

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

Chair-Rapporteur: Ms. Priya Gopalan (Malaysia)  
Vice-Chair: Dr. Matthew Gillett (New Zealand)  
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Dr. Miriam Estrada-Castillo (Ecuador)  
Mr. Mumba Malila (Zambia)

**HUMAN RIGHTS COUNCIL**  
**UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Imran Ahmad Khan Niazi  
v.  
Interim Caretaker Government of the  
Islamic Republic of Pakistan<sup>1</sup>

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Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7, 33/30,  
42/22, and 51/8<sup>2</sup>

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<sup>1</sup> Currently, the Government of Pakistan is an Interim Caretaker Government led by Prime Minister Anwaar-ul-Haq Kakar since 14 August 2023. He is aligned with the Pakistan Democratic Movement (“PDM”) party, which led the effort to replace Prime Minister Imran Khan, and the Coalition Government installed after Prime Minister Imran Khan was removed from office in a no confidence vote of the National Assembly on 10 April 2022.

<sup>2</sup> Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the U.N. Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights” pursuant to U.N. General Assembly Resolution 60/251, G.A. Res. 60/251, at ¶ 6 (15 Mar. 2006), has further extended the Working Group’s mandate through Resolutions 6/4, 15/18, 20/16, 24/7, 33/30, 42/22, and 51/8.

## **INTRODUCTION**

As set forth in this petition, the interim Government of the Islamic Republic of Pakistan is arbitrarily denying Imran Ahmad Khan Niazi (“Khan”) of his liberty. Khan is a Pakistani former cricketer, philanthropist, and politician who served as the 22<sup>nd</sup> Prime Minister of Pakistan from 18 August 2018 until 10 April 2022, when he was ousted through a no-confidence motion vote in the Parliament. He is the Chairman of the political party, *Pakistan Tehreek-e-Insaf* (Pakistan Justice Movement or “PTI”), which he founded in 1996. Originally, national elections were supposed to be held in November 2023 according to Pakistan’s Constitution, but the Election Commission, influenced by senior officers in the Pakistan Armed Forces that pushed Khan out, have tentatively rescheduled the elections for January 2024. This recent decision reaffirms that Khan’s ongoing detention is politically motivated. Despite the fact that he is sitting in prison, the most recent poll by Gallup Pakistan shows his approval rating at 60 percent and the PTI with 42 percent support, 22 points higher than the next party, the Pakistan Muslim League-Nawaz (“PML-N”).

Although Pakistan is a Federal parliamentary republic, for large parts of its modern history it has been under direct military rule and the Constitution has also been suspended during military takeovers. Thus, the Pakistan Armed Forces (“military”) have significant influence in the politics of Pakistan.

Khan was removed from office because he both criticized the role of certain officers in the military and of government mismanagement and corruption in Pakistan. In 2021, he disagreed with Army Chief Gen. Qamar Javed Bajwa over the need to replace Inter-Services Intelligence (“ISI”) Director-General Faiz Hameed. In addition, over Khan’s three years in office, the National Accountability Bureau recovered Rs. 487 billion (\$1.5 billion), which was significantly higher than its 10-year performance from 2008 to 2018 prior to Khan becoming Prime Minister.

Since Khan’s removal from office, the military has solidified its grip on power. In addition, the PDM and now interim Government filed dozens of First Information Reports (“FIRs”) against him (an FIR registers the first report of the alleged commission of a criminal offence). And yet Khan continued to relentlessly criticise the regime and demand snap elections. In May 2023, he was illegally arrested for the first time by more than 100 paramilitary troops in the Al-Qadir Trust Case, which resulted in widespread national protests. The regime responded with an iron fist, detaining some 13,000 people, dismantling PTI’s leadership, and disappearing perceived opponents. In March 2023, the regime banned the broadcasting of Khan’s speeches and press conferences in the media. And after the mass protests in May 2023, it banned mention of his name entirely by the media.

Khan was accused, tried, and convicted and sentenced to three years in prison for alleged corrupt practices under the Election Act (the Toshakhana<sup>3</sup> Case). From this conviction, he was also disqualified from running for office for five years. He was illegally arrested and detained after being convicted on 5 August 2023. Now, he is being tried in secret hearings at Adiala Jail by a Special Court established under the Official Secrets Act, 1923, for alleged illegal disclosure and retention of a classified telegram that relayed the substance of blunt discussions between Pakistan’s Ambassador to the U.S. and senior U.S. officials (the Cipher Case). If convicted, he is facing life in prison or even a death sentence. Given two prior public attempts to assassinate Khan, he has expressed serious concern that there could be another attempt on his life through slow poisoning in prison. As described below, these cases are *ultra vires*, beyond the Government’s legal power, because they violated Khan’s fundamental human rights – in particular, the rights to freedom of opinion, expression, and association, as well as the right to political participation – and they are also replete with egregious violations of Khan’s fair trial rights.

Accordingly, it is hereby requested that the attached Petition be considered a formal request for an opinion of the Working Group on Arbitrary Detention pursuant to Resolution 1997/50 of the UN Commission on Human Rights, as reconfirmed by Resolutions 2000/36 and 2003/31, and UN Human Rights Council Resolutions 6/4, 15/18, 20/16, 24/7, 33/30, 42/22, and 51/8.

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<sup>3</sup> Toshakhana is the Pakistan State’s repository for gifts received by high-level government officials.

## **MODEL QUESTIONNAIRE FOR IMRAN AHMAD KHAN NIAZI**

### **I. IDENTITY**

- 1. Family name:** Khan Niazi
- 2. First name:** Imran Ahmad
- 3. Birthdate:** 25 November 1952, according to his Pakistan National Identity Card
- 4. Nationalities:** Pakistani
- 5. Profession and/or activity (if believed to be relevant to the arrest/detention):** Khan was Prime Minister of Pakistan from August 2018 - April 2022. He is the Founder and Chairman of the political party, *Pakistan Tehreek-e-Insaf* ("PTI"). In these roles, he has been an outspoken critic of political corruption in Pakistan and has also spoken about the dangers of unconstitutional overreach of power of certain officials in the Pakistan military. Since a widespread national crackdown against PTI's leadership and members, which intensified as a response to mass protests against Khan's illegal arrest in May 2023, he has continued to criticise certain military officials, the prior PDM Government, and interim Government. He remains a serious threat to the ability of certain high-ranking military officers to secure their own pliable political preferences. Both Khan and his party remain much more popular and would win national elections handily if they were held on time in November 2023.
- 6. Address of usual residence:** Zaman Park, Islamabad

### **II. ARREST**

- 1. Date of arrest:** 9 May 2023 (1<sup>st</sup>), 5th August 2023 (2<sup>nd</sup>), 15th August 2023 (3<sup>rd</sup>)
- 2. Place of arrest:** Islamabad High Court (1<sup>st</sup>), Home (2<sup>nd</sup>), and Attock Jail (3<sup>rd</sup>)
- 3. Forces who carried out the arrest:** National Accountability Bureau with more than 100 paramilitary forces of Pakistan Rangers (1<sup>st</sup>), Punjab Police (2<sup>nd</sup>), and Correctional Authorities (3<sup>rd</sup>)
- 4. Did they show a warrant or other decision by a public authority?** No for all three.
- 5. Authority who issued the warrant or decision:** For 1<sup>st</sup>, it was the National Accountability Bureau, but it wasn't shown to him and the Supreme Court of Pakistan issued an order to release Khan, finding his arrest was illegal.
- 6. Imputed reasons for the arrest:** These arrests were all intended to block Khan's exercise of his rights to freedom of opinion, expression, and association, and political participation.
- 7. Legal basis for the arrest including relevant legislation applied (if known):** National Accountability Bureau Ordinance, 1999 (1<sup>st</sup>), Election Act, 2017 (2<sup>nd</sup>), and Official Secrets Act, 1923 (3<sup>rd</sup>).

### **III. DETENTION**

- 1. Date of detention:** 5 August 2023
- 2. Duration of detention:** Ongoing
- 3. Forces holding the detainee under custody:** Correctional officials of Attock Jail and, since 26 September 2023, correctional officials of Adiala Jail.
- 4. Place of detention:** Attock Jail and transferred on 26 September 2023 to Adiala Jail.
- 5. Authorities that ordered the detention:** National Accountability Bureau (1<sup>st</sup>), Islamabad Sessions Court (2<sup>nd</sup>), and Special Court under Official Secrets Act (3<sup>rd</sup>).
- 6. Reasons for the detention imputed by the authorities:** Same as for arrest.
- 7. Relevant legislation applied (if known).** Same as above. Khan was detained from 5 – 29 August after his conviction and three-year sentence for alleged corrupt practices under the Election Act, 2017. On 15 August, the Special Court established under the Official Secrets Act ordered Khan's detention too, but this only came out publicly later. Since 29 August, when the Islamabad High Court suspended his sentence under the Election Act, 2017, the sole justification for his ongoing detention has been the charges he is facing under the Official Secrets Act, 1923.

