject to surveillance and torture to extract information about her.

14. On 27 May 2019, the media reported that Ms. Ismail had been blacklisted, despite already being on the Exit Control List. On the same day, news reports stated that a petition was heard in the High Court to delete and block Ms. Ismail's social media accounts. According to these reports, the Court sought replies from the Pakistan Telecommunications Authority, the Pakistan Electronic Media Regulatory Authority (PEMRA), the FIA and the Federal Ministry of Interior. According to the source, the judge stated that it was necessary for PEMRA to take appropriate action if anybody speaks against religion, the State or its institutions.

15. The source refers to a joint urgent appeal sent on 29 May 2019 by several Special Procedures mandate holders.<sup>1</sup> In this appeal, mandate holders expressed serious concern at the alleged existence of a State 'kill list' containing the names of 15 individuals, including Ms. Ismail. The appeal also referred to charges brought against her, which appear to be directly related to her legitimate work defending the human rights of the Pashtun community. The experts also raised the inclusion of Ms. Ismail on a no-fly list and the surveillance of persons associated with her.

16. On 6 July 2019, after the authorities failed to arrest Ms. Ismail, they lodged a FIR accusing her, Mr. Ismail and Mr. Ismail's spouse of financing terrorism under section 11 of the Anti-Terrorism Act. According to the FIR, Mr. Ismail received money to his bank account from his daughter and used it to support terrorist activities. This FIR was based on the reports of intelligence agencies and the Counter Terrorism FIA. Mr. Ismail and his spouse were granted bail in this case. They have also submitted an appeal in the Peshawar High Court.

17. In the course of proceedings that lasted for nearly one year, additional charges of sedition under sections 124-A and B of the Penal Code, and terrorism under section 7 of the Anti-Terrorism Act were added to the FIR. Throughout the proceedings, the Court requested the Counter Terrorism Department (CTD) and the FIA to produce evidence in support of the accusations. The source alleges that, on every court date, these institutions sought additional time to produce the evidence, which was granted. On 2 July 2020, this case was dismissed as the Prosecutor was not able to submit any evidence related to the charges.

18. The source adds that, before the judge discharged Mr. Ismail and his spouse, he asked the prosecutor to read out the conclusion of the CTD and FIA report, which was the basis of the FIR. According to the source, the report clearly stated that the prosecution had not found any terrorist activity or link to the financing of terrorism during the investigation, and that the institutions would not testify in court.

19. In addition, the source claims that, in an attempt to prove that Mr. Ismail and his co-defendants were terrorists, the prosecutor presented the two-minute video speech of Mr. Ismail's daughter, which was delivered on 21 May 2019. The judge reportedly remarked that it is the right of the people to protest against human rights violations, and if a citizen is blaming an institution for any violation of rights, their claims should be investigated rather than prosecuting activists.

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<sup>1</sup> The joint urgent appeal is available at:  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24650>  
The Government's response of 25 June 2019 is available at:  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34760>

20. Two months following the discharge of the defendants, the CTD, at the request of the security agencies, submitted new statements as evidence of terrorism activity and reopened the case with additional charges of terrorism, sedition, and conspiracy against the State. The source alleges that the statements were taken from proxies of security agencies in an attempt to link Mr. Ismail's daughter and her parents with terrorist groups, terrorism and financial terrorism.

21. According to the source, the case was reopened before another judge. On 30 September 2020, the Anti-Terrorism Court in Peshawar heard the case and charged Mr. Ismail and two co-defendants under sections 120-B and 124-A of the Penal Code, which relate to sedition and conspiracy, as well as under sections 7(g)(i) and 11-N of the Anti-Terrorism Act. These charges carry heavy prison sentences. The defendants pleaded not guilty and the trial has commenced.

22. The source notes that according to applicable legal provisions, the case should be heard again only by the same judge who had previously made the decision to discharge the defendants. On 30 September 2020, in light of the new evidence, Mr. Ismail and his two co-defendants were indicted on charges of funding two terrorist attacks. These attacks allegedly took place on a church in 2013 and a Shia mosque in 2015 in Peshawar.

23. The source submits that the statements regarding the alleged involvement of Mr. Ismail and his co-defendants in the attacks were recorded eight and five years respectively after the attacks, after the court had discharged the defendants due to the lack of evidence. The source submits that this fact points to the fabrication of charges.

24. On 2 February 2021, Mr. Ismail was arrested in the Anti-Terrorism Court in Peshawar while he was attending his bail confirmation hearing in the FIR lodged under the Anti-Terrorism Act against him and his spouse. While his spouse's bail was confirmed, Mr. Ismail was handcuffed and taken away. According to the source, no reason for the arrest was given to Mr. Ismail and the authorities did not show an arrest warrant. The judge of the Anti-Terrorism Court denied bail before the arrest of Mr. Ismail under a FIR dated 6 July 2019.

25. On 3 February 2021, Mr. Ismail was brought before a judge and ordered to remain in pre-trial detention, where he will stay until trial. On the same day, he was taken to the CTD police station. During the remand, Mr. Ismail's family homes in Islamabad and Swabi were raided. The source alleges that attempts were made to plant forged evidence and receipts.

26. On 4 February 2021, Mr. Ismail was taken bound in chains by the CTD to his home in Marghuz Village, Swabi District. On 5 February 2021, the CTD police raided his rented house in Islamabad.

27. On 8 February 2021, Mr. Ismail was presented before the Anti-Terrorism Court in Peshawar. The hearing was adjourned until 15 February 2021. His spouse was exempted from attending further court sessions.