### **I. CIRCUMSTANCES SURROUNDING THE ARREST AND DETENTION OF IMRAN KHAN**

#### ***A. Statement of Facts***

## **1. Background on the Situation in Pakistan**

Since its independence in 1947, Pakistan has had a long history of political instability. The Pakistan Armed Forces, which is comprised of the Army, Navy, Air Force, and ISI, has been and remains the most powerful institution within Pakistan. The Pakistani military has long controlled and dominated politics in Pakistan, with civilian leaders dependent on their backing to remain in office. No Prime Minister of Pakistan has yet served their full five-year term.

On 10 April 2022, Khan was removed as Prime Minister of Pakistan following a no-confidence vote sought by the Pakistan Democratic Movement (PDM), a coalition of political parties founded in September 2020 to oppose him. Khan's vulnerability had become increasingly acute due to the military providing political support to the PDM, which was linked to the disapproval of his leadership by the United States, especially with his professed neutrality in the Ukraine conflict.

Following Khan's ouster, the PDM took power with Shehbaz Sharif, President of the PML-N, becoming Prime Minister. On 9 August 2023, Sharif and the PDM dissolved the National Assembly ahead of general elections with an interim caretaker Government led by Prime Minister Anwaar ul Haq Kakar at its helm. In the time since Khan's removal, both his and the PTI's popular support have only risen and he has repeatedly intimated an intended return to frontline politics in the forthcoming elections. The PDM and present regime – backed by the military – view Khan as a direct threat to maintaining their hold on power. This is why the prior PDM Government and interim Government have acted so aggressively – with an utter disregard for the rule of law – to convict and imprison Khan, to disqualify him from running for political office, and also to decapitate the leadership of the PTI and dismantle the party. These escalating actions have been taking place in drastically worsening political circumstances for Pakistan involving a seriously depressed economy, very high rates of inflation, a risk of default on foreign debts, and extensive flooding.

## **2. Crackdown on Democratic Opposition, Civil Space, and Independent Media**

Since Khan's ouster as Prime Minister in April 2022, the PDM Government and interim Government have singled out Khan for persecution because he is the Founder and Chairman of the PTI. In the prior Pakistan general election in July 2018, the PTI won a plurality of 31.82 percent of the vote, which resulted in 149 seats in the 342-seat National Assembly, enabling Imran Khan to form a coalition government and become Prime Minister. And now, despite the fact that he is sitting in prison, the most recent poll from Gallup Pakistan shows:

- Khan has a 60 percent positive approval, which is the highest of any political leader and 22 percent above the next highest leader Saad Rizvi, who has 38 percent; and
- Khan's PTI has 42 percent support in a potential election, 22 percent higher than the next highest party, the PML-N.<sup>4</sup>

In short, if Khan is allowed to contest the next election, which was recently postponed by the military-controlled Election Commission to the end of January 2024 from the constitutionally-mandated November 2023 date, he and his party would win handily and form the next Government. The prior and interim Government have spared no effort to ensure he cannot contest the election. It felt compelled to act because after he was removed from office, Khan continued to travel the country, criticizing the regime and campaigning for snap elections. As he led a march in Islamabad in November 2022, with just such a demand, a gunman opened fire on his convoy, wounding him and killing a supporter.<sup>5</sup> Not only has Khan been convicted on fabricated charges of failing to declare state gifts, but he now faces up to a death sentence, if convicted under the Official Secrets Act for alleged improper disclosure and retention of a cable about the U.S.-Pakistan relationship. For good measure,

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<sup>4</sup> *National Public Opinion Poll Report*, GALLUP PAKISTAN, June–July 2023, available at <https://gallup.com.pk/wp/wp-content/uploads/2023/09/Public-Pulse-Report-June-2023-3.pdf>.

<sup>5</sup> Shah Meer Baloch, *Imran Khan Wounded in "Assassination Attempt," in Pakistan*, THE GUARDIAN (UK), 3 Nov. 2022, available at <https://www.theguardian.com/world/2022/nov/03/imran-khan-shot-in-assassination-attempt-in-pakistan>.

the prior and interim Government have also hit him with dozens of FIRs, for allegations including the leaking of state secrets, corruption, treason, organizing violent protests, and even engaging in an “un-Islamic” marriage.<sup>6</sup> And further convictions on potential charges yet to be filed regarding the 9 May 2023 protests alone could also subject Khan to the death penalty.

Importantly, the repression of Khan and the PTI has been widespread and systematic. After the May 2023 protests against Khan’s illegal arrest, the military took broad actions to take out the PTI’s leadership, compelling hundreds to resign from their party positions.<sup>7</sup> Thousands of PTI supporters present at the protests were indiscriminately detained through arbitrary “geofencing.”<sup>8</sup> It is estimated that some 4,000 people were arrested at the time, including many PTI supporters,<sup>9</sup> including prominent women<sup>10</sup>; the number may have risen to some 13,000.<sup>11</sup> Many civilians remain on trial in military courts,<sup>12</sup> while others have been “disappeared.”<sup>13</sup> Avinash Paliwal, an associate professor at SOAS University of London, observed: “This dramatic crackdown is a clear strategy by the military to break down all the support structures that Khan has. Once those structures are gone, Khan is next in line.”<sup>14</sup>

In a news conference at that time, UN High Commissioner for Human Rights Volker Türk said “Pakistan’s plan to revive the use of military courts to try civilians is disturbing.”<sup>15</sup> Later, in June 2023, Pakistan’s National Commission for Human Rights issued a detailed report based on interviews with prisoners detained during and after the May 2023 protests, which noted that the “majority . . . complained about late-night arrests with disproportionate force intended to intimidate and cause fear.”<sup>16</sup>

But the clearest evidence that this systematic campaign against Khan and the PTI is simply a naked power grab is the former and interim Government’s brazen actions to literally erase him from public view. Starting in April 2022, the Pakistan Electronic Media Regulatory Authority (“Pemra”) sought four times to ban him from television, but those were blocked by public pressure and court orders. But in March 2023, Pemra banned broadcasts of Khan’s speeches and press conferences on the grounds that he was promoting hate speech and attacking state institutions.<sup>17</sup> And then in May 2023,

<sup>6</sup> Charles Campbell, *A Jailed Imran Khan Looms Over Pakistan’s Upcoming Elections*, TIME, 22 Sept. 2023, available at <https://time.com/6316623/pakistan-elections-imran-khan-jail/>.

<sup>7</sup> *How Many Leaders Have Quit PTI Until Now?* GEO NEWS, 27 May 2023, available at <https://www.geo.tv/latest/489164-here-is-a-list-of-pti-leaders-who-quit-party-up-till-now>.

<sup>8</sup> Farkhar Durrani, *How Punjab Police Are Investigating the May 9th Incident*, THE NEWS, 26 May 2023, available at <https://www.thenews.com.pk/print/1073995-how-punjab-police-are-investigating-may-9-incident>.

<sup>9</sup> *Pakistan: Mass Arrests Target Political Opposition*, HUMAN RIGHTS WATCH, 20 May 2023, available at <https://www.hrw.org/news/2023/05/20/pakistan-mass-arrests-target-political-opposition>.

<sup>10</sup> Correspondent, *Dr. Yasmin Rashid, Khadija Shah Remanded in Police Custody*, EXPRESS TRIBUNE, 9 Sept. 2023, available at <https://tribune.com.pk/story/2434968/dr-yasmeen-rashid-khadija-shah-remanded-in-police-custody> (Rashid, former Punjab Minister of Health, and Khan, renowned fashion designer); Web Desk, *PTI Former MNA Aliya Hamza Arrested in Islamabad*, ARY NEWS, 10 May 2023, available at <https://arynews.tv/pti-former-mna-aliya-hamza-arrested-in-islamabad/> (former Member of Parliament); *Release Sanam Javid Khan*, CHANGE.ORG, 14 May 2023, available at <https://www.change.org/p/release-sanam-javed-khan> (major social media influencer); Images Staff, *Twitter Hails Courage of Woman Who Stood Toe to Toe With Police in Lahore Cantt*, DAWN, 11 May 2023, available at <https://images.dawn.com/news/1191775> (social media influencer Tayyaba Raja, dragged by her hair by police).

<sup>11</sup> Campbell, *supra* note 6.

<sup>12</sup> Baqir Sajjad, *Undermining Justice: Court-Martialing Civilians in Pakistan*, WOODROW WILSON CENTER FOR SCHOLARS, 5 Jun. 2023, available at <https://www.wilsoncenter.org/blog-post/undermining-justice-court-martialing-civilians-pakistan>.

<sup>13</sup> *Pakistan: Journalists Missing Among PTI Crackdown*, INTERNATIONAL FEDERATION OF JOURNALISTS, 1 Jun. 2023, available at <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/pakistan-journalistsmissing-amidst-pti-crackdown> and *PTI Demands Recovery of Its “Missing Leaders,”* PAKISTAN TODAY, 3 Oct. 2023, available at <https://www.pakistantoday.com.pk/2023/10/03/pti-demands-recovery-of-its-missing-leaders/>.

<sup>14</sup> Hannah Ellis-Petersen, *Imran Khan’s Political Games Leave Him Isolated As Pakistan Army Destroys Party*, THE GUARDIAN (UK), 3 Jun. 2023, available at <https://www.theguardian.com/world/2023/jun/03/pakistan-imran-khan-pti-military-crackdown>.

<sup>15</sup> News Desk, *UN Rights Chief Sees “Rule of Law at Serious Risk” in Pakistan*, EXPRESS TRIBUNE, 24 May 2023, available at <https://tribune.com.pk/story/2418396/un-rights-chief-sees-rule-of-law-at-serious-risk-in-pakistan>.

<sup>16</sup> *Report on Allegations of Torture and Sexual Abuse of Prisoners in Connection With May 9th Protests*, NATIONAL COMMISSION FOR HUMAN RIGHTS, Jun. 2023, available at <https://www.nchr.gov.pk/wp-content/uploads/2023/06/Allegations-of-Torture-and-Sexual-Abuse-of-Prisoners-in-Connection-with-May-9th-Protests.pdf>.

<sup>17</sup> Shah Meer Baloch, *Pakistan Media Decry De Facto Ban on Giving Airtime to Imran Khan*, THE GUARDIAN (UK), 13 Jun. 2023, available at <https://www.theguardian.com/world/2023/jun/13/pakistan-media-decry-de-facto-ban-on-giving-airtime-to-imran-khan>.

Pemra issued a directive prohibiting media channels from providing airtime to people promoting hate speech, which was targeted at Khan and the PTI. In case there was any possibility of confusion, media owners have also been specifically approached by senior military officials and told not to give any media attention to Khan.<sup>18</sup> As Rehab Mahamoor, Amnesty International's South Asia researcher put it: "The blanket ban on an opposition leader's speeches . . . is a disturbing demonstration of how successive Pakistani authorities target critical voices and use the country's media regulatory authority to threaten press freedom . . . . Criticism of state institutions cannot be considered hate speech . . . ." <sup>19</sup> On 30 July 2023, shortly before the President dissolved Parliament, Prime Minister Shehbaz Sharif in an interview claimed a "cabal," led by Khan, was the "mastermind" of May 2023 protests. Sharif asserted they intended "to overthrow the military leadership," accusing Khan of treason, despite his never having been charged, tried, or convicted of such a crime.<sup>20</sup> In response, senior leaders of the PTI released video statements, made under oath, denying Khan instructed them to attack state institutions or the military. The statements were recorded to make it impossible for the regime to obtain false statements against Khan from them in case they were arrested, disappeared, tortured, and/or blackmailed, as happened with others.<sup>21</sup>

In an acceleration of the campaign against Khan, former Pakistan Prime Minister Nawaz Sharif returned to Pakistan on 21 October. He had left Pakistan in 2019 for medical treatment after a conviction and sentence of 10 years in prison on corruption charges. He was later declared a fugitive, but the Islamabad High Court recently granted him protection from arrest. This would only have been possible if Sharif has reconciled with the military and this suggests senior military leaders see him and his PML-N party as its best chance install a government that would defer to its wishes.<sup>22</sup> On 23 October, the Special Court formally indicted Khan. And on 25 October 2023, Pakistan's Ministry of Interior issued a directive to the Federal Investigation Agency ("FIA") to submit an application for the issuance of a Red Notice from INTERPOL to request the arrest of Sayed Zulfikar Abbas Bukhari, a former Federal Minister for Khan, who is his Advisor on International Relations and Media.<sup>23</sup> The Anti-Terrorism Court approved an arrest warrant and the interim Government submitted the application to INTERPOL<sup>24</sup> the same day. This case was transparently designed to take out a leading global advocate for Khan, relating to his alleged role in the non-violent "Jail Bharo Tehreek" movement. Contrary to being a terrorist plot, this campaign consisted of protests by PTI leaders and members against what Khan described as "sham FIRs and National Accountability Bureau ("NAB") cases, custodial torture, attacks on journalists and social media people."<sup>25</sup> Originally launched in Lahore, the interim caretaker Government of Punjab preemptively sought to shut down the movement by invoking Article 144 of the Criminal Procedure Code ("CrPC"), designed to address urgent cases of nuisance or danger, to ban all assemblies, sit-ins, and processions in key locations<sup>26</sup>, in flagrant violation of the rights to freedom of association and peaceful assembly protected by Pakistan's Constitution and international law.

Beyond these actions, the regime has also been very transparent with its intentions. According to Interior Minister Rana Sanaullah, the then second-most-powerful official in the PDM Government: "He [Khan] has brought the nation's politics to a point where only one of us can exist. When we feel

<sup>18</sup> *Id.*

<sup>19</sup> Press Release, *Pakistan: Imran Khan Media Ban is "Disturbing,"* AMNESTY INTERNATIONAL UK, 7 Mar. 2023, available at <https://www.amnesty.org.uk/press-releases/pakistan-imran-khan-media-ban-disturbing>.

<sup>20</sup> *Imran Khan Mastermind Behind May 9 Events Aimed at Toppling Military Leadership: PM*, GEO NEWS, 30 Jul. 2023, available at <https://www.geo.tv/latest/502225-imran-khan-mastermind-behind-may-9-events-aimed-at-toppling-military-leadership-pm>.

<sup>21</sup> *PTI Leaders Record Video Statements to Avoid "Nefarious Plan" Against Imran Khan*, GEO NEWS, 8 Oct. 2023, available at <https://www.geo.tv/latest/513531-pti-leaders-record-video-statements-to-avoid-nefarious-plan-against-imran-khan>.

<sup>22</sup> Shannon Tiezzi, *Interview with Michael Kugelman*, THE DIPLOMAT, 24 Oct. 2023, available at <https://thediplomat.com/2023/10/michael-kugelman-on-pakistani-politics-after-nawaz-sharifs-return/>.

<sup>23</sup> This relates to FIR No. 143/23 of 18 Mar. 2023 issued in Islamabad.

<sup>24</sup> Red Notice Application Form, *Pakistan v. Syed Zulfikar Abbas Bukhari*, Reference No. 2023/69771, 25 Oct. 2023.

<sup>25</sup> "Jail Bharo:" PTI Senior Leadership Forces Itself Into Prison Van in Lahore as Court Arrest Drive Commences, Dawn, 22 Feb. 2023, available at <https://www.dawn.com/news/1738518>.

<sup>26</sup> Web Desk, *Section 144 Imposed in Lahore Ahead of PTI's "Jail Bharo Tehreek,"* DAILY PAKISTAN, 21 Feb. 2023, available at <https://en.dailypakistan.com.pk/21-Feb-2023/section-144-imposed-in-lahore-ahead-of-pti-s-jail-bharo-tehreek>.

our existence is being threatened, we will go to a point where *we will not bother whether a move is democratic or not.*<sup>27</sup>

## **B. Biography of Imran Khan**

Imran Khan was born in Lahore, Pakistan, on 25 November 1952. He was educated at the Aitchison College and Cathedral School in Lahore and the Royal Grammar School Worcester before graduating from Keble College, Oxford, with a BA in Philosophy, Politics, and Economics in 1975. Khan is a former professional cricketer who began his international cricket career in 1971. He played cricket professionally until 1992, representing Pakistan in 88 test matches and 175 One-Day Internationals. Under Khan's captaincy, Pakistan won its first and only Cricket World Cup in 1992. He was inducted into the International Cricket Council's Cricket Hall of Fame in 2009.