28. On 15 February 2021, the Anti-Terrorism Court in Peshawar denied Mr. Ismail's bail application, despite his health situation following the COVID-19 pandemic. Mr. Ismail was transferred to Peshawar Central Jail where he has been kept in poor conditions in an overcrowded cell of more than 60 people. According to the source, Mr. Ismail is forced to sleep on the floor, not allowed to receive medicines, food or clothes, and toiletries from home. He is given sub-standard food despite his severe medical conditions, including a neurological disorder, dislocated discs in his back, kidney pain and high creatinine levels. Mr. Ismail has been denied medical care for his hypertension and other chronic conditions. He contracted COVID-19 when he was forced to stay in an overcrowded yard in the prison.

29. The source states that the date of the next court hearing remains unknown. The source also claims that Mr. Ismail is being denied his right to consult with his lawyer confidentially.

30. According to the source, Mr. Ismail and his spouse have been placed on the Exit Control List so that they could not join their children abroad. Neither Mr. Ismail nor his spouse were promptly notified of their placement on this list. The source alleges that the Exit

Control List notification, backdated to 18 October 2019, was sent to Mr. Ismail's spouse in February 2020. The letter mentions that she has been placed on the Exit Control List to prevent her from going abroad to speak to human rights organisations, as it will damage the reputation of Pakistan. In addition, Mr. Ismail's bank accounts have been frozen.

*Allegations against Mr. Ismail*

31. The source states that Mr. Ismail is currently accused of several crimes, including anti-State activities and financing terrorism, and having bank accounts with the aim of supporting terrorists under section 11-N of the Anti-Terrorism Act. Secondly, it is alleged that he published and disseminated anti-State material through different media for the purpose of inciting religious sectarian and ethnic hatred in the State under section 11-W of the Anti-Terrorism Act.

32. Mr. Ismail is also accused of aiding and abetting terrorist offences on 22 September 2013 and 13 February 2015 while attacking Saint John Church near Murad Shah Baba Ziarat and Immaia Mosque situated in Peshawar by providing arms, ammunition and a vehicle, in contravention of section 21(i) of the Anti-Terrorism Act.

33. Moreover, Mr. Ismail is accused of supporting terrorists and organisations financing them. Pursuant to an agreement on 16 April 2015 and 16 December 2015, he allegedly received an amount in US Dollars to use in terrorist activities. This offence is punishable under section 120-B of the Penal Code. Finally, he is accused of attempting to incite hatred and dissatisfaction with the Government, contrary to section 124-A of the Penal Code.

*Analysis of violations*

34. The source submits that Mr. Ismail's detention falls under categories I, II and III.

*Category I*

35. In relation to category I, the source argues that Mr. Ismail's detention is arbitrary because the authorities lack any substantive evidence to justify his detention. Moreover, Mr. Ismail was charged under a vague and overbroad provision of the Penal Code. Mr. Ismail is accused of anti-State activities and financing terrorism, and having bank accounts with the aim of supporting terrorism under the provisions of Anti-Terrorism Act, which is a vague and broad legislation.

36. The source recalls that article 11(2) of the Universal Declaration of Human Rights and article 15(1) of the Covenant guarantee individuals the right to know what the law is and what conduct violates the law. The Human Rights Committee has stated 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>2</sup> The Human Rights Committee has also stated that a law "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly".<sup>3</sup>

37. In the present case, the provisions of the Anti-Terrorism Act (section 11-N) and the Penal Code (sections 120-124) cited by the authorities are formulated in a vague way. The authorities failed to prove how having a bank account and making daily bank transactions, both domestically and internationally, amounted to supporting or financing terrorism. The vague formulation of these provisions permits the authorities to arbitrarily apply them, as is the case for Mr. Ismail.

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<sup>2</sup> Human Rights Committee, General comment No. 35, para. 22.

<sup>3</sup> Human Rights Committee, General comment No. 34, para. 25.

*Category II*

38. In relation to category II, the source states that the authorities arrested and detained Mr. Ismail on the basis of his exercise of the rights to freedom of opinion and expression and to peaceful assembly. The source recalls that article 19(2) of the Covenant 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.” The right to freedom of opinion and expression is vital to the work of human rights defenders. The Human Rights Committee has stated that the right to freedom of expression under article 19 of the Covenant protects canvassing and discussion of human rights.<sup>4</sup>

39. Furthermore, article 21 of the Covenant provides that “[t]he right of peaceful assembly shall be recognized.” This right is also protected by article 20(1) of the Universal Declaration of Human Rights. The Human Rights Council has specifically called upon 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>5</sup>

40. According to the source, Mr. Ismail was arrested and detained due to his activities as a human rights activist. Mr. Ismail has been at the forefront of Pakistani civil society for decades. He is the General Secretary of the Pakistan NGO Forum, which is the apex body of Pakistani civil society organisations. The source argues that the arrest and detention of Mr. Ismail aimed at ending his advocacy activities.

41. The source further submits that, while the rights to freedom of opinion and expression and peaceful assembly are not absolute, none of the exceptions to these rights apply to Mr. Ismail’s case. Under international law, the rights to freedom of opinion and expression and to peaceful assembly may only be restricted in limited circumstances. The Human Rights Committee has established a three-part “strict test of justification” in analysing limitations on such fundamental rights.<sup>6</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>7</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.