Following his retirement from cricket, Khan focused his efforts on social work. He founded the Shaukat Khanum Memorial Trust, a charity organisation bearing the name of his late mother. As the Trust's first project, Khan established Pakistan's first cancer hospital. Today, the Trust has a presence in over 50 Pakistan cities in the form of hospitals, diagnostic centres, and walk-in-clinics.

On 25 April 1996, Khan founded the PTI. The PTI is one of three major political parties in Pakistan (alongside the Pakistan Muslim League, PML-N, and the Pakistan People's Party, PPP). With over 10 million members in Pakistan and overseas, the PTI is the largest Pakistani political party by primary membership. In the 2018 general election, the PTI became the largest party in the National Assembly and formed a Coalition Government with independents with Khan as Prime Minister. He served from 18 August 2018 until 10 April 2022. Khan continues to serve as the Chairman of the PTI, a position he has held since 25 April 1996.

## **C. Persecution and Detention of Imran Khan**

On 4 July 2022, six members of Pakistan's National Assembly filed a complaint with Assembly Speaker Raja Pervaiz Ashraf claiming that Khan – who was then a member elect – was disqualified from serving.<sup>28</sup> All six were members of the PDM, which is politically opposed to Khan and the PTI. The reference alleged that Khan retained gifts he had received as Prime Minister but failed to disclose them in his Statements of Assets and Liabilities for 2017-2018 and 2018-2019 – required disclosures that members of the National Assembly must submit annually under the Election Act, 2017 (in Form B).<sup>29</sup> Such gifts received by public officials are managed by the Toshakhana, the Government's gift repository, so the case became known as the Toshakhana Case. On 2 August 2022, Speaker Ashraf, also a member of the PDM, referred the complaint of the six members of the Parliament to the Election Commission of Pakistan making similar allegations.

Khan explained in filings in response to the referral to the Election Commission that his Statements of Assets and Liabilities contained all the necessary disclosures. However, on 21 October 2022, after a highly-flawed process (discussed in more detail below), the Election Commission found that Khan's Statements of Assets and Liabilities for the financial years 2018–2019, 2019–2020, and 2020–2021 contained false statements relating to various gifts he had received and he had therefore violated Sections 137, 167 and 173 of the Elections Act. As a result, the Election Commission declared that he was disqualified under Article 63(1)(p) of the Constitution and that he could no longer serve as a member of the National Assembly. The Commission further filed a criminal complaint against Khan with the Islamabad Sessions Court and he was indicted on 10 May 2023.

The trial before the Sessions Court began on 12 July 2023, and it was marked by egregious violations of Khan's due process rights. For example, Judge Humayun Dilawar did not allow the defence to call any witnesses or make a closing argument. Furthermore, the court ignored two High Court orders to address defence counsel's arguments regarding jurisdiction and maintainability (i.e.,

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<sup>27</sup> Abid Hussain, "*Either Imran Khan Exists or We Do*," Says Pakistan Home Minister, AL JAZEERA, 27 Mar. 2023, available at <https://www.aljazeera.com/news/2023/3/27/either-imran-khan-exists-or-we-do-says-pakistan-home-minister> (emphasis added).

<sup>28</sup> Fiaz Mehmood, *Gifts Case Comes to Haunt PTI Chief Again*, THE EXPRESS TRIBUNE, 9 Jul. 2023, available at <https://tribune.com.pk/story/2425394/gifts-case-comes-to-haunt-pti-chief-again>.

<sup>29</sup> Election Act, 2017, at § 137.

that the case was *void ab initio* at the Election Commission because the statute of limitations filing a complaint had long expired). On 5 August, Judge Dilawar found that Khan had committed “corrupt practices” by making false declarations in Form B regarding gifts he had received in financial years 2018–2019, 2019–2020, and 2020–2021, in violation of Sections 167(a) and 173 of the Election Act. He was sentenced to three years’ imprisonment, the maximum sentence allowed.

Approximately half an hour after the court’s decision, Khan – who was not present in court that day due to medical issues – was arrested at his home in Lahore. Law enforcement personnel broke into the residence and assaulted several of his staff members. He was not informed of the reason for his arrest, nor was he shown any arrest warrant. Khan was also assaulted and thrown into a car, then transported to Attock Jail in Punjab Province, despite the court order to send him to Adiala Jail, which had better facilities. He was only transferred to Adiala Jail a few weeks later.

On 8 August, based on the conviction, the Election Commission disqualified Khan from running for office for five years, citing Article 63(1)(h) of the Constitution, which allows for disqualification “on conviction for any offence involving moral turpitude,” and Section 232 of the Elections Act.<sup>30</sup>

On 28 August, the Islamabad High Court suspended Khan’s sentence and ordered that he be released on bail pending consideration of his appeal. However, instead of being released, he was kept in detention on another case, the so-called Cipher Case, involving Khan’s alleged wrongful sharing and retention of a classified document – a diplomatic cable from then Pakistani Ambassador Asad Majeed Khan detailing his meeting with U.S. State Department officials in March 2022. The case alleged a violation of Sections 5 and 9 of the Official Secrets Act even though the document was officially declassified while Khan was Prime Minister. Like the trial in the Toshakhana Case, the proceedings in the Cipher Case have been plagued by serious violations of Khan’s rights under Pakistani and international law, which are discussed in more detail below. Khan remains detained on the Cipher Case to this day.

## II. LEGAL ANALYSIS

For the reasons set forth below, Imran Khan’s detention constitutes an arbitrary deprivation of his liberty under Categories I, II, and III of the Working Group’s Methods of Work. The Government of Pakistan signed the International Covenant on Civil and Political Rights (“ICCPR”) on 17 April 2008, and it ratified the treaty on 23 June 2010. The Working Group may look to other instruments in determining whether a deprivation of liberty is arbitrary, such as the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (“Body of Principles”).<sup>31</sup> Both the ICCPR and the Universal Declaration of Human Rights (“UDHR”) state that “no one shall be subjected to arbitrary arrest, detention, or exile.”<sup>32</sup>

### A. *Category I: No Legal Basis for Detention*

An arbitrary detention falls under Category I when there is no legal basis justifying the detention.<sup>33</sup> In both the Toshakhana Case and the Cipher Case, there is no legal basis for Khan’s detention. This Petition does not address the Al-Qadir Trust Case because, after the Supreme Court

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<sup>30</sup> *Pak’s Top Election Body Disqualifies Imran Khan For Five Years Following His Conviction In Corruption Case*, OUTLOOK INDIA, 8 Aug. 2023, available at <https://www.outlookindia.com/international/pak-s-top-election-body-disqualifies-imran-khan-for-five-years-following-his-conviction-in-corruption-case-news-309172>.

<sup>31</sup> METHODS OF WORK OF THE WORKING GROUP ON ARBITRARY DETENTION, 36th Sess., U.N. Doc. A/HRC/36/38, 13 Jul. 13, 2017, at ¶¶ 7(e)–(f), (i) [hereinafter “METHODS OF WORK”] and Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, G.A. Res. 43/173, A/RES/43/173, adopted 9 Dec. 1988 [hereinafter “BODY OF PRINCIPLES”].

<sup>32</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 52 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, at Art. 9(1) [hereinafter “ICCPR”] and Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, adopted 1948, at Art. 9 [hereinafter “UDHR”].

<sup>33</sup> Specifically, a Category I deprivation of liberty occurs, “[w]hen it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.” METHODS OF WORK, *supra* note 31, at ¶ 8(a).



ordered Khan's release after the illegal arrest in May 2023, he was granted bail and the case is continuing, but is not connected to his arbitrary detention.