42. The Human Rights Committee has emphasized that such restrictions must not “put in jeopardy the right itself.”<sup>8</sup> It is not sufficient for a government to merely invoke one of the enumerated exceptions, it must “specify the precise nature of the threat” posed by the protected activity,<sup>9</sup> establish a “direct and immediate connection between the expression and the threat,” and demonstrate why the limitation was necessary.<sup>10</sup> Furthermore, the Human Rights Committee has been clear that article 19(3) of the Covenant must never be used to justify “the muzzling of any advocacy of ... human rights”.<sup>11</sup>

43. The source argues that the arrest and detention of Mr. Ismail falls outside any possible legitimate restriction on the right to freedom of opinion and expression. Mr. Ismail was targeted due to his advocacy and work as human rights defender. For this reason, the Government has acted in violation of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant, rendering Mr. Ismail’s detention arbitrary under category II.

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<sup>4</sup> Ibid, para. 11.

<sup>5</sup> A/HRC/RES/15/21, para. 1.

<sup>6</sup> CCPR/C/64/D/628/1995, para. 10.3.

<sup>7</sup> CCPR/C/80/D/926/2000, para 7.2.

<sup>8</sup> Human Rights Committee, General comment No. 34, para. 21.

<sup>9</sup> CCPR/C/54/D/518/1992, para. 10.4.

<sup>10</sup> Human Rights Committee, General comment No. 34, para. 35.

<sup>11</sup> Ibid, para. 23.

44. The source submits that Mr. Ismail's right to freedom of movement under article 12 of the Covenant has been violated. 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(2) is not restricted to persons lawfully within the territory of a State, an alien being legally expelled from the country is entitled to elect the State of destination, subject to the agreement of that State.<sup>12</sup>

45. In order to enable the individual to enjoy the rights guaranteed by article 12(2) of the Covenant, obligations are imposed on the State of residence and on the State of nationality. 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.

46. Mr. Ismail and his spouse have been placed on the Exit Control List, preventing them from leaving Pakistan. Mr. Ismail's request for a passport was rejected. The source remarks that none of the exceptions, as provided for under article 12(3) of the Covenant, apply to Mr. Ismail. The authorities did not show how the test of necessity and the requirements of proportionality have been met.

### *Category III*

47. In relation to category III, the source submits that due process is at the core of the right to a fair trial. The minimum international standards of due process are established in the Covenant, the Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) and the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

48. Mr. Ismail's arrest and continued pre-trial detention violates article 9 of the Universal Declaration of Human Rights and article 9(1) of the Covenant. It is based on Mr. Ismail's work as a human rights defender and is therefore unfounded. Article 9(1) of the Covenant guarantees that no one shall be subjected to arbitrary arrest or detention. This right is reiterated by article 9 of the Universal Declaration of Human Rights. The Human Rights Committee has emphasized that the "notion of arbitrariness" in article 9 of the Covenant 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>13</sup>

49. Moreover, the source submits that Mr. Ismail's right to be released pending trial has been violated. Article 9(3) of the Covenant 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". 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>14</sup> Moreover, principles 38 and 39 of the Body of Principles confirm that, except in special cases, a criminal detainee is entitled to release pending trial.

50. According to the source, Mr. Ismail was brought before a judge on 3 February 2021 and ordered to remain in pre-trial detention, where he will stay until trial. The judge did not provide any individualised reasoning to justify Mr. Ismail's detention. Mr. Ismail has no history of violence and is not a threat to society. His name is on the Exit Control List and he

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<sup>12</sup> Human Rights Committee, General comment No. 15, para. 9 in HRI/GEN/1/Rev.3.

<sup>13</sup> Human Rights Committee, General comment No. 35, para. 12.

<sup>14</sup> *Ibid.*, para. 38.



does not pose a flight risk. Furthermore, there is no evidence that Mr. Ismail might destroy if he is released. The source concludes that the pre-trial detention of Mr. Ismail is unfounded.

51. In addition, the source submits that Mr. Ismail's right to the presumption of innocence has been violated. Article 14(1) of the Covenant guarantees the right to a "fair and public hearing by a competent, independent and impartial tribunal". One of the key tenets of a fair hearing is the principle of the equality of arms, which requires that both parties have the same procedural rights.<sup>15</sup> Article 14(2) of the Covenant guarantees that "[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty". This right is reiterated in article 11(1) of the Universal Declaration of Human Rights. 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>16</sup>

52. It is argued that Mr. Ismail was called a supporter of terrorism without a fair trial process. No concrete evidence was shown to support the accusations against Mr. Ismail, other than his usual daily activities. The authorities have violated article 11(1) of the Universal Declaration of Human Rights and articles 14(1), 14(2) and 14(3)(d) of the Covenant.

53. Finally, the source notes that the authorities have raided Mr. Ismail's house. It recalls that article 17 of the Covenant prohibits arbitrary or unlawful interference with a person's privacy, home or correspondence. An identical guarantee is provided in article 12 of the Universal Declaration of Human Rights.

54. On the morning of 4 February 2021, Mr. Ismail's spouse visited the CTD police station in Peshawar with clothes and medication for Mr. Ismail. She was informed that Mr. Ismail was no longer in their custody and was given no further information regarding his whereabouts. Later that day, the CTD brought Mr. Ismail bound in chains to his family home. Officers searched the house and confiscated mobile telephones. The search was not carried out in accordance with domestic law and no search warrant has been produced.

#### *Response from the Government*

55. On 19 April 2021, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 17 June 2021 about the situation of Mr. Ismail. The Working Group also requested the Government to clarify the legal provisions justifying his continued detention, as well as its compatibility with Pakistan's obligations under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of Mr. Ismail.

56. The Working Group regrets that it did not receive a response from the Government to this communication.<sup>17</sup> The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work.

#### *Additional comments from the source*

57. The source reports that Mr. Ismail was released on bail on 15 April 2021, as his health condition has deteriorated in prison. However, the charges against him remain.

#### **Discussion**

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<sup>15</sup> Human Rights Committee, General comment No. 32, para. 8.

<sup>16</sup> Ibid, para. 6.

<sup>17</sup> The Government responded to previous communications from the Working Group and other Special Procedures mandate holders on Mr. Ismail's case. However, the Working Group's methods of work require a separate response to the urgent action and regular procedures: A/HRC/36/38, para. 23.

58. In the absence of a response from the Government, the Working Group has decided to render the present opinion in conformity with paragraph 15 of its methods of work.

59. The Working Group welcomes the release of Mr. Ismail on bail on 15 April 2021. In accordance with paragraph 17(a) of its methods of work, the Working Group reserves the right to render an opinion on whether or not a deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. According to the source, the charges brought against Mr. Ismail remain and he is at risk of being detained again following his release on bail. In addition, Mr. Ismail is being prosecuted for serious allegations relating to terrorism and other offences, reportedly as a result of his work as a human rights defender. In these circumstances, the Working Group considers it important to render an opinion.

60. In determining whether the deprivation of liberty of Mr. Ismail is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

61. In the present case, two proceedings have been initiated against Mr. Ismail:

(i) The first case involves allegations of cybercrime for speaking against government institutions. Mr. Ismail was reportedly abducted outside the Peshawar High Court on 24 October 2019 and was produced in court the following day. He was charged under the Pakistan Electronic Crimes Act with hate speech and spreading false information against government institutions. Mr. Ismail was detained for more than a month until he was granted bail and released on 25 November 2019. The FIA appealed this decision, seeking to revoke the bail order. Hearings in relation to the matter are ongoing.

(ii) The second case involves a FIR lodged on 6 July 2019 against Mr. Ismail, his spouse and daughter in relation to financing terrorism, sedition and terrorism charges. The case was initially dismissed on 2 July 2020 owing to a lack of evidence submitted by the prosecution. However, the matter was reopened two months later and further charges were brought against the defendants. On 2 February 2021, Mr. Ismail was arrested in the Anti-Terrorism Court in Peshawar while attending a bail confirmation hearing. According to the source, Mr. Ismail was detained at the Peshawar Central Jail until his release on bail on 15 April 2021. The defendants have pleaded not guilty and the trial has commenced.

62. The Working Group will consider whether the detention of Mr. Ismail in relation to both of these proceedings was arbitrary under the relevant categories provided for in its methods of work.<sup>18</sup>

#### *Category I*

63. In relation to the first proceedings, the source alleges that Mr. Ismail was forcibly abducted on 24 October 2019 from outside the Peshawar High Court by unidentified men. He was subsequently handed over to the FIA Cyber Crimes Unit. Following a statement by the United States Department of State seeking Mr. Ismail's release, he was produced in court on 25 October 2019. Mr. Ismail was then detained until his release on bail on 25 November 2019. The Government did not submit a response to the Working Group's regular communication and has not sought to challenge these allegations.

64. In the absence of any alternative explanation from the Government, it appears that the unidentified men who reportedly abducted Mr. Ismail were acting on behalf of the Government, given that Mr. Ismail was handed over to the FIA Cyber Crimes Unit. Mr. Ismail was therefore deprived of liberty against his will, with the involvement of Government

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<sup>18</sup> A/HRC/36/38, para. 8.

officials, who appear to have refused to disclose his fate and whereabouts during this period.<sup>19</sup> The Working Group considers that Mr. Ismail was subjected to enforced disappearance in the period between his abduction on 24 October 2019 and his appearance in court on 25 October 2019. The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

65. The Working Group recalls that enforced disappearances violate numerous substantive and procedural provisions of the Covenant, including articles 9 and 14, and constitute a particularly aggravated form of arbitrary detention.<sup>20</sup> In particular, the abduction of Mr. Ismail on 24 October 2019 took place completely outside of established legal processes and with no judicial oversight, in violation of the requirement under article 9(1) of the Covenant that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. Mr. Ismail's abduction also violated the requirement under article 9(2) of the Covenant that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest. By failing to follow arrest procedures, such as presenting an arrest warrant<sup>21</sup> and informing Mr. Ismail of the reasons for his arrest,<sup>22</sup> the authorities have failed to invoke a legal basis for Mr. Ismail's detention.

66. In addition, while Mr. Ismail was brought before a court the day after his abduction, it is unlikely that this represented a real opportunity to challenge the legal basis for his detention, given that he had been disappeared prior to his appearance in court, with limited opportunity to prepare or consult with legal counsel. The Working Group considers that Mr. Ismail's right to challenge the legality of his detention under article 9(3) and (4) of the Covenant, as well as his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2(3) of the Covenant, were violated.<sup>23</sup> As a result, the authorities did not establish a legal basis for Mr. Ismail's detention in accordance with the requirements of international human rights law.

67. In relation to the second proceedings, the source alleges that on 2 February 2021, Mr. Ismail was arrested in the Anti-Terrorism Court in Peshawar while attending a bail confirmation hearing in the FIR lodged under the Anti-Terrorism Act against him and his spouse. While his spouse's bail was confirmed, Mr. Ismail was handcuffed and taken away. According to the source, no reason for the arrest was given to Mr. Ismail and the authorities did not show an arrest warrant. On 3 February 2021, Mr. Ismail was brought before a judge and ordered to remain in pre-trial detention. He was subsequently released on bail on 15 April 2021. The Government has not responded to these allegations.