In the Toshakhana Case, from its inception through Khan's disqualification to run for political office, it was both clearly politically motivated and *ultra vires* as a matter of law. Specifically:

- The six members of the National Assembly that on 4 July 2022 accused Khan (in a complaint letter to the Assembly's Speaker) of failing to properly report gifts in his 2017–2018 and 2018–2019 Statements of Assets and Liabilities (Form B) were all members of the PDM Coalition that ousted Khan as Prime Minister in the April 2022 no-confidence vote. The Speaker of the National Assembly, Raja Pervaiz Ashraf, who referred the allegations to the Election Commission on 2 August 2022, was elected Speaker immediately after Khan's removal, and has served as the Senior Vice President of the PDM as well.
- The Speaker's referral<sup>34</sup> of these allegations was purportedly made under Article 63(2) of Pakistan's Constitution, which authorizes him to refer a case to the Election Commission if a question arises about the potential disqualification of a Member of Parliament. But the Speaker can only make a referral in relation to 16 specific situations that are identified under Article 63(1), *none* of which applied in this case.
- Even if this had been a valid referral, the decision by the Election Commission to open an investigation into this complaint was *ultra vires*. Under Section 137(1) of the Elections Act, 2017, every member of the National Assembly and Senate must "submit to the Commission, on or before 31 December each year, a copy of his statement of assets and liabilities . . . as on the preceding thirtieth day of June." And under Section 137(4), if a member's Statement "is found to be false in material particulars, he may, within one hundred and twenty days from the date [of] submission of the statement, be proceeded against for committing the offence of corrupt practice." Yet Speaker Ashraf referred the complaint to the Election Commission some 825 days after the timeframe for making such a complaint had expired (120 days after 31 December 2019, which was 29 April 2020). Later, the Election Commission *sua sponte* expanded its investigation to also cover the year 2020–2021, but its decision to do so extended an illegally-opened investigation.
- On 21 October 2022, the Election Commission found Khan guilty of having committed corrupt practices. In a case of clear selective prosecution, the Commission referred his case for prosecution to the Islamabad Sessions Court, when it had never done so before on prior cases brought against prior Prime Ministers.<sup>35</sup> After Khan was later convicted in a process replete with egregious due process abuses,<sup>36</sup> the Election Commission disqualified him from holding office for a period of five years.<sup>37</sup> That said, however, any disqualification for membership in the Parliament is governed by Article 63 of Pakistan's Constitution. And the Election Commission declared him disqualified under Article 63(1)(h), which allows for disqualification "on conviction for any offence involving moral turpitude." Yet the Supreme Court of Pakistan has never labeled a violation of the Election Act as a crime involving moral turpitude.
- Finally, regarding the politically-motivated basis for all the events that have transpired in the Toshakhana Case, this is the same Election Commission that, in violation of Pakistan's Constitution, postponed Pakistan's general elections that should have been held in November 2023 to January 2024. Under Article 48(5) of the Constitution, "[w]here the President dissolves the National Assembly . . . he shall (a) appoint a date, not later than ninety days from the date of

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<sup>34</sup> Letter from Muhammad Mushtaq, Additional Secretary (Legislative), to Secretary, Election Commission of Pakistan, *Reference of Disqualification of Mr. Imran Khan, MNA Filed By Mr. Ali Gohar Khan and Five Other MNAs Under Clause (2) of Article 63 of the Constitution of the Islamic Republic of Pakistan*, NATIONAL ASSEMBLY SECRETARIAT, 2 Aug. 2022.

<sup>35</sup> Order, *Reference on the Question of Disqualification of Mr. Imran Ahmed Khan as Member of National Assembly Under Article 63(2) of the Constitution of the Islamic Republic of Pakistan*, Case No. 12(5)/2022-Law, ELECTION COMMISSION, 21 Oct. 2022.

<sup>36</sup> Judgment, Judge Humayun Diliwar, Additional Sessions Judge, West Islamabad, *District Election Commissioner v. Imran Khan Niazi, Complaint Under Section 190 of the Election Act, 2017 in Respect of Offences Committed Under Sections 167 & 173 of the Elections Act Along With All Other Enabling Provisions of Law*, COURT OF SESSIONS (Islamabad, West), 5 Aug. 2023.

<sup>37</sup> Notification, Syed Nadeem Haider, Additional Director General (Elections-II), *District Election Commissioner v. Imran Khan Niazi*, No. F.17 (4)/2023.Coord., ELECTION COMMISSION, 8 Aug. 2023.

the dissolution, for the holding of a general election to the Assembly.” President Arif Alvi dissolved the Parliament on 9 August 2023. An election must be held by 7 November 2023.

Similarly, the Cipher Case has been, from its inception, both politically-motivated and *ultra vires* as a matter of law. Specifically:

- On 15 August 2023, the Secretary of the Ministry of the Interior Yousaf Naseem Khokhar, who is part of the prior and interim Government that removed Khan from power, filed an FIR in Islamabad accusing Khan of the “unauthorized retention”<sup>38</sup> and misuse” of a “secret classified document” in violation of Sections 5 and 9 of the Official Secrets Act (“OSA”). The document was a Cipher Telegram sent from the Pakistan Embassy in Washington, dated 7 March 2022, to the Minister of Foreign Affairs, recounting a meeting between then Pakistan Ambassador Asad Majeed Khan and senior State Department officials.<sup>39</sup> Among other information, the Telegram describes U.S. Assistant Secretary of State for South and Central Asian Affairs Donald Lu saying “I think if the no-confidence vote against the Prime Minister succeeds, all will be forgiven in Washington” over Khan’s visit to Russia, but “otherwise, I think it will be tough going ahead.”<sup>40</sup>
- On 27 March 2022, Khan spoke publicly in general terms about the Telegram, saying a foreign government wanted him removed.<sup>41</sup> Four days later, the National Security Council (“NSC”)<sup>42</sup> of Pakistan, chaired by Khan, issued a strong demarche to the United States. Khan’s office issued a statement, which said “The Committee expressed grave concern at the communication, terming the language used by the foreign official as undiplomatic.” It added that the Committee concluded it amounted to “blatant interference in the internal affairs of Pakistan” and that it was “unacceptable under any circumstances.”<sup>43</sup> Khan then gave a live televised address to the nation in which he named the United States as the country that had leveled threats against the Government.<sup>44</sup> On 9 April 2022, the Federal cabinet, chaired by Khan, formally declassified the Telegram.<sup>45</sup> And then he was ousted as Prime Minister on 10 April 2022.
- Yet the Cipher Case has no basis in law. First, Article 248(1) of the Pakistan Constitution says “The President, a Governor, the Prime Minister . . . shall not be answerable to any court for the exercise of powers and performance of functions of their respective offices.” Second, the NSC issued a demarche to the United States in response to what it concluded was a blatant interference with Pakistan’s internal affairs. And third, Khan secured the cabinet’s approval to declassify the Telegram. The new PDM Government only purported to reverse<sup>46</sup> the decision of Khan’s NSC after it came to power. Yet there was a clear conflict of interest in this decision, as neither the new PDM Government nor the military would ever want to admit it felt encouraged by the United

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<sup>38</sup> There was no crime of unauthorized “retention” of a classified document when Khan was accused of this crime. In fact, it was only on 18 August 2023 that Act No. LXIII of 2023, “An Act to Further Amend the Official Secrets Act, 2023” was adopted by the Parliament. It says in Subsection 6(b) that Section 5 of the OSA, on wrongful communication, was amended to add after the word “obtained” the phrase “or retained” to make a crime the keeping of a classified document that someone is not authorized to possess. Act No. LXIII, *available at* [https://molaw.gov.pk/SiteImage/Downloads/Official%20Secrets%20\(Amendment\)%20Act,%202023.pdf](https://molaw.gov.pk/SiteImage/Downloads/Official%20Secrets%20(Amendment)%20Act,%202023.pdf). Beyond that, Pakistan President Arif Alvi also denies having signed this bill into law.

<sup>39</sup> Ryan Grim and Murtaza Hussain, *Secret Pakistan Cable Documents U.S. Pressure to Remove Imran Khan*, THE INTERCEPT, 9 Aug. 2023, *available at* <https://theintercept.com/2023/08/09/imran-khan-pakistan-cypher-ukraine-russia/> [hereinafter “The Intercept”].

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Chaired by the Prime Minister, Pakistan’s National Security Council is the highest forum for coordination on security issues and includes the Ministers of Defence, Energy, Information and Broadcasting, Interior, Finance, Human Rights, Planning, Development and Special Initiatives, Chairman of Joint Chiefs of Staff, Service Chiefs, National Security Adviser, and Senior Officers.

<sup>43</sup> Sanaullah Khan, *NSC Decides to Issue Strong Demarche to Unnamed Country Over “Threat Letter,”* DAWN, 31 Mar. 2022, *available at* <https://www.dawn.com/news/1682723>.

<sup>44</sup> Shah Meer Baloch, *Imran Khan Claims US Threatened Him and Wants Him Ousted as Pakistan’s PM*, THE GUARDIAN (UK), 31 Mar. 2022, *available at* <https://www.theguardian.com/world/2022/mar/31/imran-khan-address-pakistan-faces-no-confidence-vote>.

<sup>45</sup> *Pakistani Government Decides to Declassify ‘Threat Letter,’* DAILY PAKISTAN, 9 Apr. 2022, *available at* <https://en.dailypakistan.com.pk/09-Apr-2022/pakistani-government-decides-to-declassify-threat-letter>.