68. While the source alleges that no arrest warrant was presented and no reasons were given for the arrest of Mr. Ismail on 2 February 2021, it is not clear whether these procedures were required in this situation. Unlike Mr. Ismail's abduction in October 2019, on this occasion he was present in court and was denied bail in proceedings that had already been initiated against him and other defendants. It appears that the authorities were taking him into custody pursuant to the court order denying bail, rather than arresting him under a new FIR. In the absence of specific information that the arrest on 2 February 2021 related to different proceedings against Mr. Ismail which required an arrest warrant and reasons to be given, the Working Group is not in a position to determine whether Mr. Ismail's rights were violated.

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<sup>19</sup> A/HRC/16/48/Add.3, para. 21. See also A/HRC/33/51/Add.7, paras. 22-38.

<sup>20</sup> Human Rights Committee, General comment No. 35, para. 17; Opinion Nos. 41/2020, para. 61; 11/2020, para. 41; CCPR/C/PAK/CO/1, paras. 19-20; CAT/C/PAK/CO/1, paras. 24-25.

<sup>21</sup> In order for deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant: Opinion Nos. 4/2021, 59/2019, 46/2019, 33/2019, 9/2019.

<sup>22</sup> An arrest is arbitrary when carried out without informing the arrested person of the reasons for the arrest: Opinion Nos. 4/2021, para. 83; 46/2020, para. 40; 59/2019, para. 46; 46/2019, para. 51.

<sup>23</sup> CAT/C/PAK/CO/1, paras. 16-17 (noting the importance of reviewing the legality of detention).

69. The source further alleges that during his remand, Mr. Ismail's family homes in Islamabad and Swabi were raided. According to the source, a search was conducted on 4 February 2021 and mobile telephones were confiscated without a search warrant. In its jurisprudence, the Working Group has established that detention is arbitrary when evidence obtained without a search warrant is used in judicial proceedings.<sup>24</sup> In the present case, it is not clear whether the seized evidence will be used against Mr. Ismail during his trial. However, the Working Group considers that the source has established a credible case, which was not rebutted by the Government, that a search was conducted without a search warrant. This suggests that the authorities did not follow the necessary investigative procedures to ensure that Mr. Ismail's detention had a legal basis.

70. Furthermore, the source argues that Mr. Ismail was not afforded his right to be released pending trial, in violation of article 9(3) of the Covenant. According to the source, when Mr. Ismail was ordered to remain in pre-trial detention on 3 February 2021, the judge did not provide any individualised reasoning to justify Mr. Ismail's detention. Mr. Ismail has no history of violence and is not a threat to society. His name is on the Exit Control List and he does not pose a flight risk. There is no evidence that he might destroy if he is released. The source also refers to Mr. Ismail's serious health conditions and the risks that he faces while in detention.

71. According to article 9(3) of the Covenant, pre-trial detention must be the exception and not the rule, and should be ordered for as short a time as possible.<sup>25</sup> Detention pending trial must be based on an individualised determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>26</sup> Courts must examine whether alternatives to pre-trial detention, such as bail, would render detention unnecessary.<sup>27</sup>

72. The Working Group notes that Mr. Ismail was released on bail on 15 April 2021. However, he was detained for over two months prior to his release, that is, from 2 February to 15 April 2021, and the source's original submissions relating to the absence of an individualised review of Mr. Ismail's case still apply to that period of detention. The Government provided no information to rebut the source's allegation that Mr. Ismail did not initially receive an individualised judicial review of the need for his detention pending trial. As a result, the Working Group finds that Mr. Ismail's pre-trial detention for over two months was not properly constituted and thus had no legal basis.<sup>28</sup> In reaching this conclusion, the Working Group emphasizes that it did not review whether Mr. Ismail posed any of the risks referred to by the source, such as a flight risk, as that is a matter for the national courts to determine.<sup>29</sup> Rather, the Working Group considered whether an individualised judicial review of Mr. Ismail's case had taken place, and found no suggestion that such a review was initially conducted following his arrest on 2 February 2021.

73. For these reasons, Mr. Ismail's detention from the time of his abduction on 24 October 2019 until his release on bail on 25 November 2019, and from the time of his arrest on 2 February 2021 until his release on bail on 15 April 2021, was arbitrary under category I.

#### *Category II*

74. The source alleges that Mr. Ismail was deprived of his liberty as a result of the exercise of his rights to freedom of movement, freedom of opinion and expression, and peaceful

<sup>24</sup> Opinion No. 83/2019, para. 51. See also Opinion Nos. 33/2019, 31/2019, 83/2018, 78/2018, 36/2018.

<sup>25</sup> A/HRC/19/57, paras. 48-58; Opinion Nos. 64/2020, para. 58; 62/2019, paras. 27-29; 5/2019, para. 26.

<sup>26</sup> Human Rights Committee, General comment No. 35, para. 38; Opinion No. 45/2016, para. 51.

<sup>27</sup> Human Rights Committee, General comment No. 35, para. 38.

<sup>28</sup> Opinion Nos. 36/2020, para. 51; 68/2019, para. 96.

<sup>29</sup> Opinion Nos. 46/2020, para. 62; 1/2020, para. 51; 64/2019, para. 89; 49/2019, para. 58.

assembly under articles 13, 19 and 20 of the Universal Declaration of Human Rights and articles 12, 19 and 21 of the Covenant. The Government did not respond to these submissions.

75. The Working Group considers that there is insufficient basis to conclude that Mr. Ismail's detention was related to the exercise of his right to freedom of movement or to peaceful assembly. While Mr. Ismail has been prevented from leaving Pakistan because of his placement on the Exit Control List, he does not appear to have been detained as a result of exercising his right to freedom of movement.<sup>30</sup> Indeed, Mr. Ismail is not a flight risk because his name is on the Exit Control List and he cannot exercise his right to leave Pakistan. His bank accounts have also been frozen. There would appear to be no point in detaining him to prevent him from exercising his freedom of movement to leave the country, as he is already incapable of doing so. Similarly, the source has not pointed to the participation of Mr. Ismail in any specific peaceful assemblies that resulted in his detention.

76. The source further alleges that Mr. Ismail was detained as a result of exercising his right to freedom of opinion and expression through his work as a human rights activist. According to the source, Mr. Ismail's detention was aimed at ending his advocacy activities. Mr. Ismail has a long-standing history at the forefront of Pakistani civil society, including as the General Secretary of the Pakistan NGO Forum and as the founder of several NGOs. His work includes advocacy on peacebuilding, countering violent extremism, democracy, youth empowerment, rural development, freedom of speech and political empowerment of communities.

77. Article 19(2) of the Covenant provides that everyone has the right to freedom of expression; this right includes the 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 or her choice. This right includes political discourse, commentary on public affairs, and discussion of human rights through any media, such as electronic and internet-based modes of expression.<sup>31</sup> It protects the holding and expression of opinions, including those which are critical of, or not in line with, government policy.<sup>32</sup>

78. The Working Group considers that Mr. Ismail's conduct falls within the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant and that he was detained for exercising this right through his work.<sup>33</sup> Moreover, Mr. Ismail's work involved advocacy on key areas of government policy and human rights, and as such, concerned matters of public interest. In the view of the Working Group, Mr. Ismail was also detained for exercising his right to take part in the conduct of public affairs under article 21(1) of the Universal Declaration of Human Rights and article 25(a) of the Covenant.<sup>34</sup>

79. There is nothing to suggest – and the Government has not argued – that the permissible restrictions on the above rights set out in articles 19(3) and 25 of the Covenant would apply in the present case. The Government did not explain how prosecuting Mr. Ismail is necessary to protect a legitimate interest under these provisions, nor how bringing serious charges under the Penal Code, Anti-Terrorism Act and other legislation was a proportionate response to his activities. Importantly, there is no evidence to suggest that Mr. Ismail's activities could reasonably be considered to pose a threat to national security, public order, public health or morals, or the rights or reputations of others. The Human Rights Council has called on States

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<sup>30</sup> Compare Opinion Nos. 33/2016 (individual detained for illegally returning to his country); 36/2007 (individual detained for the crime of illegally crossing a state border).

<sup>31</sup> Human Rights Committee, General comment No. 34, paras. 11-12.

<sup>32</sup> Opinion Nos. 8/2019, para. 55; 79/2017, para. 55.

<sup>33</sup> CCPR/C/PAK/CO/1, paras. 37-38 (discussing the lack of a safe environment for human rights defenders and others who exercise the freedom of expression); CAT/C/PAK/CO/1, paras. 22-23.

<sup>34</sup> Human Rights Committee, General comment No. 25, para. 8 (noting that citizens may take part in the conduct of public affairs by exerting influence through public debate). Opinion Nos. 16/2020, 15/2020.

to refrain from imposing restrictions under article 19(3) that are not consistent with international human rights law.<sup>35</sup>

80. As the Human Rights Committee has stated, extreme care must be taken by States to ensure that provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of article 19(3) of the Covenant.<sup>36</sup> It is not compatible with this provision 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 human rights defenders or others for having disseminated such information.<sup>37</sup>

81. According to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and to draw public attention to the observance of human rights.<sup>38</sup> The source has demonstrated that Mr. Ismail was detained for the exercise of his rights under this Declaration. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.<sup>39</sup>

82. The Working Group finds that Mr. Ismail was detained in relation to both proceedings against him as a result of the peaceful exercise of his right to freedom of opinion and expression and to participate in the conduct of public affairs, and in violation of article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. His detention was arbitrary under category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

83. Finally, the Working Group takes note of the source's submission that the offences that Mr. Ismail is accused of under the Penal Code and Anti-Terrorism Act are vague and overly broad. The principle of legality requires that laws be formulated with sufficient precision so that the individual can acquire access to and understand the law and regulate his or her conduct accordingly.<sup>40</sup> The Working Group takes this opportunity to reiterate that laws may be so lacking in sufficient detail of the conduct that may be penalised that it is impossible to invoke a legal basis justifying the deprivation of liberty.<sup>41</sup> The Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

### *Category III*

84. Given its finding that Mr. Ismail's detention was arbitrary under category II, the Working Group emphasizes that no trial should take place. However, while Mr. Ismail has been released on bail, the hearings in his first proceedings are ongoing and the trial against him and the two co-defendants in the second proceedings has commenced.

85. The source alleges that Mr. Ismail has been denied his right to consult with his lawyer confidentially. While the Working Group notes that the right to confidential communications with legal counsel is well established under international human rights law,<sup>42</sup> the source has

<sup>35</sup> A/HRC/RES/12/16, para. 5(p).

<sup>36</sup> Human Rights Committee, General comment No. 34, para. 30.