<sup>46</sup> *Pakistan Top Body Says No U.S. Plot in Ex-PM Imran Khan’s Removal*, AL JAZEERA, 23 Apr. 2022, *available at* <https://www.aljazeera.com/news/2022/4/23/pakistan-top-body-says-no-us-plot-in-ex-pm-imran-khans-removal>.

States to remove Khan. Importantly, the FIR in the Cipher Case says Khan’s alleged conspiracy to “misuse the contents of the Cipher” to “accomplish nefarious designs” began in a meeting on 28 March 2022, *when he was Prime Minister*, and he ran the Government. The entire Cipher Case, therefore, is a brazenly ex-post facto reinterpretation of actions Khan took that were fully legal and appropriate at the time. Under Article 15(1) of the ICCPR, “[n]o 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.” And Article 12(1) of Pakistan’s Constitution similarly provides that “[n]o law shall authorize the punishment of a person – (a) for an act or omission that was not punishable by law at the time of the act or omission.” Here, the new regime not only criminalized for political purposes actions taken by Khan but now if convicted, according to Special Prosecutor Raja Rizwan Abbasi, he “can either be sentenced to life imprisonment or death.”<sup>47</sup>

- By August 2023, *The Intercept* obtained and published the full text of the Telegram. Coming from their own investigation, the two independent journalists concluded as follows: “According to the cable, while Lu did not directly order Khan to be taken out of office, he said that Pakistan would suffer severe consequences, including international isolation, if Khan were to stay on as prime minister, while simultaneously hinting at rewards for his removal. The remarks appear to have been taken as a signal for the Pakistani military to act.”<sup>48</sup>
- In legal analysis that reads as though it was written for this exact situation, the Human Rights Committee has explained: “Extreme care must be taken by States parties to ensure that treason laws and similar 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 ICCPR Article 19(3), which allows for narrow restrictions on the right to freedom of opinion and expression] . . . . It is not compatible [with Article 19(3)] . . . 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 . . . others, for having disseminated such information.”<sup>49</sup>
- The information in the Telegram, was undoubtedly of legitimate and enormous public interest to the Pakistani people. This is demonstrated by then Prime Minister Khan’s decision to discuss publicly the statements of the U.S. officials described in the Telegram, the NSC’s unanimous decision to demarche the United States in response, and the Federal cabinet’s decision to declassify the Telegram. The PDM and later interim Government decisions to pursue an OSA case against Khan had no basis in law because they retroactively criminalized actions that at the time were not criminal and because his public statements were fully consistent with his right to freedom of opinion and expression.
- Finally, on 26 October, the Islamabad High Court denied Khan bail.<sup>50</sup> In interpreting Article 9(3)<sup>51</sup> of the ICCPR, the Human Rights Committee said “[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 recurrence of crime.”<sup>52</sup> Yet in Khan’s case, the sole reason bail was denied was because “where the allegations are serious and prima facie link the accused with the commission of the offence, bail is to be denied in case of Official Secrets Act, 1923.”<sup>53</sup> This approach was arbitrary and lacked any legal

<sup>47</sup> Umer Burney, *IHC Reserves Verdict on Imran’s Bail Plea in Cipher Case*, DAWN, 16 Oct. 2023, available at <https://www.dawn.com/news/1781400/ihc-directs-imran-to-approach-special-court-against-jail-trial>.

<sup>48</sup> *The Intercept*, *supra* note 39.

<sup>49</sup> *General Comment No. 34 on Article 19: Freedom of Expression*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/34, 12 Sep. 2011, at ¶ 30 [hereinafter *General Comment No. 34*].

<sup>50</sup> *Cipher Case: Imran Khan Pleas Seeking Bail, Cancellation of FIR Rejected*, GEO NEWS, 27 Oct. 2023, available at <https://www.geo.tv/latest/516285-cipher-case-imran-khans-pleas-seeking-bail-cancellation-of-fir-rejected>.

<sup>51</sup> Article 9(3) of the ICCPR says: “It shall not be the general rule that persons awaiting trial shall be detained in custody . . . .” ICCPR, *supra* note 32.

<sup>52</sup> *General Comment No. 35 on Article 9: Liberty and Security of the Person*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/35, 16 Dec. 2014, at ¶ 38.

<sup>53</sup> In the Court of Aamer Farooq, Chief Judge, Islamabad High Court, Case No. CRL.MISC.NO. 1354-B-2023, *The State v. Imran Khan, et al.*, Judgment Sheet, 26 Oct. 2023, at ¶ 28.

basis because it wasn't based on an individualized determination but rather a presumption of guilt, in violation of Article 14(2) of the ICCPR.

## ***B. Category II: Detention Based on Exercise of Fundamental Rights and Freedoms***

An arbitrary detention falls under Category II when the detention results from the exercise of fundamental rights protected by international law.<sup>54</sup> These fundamental rights include the right to freedom of opinion and expression,<sup>55</sup> the right to political participation,<sup>56</sup> and the right to freedom association.<sup>57</sup> Khan's detention is arbitrary under Category II because it resulted from his exercise of these fundamental rights and freedoms, as detailed below.

### **1. Khan's is detained by the interim Government for exercising his right to freedom of opinion and expression**

Freedom of opinion and expression are protected by Article 19 of the ICCPR<sup>58</sup> and Article 19 of the UDHR.<sup>59</sup> The right to freedom of opinion and expression includes the "the right to hold opinions without interference" and "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers . . . through any . . . media."<sup>60</sup> In addition to the requirements of international law, Pakistan's Constitution provides that "[e]very citizen shall have the right to freedom of speech and expression."<sup>61</sup> Article 19 of the ICCPR is of special importance for members of political opposition groups. The UN Human Rights Committee has recognized that the protection of free expression is broad enough to "include[] the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment."<sup>62</sup>

Article 19(3) of the ICCPR allows for narrow limitations to be imposed on the right to freedom of expression where they are necessary "[f]or respect of the rights or reputations of others" or "[f]or the protection of national security or of public order (ordre public), or of public health and morals."<sup>63</sup> But these restrictions would not apply to Khan. The Human Rights Committee has emphasized the narrowness of these limitations and found that government limitations must be for one of the enumerated purposes and "meet a strict test of justification."<sup>64</sup> It has also emphasized public order and national security "may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights."<sup>65</sup>

Since his removal as Prime Minister, Khan has continued to be an outspoken critic of the PDM and interim Government as well as political interference by certain military officers. Some examples include:

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<sup>54</sup> Specifically, a Category II deprivation of liberty occurs, "[w]hen 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 International Covenant on Civil and Political Rights." METHODS OF WORK, *supra* note 31, at ¶ 8(b).

<sup>55</sup> ICCPR, *supra* note 32, at Art. 19(1) and UDHR, *supra* note 32, at Art. 19.

<sup>56</sup> ICCPR, *supra* note 32, at Art. 25(a) and UDHR, *supra* note 32, at Art. 21.

<sup>57</sup> ICCPR, *supra* note 32, at Art. 22(1) and UDHR, *supra* note 32, at Art. 20.

<sup>58</sup> ICCPR, *supra* note 32, at Art. 19(1).

<sup>59</sup> UDHR, *supra* note 32, at Art. 19.

<sup>60</sup> ICCPR, *supra* note 32, at Arts. 19(1) ("Everyone shall have the right to hold opinions without interference."), 19(2) ("Everyone shall have the right to 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.") and UDHR, *supra* note 32, at Art. 19.

<sup>61</sup> Constitution of Pakistan (Updated 2018), at Art. 19.

<sup>62</sup> *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/83/D/1128/2002, 29 Mar. 2005, at ¶ 6.7.

<sup>63</sup> ICCPR, *supra* note 32, at Art. 19(3).

<sup>64</sup> *General Comment No. 34*, *supra* note 49, at ¶ 23 and *Tae-Hoon Park v. Republic of Korea*, Communication No. 628/1995, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/64/D/628/1995, 5 Jul. 1995, at ¶ 10.3. Article 19 of Pakistan's Constitution further imposes the narrow limitation that any speech or opinion cannot be contrary to "restrictions imposed by law in the interest of the glory of Islam." Khan's expression does not fall within these highly narrow confines justifying limitation by the interim Government of Pakistan because his speech was not contrary to any of Islam's tenets.

<sup>65</sup> *General Comment No. 34*, *supra* note 49, at ¶ 23.