<sup>37</sup> *Ibid.*

<sup>38</sup> GA RES 53/144 annex, articles 1 and 6(c). See also GA RES 74/146, para. 12.

<sup>39</sup> See e.g., Opinion Nos. 16/2020, 15/2020, 45/2019, 44/2019, 9/2019, 46/2018, 45/2018, 36/2018.

<sup>40</sup> Opinion No. 41/2017, paras. 98–101. See also Opinion No. 62/2018, paras. 57–59.

<sup>41</sup> CCPR/C/PAK/CO/1, paras. 21–22 (commenting on the broad nature of the Anti-Terrorism Act). See also A/70/371, para. 46(b) (urging States to ensure that counter-terrorism laws are sufficiently precise so that they cannot be used to target civil society on unjustified grounds).

<sup>42</sup> Nelson Mandela Rules, rule 61(1); Body of Principles, principle 18(3); A/HRC/30/37, principle 9 and

not provided any details of the circumstances in which the authorities denied this right to Mr. Ismail, nor any information about the impact on the proceedings against him. In these circumstances, the Working Group is not in a position to make any findings on this issue.

86. In addition, the source submits that Mr. Ismail's right to the presumption of innocence has been violated. According to the source, Mr. Ismail was called a supporter of terrorism without a fair trial process. No concrete evidence was shown to support the accusations against him, other than his usual daily activities. While the Working Group determines whether proceedings meet international fair trial standards, it does not act as a national court or appellate body and does not assess the sufficiency of the evidence presented against a defendant.<sup>43</sup> As a result, the Working Group is not in a position to determine whether there was any concrete evidence presented in this case, and finds no other information to support the alleged violation of Mr. Ismail's right to the presumption of innocence.

87. Finally, although the source did not make any submissions relating to the duration of the proceedings against Mr. Ismail, the Working Group considers that Mr. Ismail has been denied his right to trial without undue delay in both proceedings. In the first proceedings, Mr. Ismail was abducted on 24 October 2019 and the hearings relating to his bail are reportedly ongoing, nearly two years later. In the second proceedings, the FIR dates back to 6 July 2019, more than two years ago. The case was initially dismissed on 2 July 2020 but was subsequently reopened, and the trial of Mr. Ismail and the other two co-defendants is ongoing with additional charges having been brought by the authorities. Mr. Ismail is currently released on bail in relation to both matters. The Government has not provided any information that would address this issue.

88. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the authorities.<sup>44</sup> This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal. All stages, whether in first instance or on appeal must take place without undue delay.<sup>45</sup>

89. The Working Group has taken into account that Mr. Ismail has not been detained in relation to the first proceedings since November 2019. He was not detained in relation to the second proceedings in the period between the initiation of the case in July 2019 until his arrest in February 2021, and was released on bail on 15 April 2021. However, the Working Group considers that the delay in finalising both matters is still unacceptably long, in violation of article 14(3)(c) of the Covenant. Given the above finding that Mr. Ismail's detention was arbitrary under category II, he should never have been detained for the peaceful exercise of his rights under international human rights law, and any delay in trying his case would be unreasonable.<sup>46</sup>

90. The Working Group concludes that this violation of the right to a fair trial through undue delay in concluding the proceedings against Mr. Ismail is of such gravity as to give his detention an arbitrary character under category III.

#### *Category V*

91. While the source did not make any submissions under category V, the Working Group has decided to analyse Mr. Ismail's detention under this category of its methods of work.

92. The Working Group considers that Mr. Ismail was targeted because of his peaceful activities in support of human rights. As noted earlier, he has a long-standing record as a

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<sup>43</sup> Opinion Nos. 64/2019, para. 89; 75/2018, para. 73, 53/2018, para. 79, 57/2016, para. 115.

<sup>44</sup> Human Rights Committee, General comment No. 35, para. 37 and General comment No. 32, para. 35.

<sup>45</sup> Human Rights Committee, General comment No. 32, para. 35.

<sup>46</sup> See Opinion Nos. 10/2021, 16/2020 and 15/2020.

human rights activist and defender, having established several NGOs and served in leadership roles of human rights bodies such as the NGO Forum, as well as other organisations such as the Pakistan National Aids Consortium and the Joint Action Committee. Notably, the authorities appear to have targeted Mr. Ismail and his family, having reopened the second proceedings against him after it was initially dismissed. The authorities also brought Mr. Ismail bound in chains to his home village in February 2021, which would appear to be excessive and disproportionate to any risk posed by Mr. Ismail. The likelihood of a well-known 66-year-old human rights defender with chronic health conditions whose name is on the Exit Control List attempting to escape or commit any crimes was presumably minimal.

93. Moreover, in the discussion above concerning category II, the Working Group established that Mr. Ismail's detention resulted from the peaceful exercise of his rights under international law. When detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>47</sup> The Government has submitted no information to rebut this presumption. In particular, the Government has not provided any information suggesting that Mr. Ismail was involved in the alleged offences or that he has a prior criminal record involving violence and terrorism. In these circumstances, the Working Group concludes that Mr. Ismail was detained because of his status as a human rights defender<sup>48</sup> and for his political or other opinions expressed through his advocacy work. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

94. Furthermore, the source has submitted a credible prima facie case, which was not rebutted by the Government that Mr. Ismail was detained because of the human rights advocacy of his daughter, Ms. Gulalai Ismail. This included Ms. Ismail's participation in a protest in May 2019 condemning sexual violence, which resulted in three cases being filed against her, numerous raids on her home, and the alleged surveillance and torture of her relatives and friends. According to the source, Ms. Ismail fled Pakistan to live in exile abroad. It appears that when the authorities failed to apprehend Ms. Ismail, they pursued proceedings against Mr. Ismail and his spouse.