- As terror attacks increased in Pakistan, Khan criticized Prime Minister Sharif, saying: “The imposed, corrupt and incompetent rulers are pushing the nation towards [terror] incidents,” by leaving security in the hands of people like Foreign Minister Bilawal Bhutto Zardari.<sup>66</sup>
- Khan alleged that Pakistan’s then new Army Chief Gen. Asim Munir ordered his arrest on trumped-up corruption charges, accusing him of threatening “democracy, our constitution, fundamental rights,” adding: “He’s basically dismantling the future of this country to protect himself.”<sup>67</sup>
- After his illegal arrest, Khan said Pakistan was under an “undeclared martial law,” and that “All the movement towards democracy – that is under threat. This could roll everything back.”<sup>68</sup>

These statements are all protected speech consistent with the right to freedom of opinion and expression. Beyond the dozens of criminal cases brought against him, Pemra banned broadcasts of Khan’s speeches and press conferences and later issued a directive urging media channels to not provide airtime to people promoting hate speech, with the military pressuring owners to refuse to even mention Khan’s name.<sup>69</sup> Michael Kugelman, Director for the South Asia Institute at the Wilson Center observed “[t]he military does not want him to have the opportunity to contest elections. Because if it’s not rigged, there’s a very good chance that PTI could still win.”<sup>70</sup>

Though Khan was exercising his fundamental legal rights to express his opinion, he was summarily convicted and sentenced to three years in prison in a trial that was a mockery of justice. His imprisonment amounts to no more than a crude and transparent attempt by regime to silence a political opponent with enormous popular support in Pakistan. Therefore, the recognition of the arbitrariness of his detention should be affirmed by the Working Group, as it has in other cases in the past including the unlawful imprisonment of political leaders and thinkers such as Malaysian opposition leader Anwar Ibrahim<sup>71</sup>, Maldives opposition leader Mohamed Nasheed<sup>72</sup>, Nobel Peace Prize Laureate Liu Xiaobo<sup>73</sup>, Nicaraguan presidential candidates Félix Maradiaga and Juan Sebastián Chamorro<sup>74</sup>, then Venezuelan opposition leader Leopoldo López<sup>75</sup>, among others.

As such, Khan’s current detention is in direct violation of his domestic and international rights to freedom of opinion and expression.

## 2. Khan is detained by the interim Government for exercising his right to freedom of association

Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others.” Further, Article 20(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association.” Similarly, Pakistani law also ensures the right to

<sup>66</sup> *Imran Khan Criticizes Shehbaz Sharif Government Over Terror Attacks in Pakistan*, THE STATESMAN, 27 Dec. 2022, available at <https://www.thestatesman.com/world/imran-khan-criticises-shehbaz-sharif-govt-over-terror-incidents-in-pakistan-1503141432.html>.

<sup>67</sup> Benjamin Parkin and Farhan Bokhari, *The Populist vs The General: Imran Khan Takes on Pakistan’s Military*, FINANCIAL TIMES, 18 May 2023, available at <https://www.ft.com/content/ff773270-7a48-4be3-8c87-88c9b247f4e3>.

<sup>68</sup> Gordon Fairclough and Saeed Shah, *Former Pakistan Leader Imran Khan Says Country is Under “Undeclared Martial Law,”* WALL STREET JOURNAL, 27 May 2023, available at <https://www.wsj.com/articles/former-pakistan-leader-imran-khan-says-country-is-under-undeclared-martial-law-ee48debb>.

<sup>69</sup> Shah Meer Baloch, *Pakistan Media Decry De Facto Ban on Giving Airtime to Imran Khan*, THE GUARDIAN (UK), 13 Jun. 2023, available at <https://www.theguardian.com/world/2023/jun/13/pakistan-media-decry-de-facto-ban-on-giving-airtime-to-imran-khan>.

<sup>70</sup> Campbell, *supra* note 6.

<sup>71</sup> *Anwar Ibrahim v. Malaysia*, Opinion No. 22/2015, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2015/22, adopted 1 Sep. 2015 (Represented by Jared Genser).

<sup>72</sup> *Mohamed Nasheed v. The Maldives*, Opinion No. 33/2015, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2015/33, adopted 4 Sep. 2015 (Represented by Jared Genser).

<sup>73</sup> *Liu Xiaobo v. People’s Republic of China*, Opinion No. 15/2011, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2011/15, adopted 5 May 2011 (Represented by Jared Genser/Freedom Now).

<sup>74</sup> *Félix Maradiaga and Juan Sebastián Chamorro v. Nicaragua*, Opinion No. 73/2022, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2022/73, adopted 15 Nov. 2022 (Represented by Jared Genser).

<sup>75</sup> *Leopoldo López v. Venezuela*, Opinion No. 26/2014, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2014/26, adopted 26 Aug. 2014 (Jared Genser joined López’s legal team after submission to WGAD).

freedom of association of a political nature. Article 17(2) of the Pakistan Constitution states that “[e]very citizen . . . shall have the right to form or be a member of a political party.”<sup>76</sup>

Though Khan is well within his rights to serve as Chairman and associate with the PTI and express his political opinions with his party, the prior and interim Government have systemically persecuted him, his party’s leaders, and party members to suppress their involvement in politics. As noted earlier, an estimated 13,000 PTI party leaders and members remain detained.<sup>77</sup> The interim Government is actively detaining Khan because of his leadership of and affiliation with the country’s leading opposition party, PTI, and because of the threat it poses to their grip on power. This violates Khan’s right to freedom of association under Pakistan and international law.

### **3. Khan is detained by the interim Government for seeking to exercise his right to political participation**

The interim Government’s detention of Khan is also punishment for exercising his right to take part in public affairs and be elected without unreasonable restrictions, which is protected by Article 25 of the ICCPR<sup>78</sup> and Article 21 of the UDHR.<sup>79</sup> According to the Human Rights Committee, this right allows “[c]itizens . . . [to] take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly, and association.”<sup>80</sup> Moreover, this right depends on the ability of individuals to run for office. As the Human Rights Committee has noted:

The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates . . . Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as . . . by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person’s candidacy.<sup>81</sup>

In addition, the Working Group’s jurisprudence supports this right where individuals are detained solely for exercising their right to freedom of association and right to take part in the conduct of public affairs.<sup>82</sup>

In Khan’s case, on 29 August 2023, a Pakistan High Court suspended his three-year sentence for alleged corrupt practices. But the five-year ban on contesting elections only begins upon completion of his sentence, which will persist as long as the conviction itself remains in force. It is expected that Khan’s appeal to the High Court will take at least two years to be heard, which is long after the national elections currently scheduled for January 2024. The suspension of the sentence in

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<sup>76</sup> Constitution of Pakistan (Updated 2018), at Art. 19.

<sup>77</sup> Campbell, *supra* note 6.

<sup>78</sup> ICCPR, *supra* note 32, at Art. 25 (“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.”).

<sup>79</sup> UDHR, *supra* note 32, at Art. 21 (“(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”).

<sup>80</sup> *General Comment No. 25 on Article 25: Participation in Public Affairs and the Right to Vote*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/21/Rev.1/Add.7, 12 Jul. 1996, at ¶ 8.

<sup>81</sup> *Id.*, at ¶ 15.

<sup>82</sup> See *Tran Thi Thuy et al. v. Viet Nam*, Opinion No. 46/2011, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2011/46, 2 Sep. 2011, at ¶¶ 21, 22, 26.

this case did not result in his release pending appeal, which would have allowed him to at least continue engaging in politics, because the Special Court ordered him detained in the Cipher Case.<sup>83</sup>

Through Khan's arrest, trial, summary conviction, and political disqualification in the Toshakhana Case, the interim Government not only discriminated against Khan on the basis of his political participation, but also directly and unlawfully interfered with his ability to run for office. The conviction and the resulting five-year ban on running for office demonstrates the interim Government's determination to silence Khan, his supporters, and the democracy for which they have fought. The intent is self-evident – unless the regime keeps him locked up and disqualified from running for office, he and the PTI are well positioned to win the next election. As noted earlier, his approval rating of 60 percent exceeds the next highest political leader by 20 points and the PTI is outpolling the next highest party by 22 percent.

Because Khan's detention is a direct result of the exercise of his rights to freedom of opinion and expression, freedom of association, and political participation, his detention is arbitrary under Category II.