95. Accordingly, the Working Group considers that Mr. Ismail's detention resulted from discrimination based on birth and family ties, namely, his association with his daughter. This appears to be a case of guilt by association.<sup>49</sup> The Working Group reaffirms that no one should be deprived of their liberty for the crimes, real or not, committed by a family member by birth or marriage, in a free, democratic society.<sup>50</sup>

96. The Working Group finds that Mr. Ismail was detained on discriminatory grounds, that is, on the basis of his status as a human rights defender, his political or other opinion, and his birth and family ties, contrary to articles 2 and 7 of the Universal Declaration of Human Rights and articles 2(1) and 26 of the Covenant. His detention in both proceedings was arbitrary according to category V.

#### *Concluding remarks*

97. The Working Group expresses its serious concern about the reported conditions in which Mr. Ismail was previously detained and his chronic health conditions. According to the source, Mr. Ismail was held in poor conditions in Peshawar Central Jail, forced to sleep on the floor, and not allowed to receive medicines, food or clothes, and toiletries. He was given sub-standard food despite his medical conditions, including a neurological disorder, dislocated discs in his back, kidney pain and high creatinine levels. Mr. Ismail was allegedly

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<sup>47</sup> Opinion Nos. 4/2021, para. 108; 59/2019, para. 79; 13/2018, para. 34; 88/2017, para. 43.

<sup>48</sup> See Opinion No. 45/2016; A/HRC/36/37, para. 49 (identifying human rights defenders as a protected group that is entitled to equal protection of the law under article 26 of the Covenant).

<sup>49</sup> Opinion Nos. 65/2019, para. 85; 83/2017, paras. 87-88; 33/2017, para. 98; 1/2017, para. 59.

<sup>50</sup> Opinion Nos. 2/2021, para. 82; 65/2019, para. 83.



denied medical care for his hypertension and other chronic conditions. He contracted COVID-19 when he was forced to stay in an overcrowded yard in the prison.

98. The Working Group urges the Government to ensure that the conditions in all places of deprivation of liberty throughout Pakistan meet international standards.<sup>51</sup> This includes the Nelson Mandela Rules, particularly rules 12-27 relating to living conditions and health care. In accordance with article 10(1) of the Covenant, the Government is obliged to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person. Given that Mr. Ismail was arbitrarily detained despite his poor health, the Working Group urges the Government to unconditionally release him and ensure that he receives the necessary medical care.

99. The Working Group notes with concern the charges reportedly brought against Mr. Ismail's spouse, as well as actions taken against Mr. Ismail's daughter for her advocacy in support of the Pashtun community. The actions taken against Mr. Ismail's daughter reportedly include several serious charges, raids on her home, surveillance and torture of her relatives and friends, attempts to block her access to social media, and inclusion on an alleged State 'kill list'. While the Working Group was not asked to consider the situation of Mr Ismail's family members, and they do not appear to have been detained, the alleged violation of their human rights should be subject to further investigation by the authorities.

100. Finally, the Working Group would welcome the opportunity to undertake a country visit to Pakistan to work constructively with the authorities in addressing its concerns in relation to the arbitrary deprivation of liberty. The Working Group made a request to the Government on 11 June 2018 to conduct a country visit. As an elected member of the Human Rights Council from 2021-2023, Pakistan is well placed to demonstrate its commitment to human rights by inviting the Working Group to undertake a visit.<sup>52</sup>

### **Disposition**

101. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Muhammad Ismail, being in contravention of articles 2, 7, 8, 9, 10, 11(1), 19 and 21(1) of the Universal Declaration of Human Rights and articles 2(1), 2(3), 9, 14, 19, 25(a) and 26 of the International Covenant on Civil and Political Rights, was arbitrary falling within categories I, II, III and V.

102. The Working Group requests the Government of Pakistan to take the steps necessary to remedy the situation of Mr. Ismail without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

103. The Working Group considers that, taking into account all the circumstances of the case, including the risk to Mr. Ismail's health and wellbeing, the appropriate remedy would be to release Mr. Ismail unconditionally and accord him an enforceable right to compensation and other reparations, in accordance with international law.<sup>53</sup>

104. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Mr. Ismail and to take appropriate measures against those responsible for the violation of his rights.

105. In accordance with paragraph 33(a) of its methods of work, the Working Group refers this case to: (i) the Working Group on Enforced or Involuntary Disappearances, (ii) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and

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<sup>51</sup> CCPR/C/PAK/CO/1, paras. 27-28; CAT/C/PAK/CO/1, paras. 28-29.

<sup>52</sup> The Government made a voluntary commitment prior to its election to the Human Rights Council to continue to "strengthen cooperation with the special procedures, including by arranging visits of the High Commissioner for Human Rights and the special rapporteurs": see A/75/119, para. 30(p).

<sup>53</sup> A/HRC/45/16, Annex I.

expression, (iii) the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and (iv) the Special Rapporteur on the situation of human rights defenders, for appropriate action.

106. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

#### **Follow-up procedure**

107. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Ismail has been unconditionally released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ismail;
- (c) Whether an investigation has been conducted into the violation of the rights of Mr. Ismail and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonise the laws and practices of Pakistan with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

108. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

109. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

110. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>54</sup>

*[Adopted on 9 September 2021]*

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<sup>54</sup> Human Rights Council resolution 42/22, paras. 3 and 7.