### **C. Category III: Violation of Due Process Rights**

Detention is considered arbitrary under Category III “[w]hen 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.”<sup>84</sup> These include those protected by Article 14 of the ICCPR. In addition, Article 4(1) of Pakistan's Constitution provides that “[t]o enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen.” And Article 9 states that “[n]o person shall be deprived of . . . liberty save in accordance with law.” In this case, Khan was subjected to numerous violations of his fair trial rights, and his detention is therefore arbitrary under Category III.

## **TOSHA KHANA CASE**

### **1. Khan was not promptly informed in detail of the nature and cause of the charges against him**

Article 14(3)(a) of the ICCPR stipulates that an accused has the right “to be informed promptly and in detail . . . of the nature and cause of the charge[s] against him.”<sup>85</sup> Importantly, “both the law *and the alleged general facts on which the charge is based*” must be provided.<sup>86</sup> The UN Human Rights Committee has explained that this right “applies to all cases of criminal charges, including those of persons not in detention” and “requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such.”<sup>87</sup> Pakistan's CrPC provides that if “the Court is of opinion that there is ground for proceeding with the trial of the accused it shall frame in writing a charge against the accused.”<sup>88</sup> And the “charge shall be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.”<sup>89</sup>

There were serious violations in this case. First, when the Elections Commission previously adopted its order finding Khan guilty of corrupt practices, it included information from documents it privately solicited (from, e.g., Government bodies and financial institutions) that had never been

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<sup>83</sup> Asif Shahzad and Gibran Naiyyar Peshimam, *Imran Khan's Graft Conviction Suspended By Court, Lawyer Says*, REUTERS, 29 Aug. 2023, available at <https://www.reuters.com/world/asia-pacific/pakistan-ex-pm-imran-khans-graft-conviction-suspended-geo-tv-2023-08-29/>.

<sup>84</sup> METHODS OF WORK, *supra* note 31, at ¶ 8.

<sup>85</sup> ICCPR, *supra* note 32, at Art. 14(3)(a).

<sup>86</sup> *General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*; U.N. Human Rights Committee, U.N. Doc. CCPR/C/GC/32, 23 Aug. 2007, at ¶ 31 [hereinafter “*General Comment No. 32*”].

<sup>87</sup> *Id.* (emphasis added).

<sup>88</sup> Pakistan Criminal Procedure Code (1898), at Art. 265D.

<sup>89</sup> *Id.*, at Art. 265E.

provided to Khan’s counsel to review or provide a response. And second, when the Election Commission filed the criminal complaint to the Islamabad Sessions Court, neither the written complaint nor the privately-solicited documents were provided to Khan’s counsel. As a result, Khan’s counsel had no documents related to the criminal complaint in the advance of the first day of trial. Instead, Judge Dilawar opened the case by allowing the Election Commission, which was serving as prosecutor in the case, to summarize its allegations against Khan. But not only was the charge not read out in full nor framed in writing, but Khan was never asked to enter a plea in the case. This violated ICCPR Article 14(3)(a) and Articles 265D–265E of Pakistan’s Criminal Procedure Code.

## 2. **Khan was denied his rights to prepare an adequate defence, examine key evidence in advance of trial, fully examine prosecution witnesses, and present witnesses in his own defence**

Article 14(3) of the ICCPR ensures the right of an individual “[i]n the determination of any criminal charge against him . . . [t]o have adequate time and facilities for the preparation of his defence.”<sup>90</sup> What constitutes “adequate time” depends on the circumstances of each case, but the facilities must include access to documents and other evidence that the accused requires to prepare his case.<sup>91</sup> In practice, this means that “[t]he accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair.”<sup>92</sup> In addition, the ICCPR specifically guarantees a defendant the right “to obtain the attendance and examination of witnesses on his behalf under the *same* conditions as witnesses against him.”<sup>93</sup> The Working Group’s jurisprudence has likewise held that the right to a fair trial is violated by a government’s denial of adequate time and facilities for the preparation of a defence.<sup>94</sup> Additionally, Pakistan’s Constitution enshrines the right to a fair trial and due process.<sup>95</sup> Here, Khan was subjected to repeated and systematic violations of his due process rights throughout the trial:

- **Examine Key Evidence in Advance of Trial.** Prior to issuing an order finding Khan guilty of corrupt practices, the Election Commission requested and reviewed further information relating to the case from documents provided by various Government agencies. Khan’s counsel were not given any opportunity to review or respond to them. And yet these documents were relied upon and cited to in the Election Commission’s decision. When the Election Commission subsequently lodged a criminal complaint in the Islamabad Sessions Court, Khan’s counsel was only provided access to these documents after the complaint was presented to the Court on the first day of trial. This is a clear violation of the right to adequate time to prepare for trial.
- **Fully Examine Prosecution Witnesses.** Khan was denied the opportunity to fully confront Government witnesses and present defence witnesses and evidence. The first witness for the prosecution was Waqas Ahmad Malik, the District Election Commissioner, who had filed and signed an affidavit to the Court presenting the criminal complaint and the prior judgment of the Election Commission. His role was to explain the Commission’s case. But defence counsel noticed that Malik’s signature on the affidavit did not match his signature on the complaint. And defence counsel further found examples of other official documents Malik had signed, none of which matched his signature on the affidavit. In being questioned about this issue, Malik claimed he signs his name in different ways on different documents. Khan’s counsel asked Judge Dilawar to order Malik to produce copies of other official documents from the Election Commission where his signature matched the one on this affidavit. But the Judge refused, claiming it was not

<sup>90</sup> ICCPR, *supra* note 32, at Art. 14(3)(b).

<sup>91</sup> *General Comment No. 13: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law (Art. 14)*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. HRI/GEN/1/Rev.1, 13 Apr. 1984 at ¶ 9.

<sup>92</sup> *Id.*, at ¶ 11.

<sup>93</sup> ICCPR, *supra* note 32, at Art. 14(3)(e).

<sup>94</sup> *Andrei Sannikov v. Belarus*, Opinion No. 14/2012, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2012/14, *adopted* 4 May 2012, ¶ 38.

<sup>95</sup> Constitution of Pakistan (Updated 2018), at Art. 10A (“For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.”).



necessary. Yet it is very important to know if a witness had lied on the stand and if, in fact, the affidavit had been prepared and signed by someone else entirely.

- **Present Defence Witnesses.** Khan was totally denied the right to present and examine any witnesses in his defence. Specifically, after the completion of the Prosecution’s case, Khan’s counsel filed an application to issue process to compel four witnesses to appear in his defence under CrPC Article 265F(7). Three of these witnesses were Khan’s accountants who prepared and filed on his behalf the financial statements at issue (for 2018–2019, 2019–2020, and 2020–2021). On 1 August 2023, the Judge ordered the witnesses to be presented on 2 August. When defence counsel told the Judge the witnesses were in Karachi and more time would be needed to bring them to the court (which was in Islamabad), the Judge responded by saying the witnesses were not relevant. But the standard practice in Sessions Courts is to give the defence one week before being required to present witnesses. The Court’s decision not only violated ICCPR Article 14(3)(e), but also Article 265F(7) of the Criminal Procedure Code, which says the Court “shall issue such process unless it considers that the application is made for the purpose of vexation or delay or defeating the ends of Justice.” Judge Dilawar lacked discretion to refuse the application for witnesses on grounds of relevance.
- **Present Closing Argument.** At the end of the trial, after rejecting the application for defence witnesses, Judge Dilawar proceeded directly to closing arguments. Per the Criminal Procedure Code, the prosecutor presented his closing argument first. And then, to the surprise of Khan’s counsel, they were told by the Judge they would not be allowed to present a closing argument, as it was not necessary. Judge Dilawar lacked discretion to deny the defence a closing argument. Under Criminal Procedure Code Article 265G(2), “[i]n cases where the accused . . . examines evidence, in his defence the Court shall, on the close of the defence case, call upon the accused to sum up the case whereafter the prosecutor shall make a reply.”
- **Prepare an Adequate Defence.** Collectively, these violations made it impossible for Khan and his counsel to prepare and present an adequate defence. Concerns about these issues were acknowledged by the Supreme Court of Pakistan. In an order issued by the Supreme Court on 8 August 2023, it emphasized the failure of the Sessions Court to allow defence witnesses and to bring the defendant for the verdict were “serious points of law that deserve consideration.”<sup>96</sup> It also noted the Sessions Court had ignored the High Court’s order to reconsider defence counsel’s objections regarding jurisdiction and the maintainability of the case.<sup>97</sup> However, the Supreme Court concluded that “notwithstanding the legal issues highlighted to us . . . we consider that the High Court is the first Court which should hear and decide such matters.”<sup>98</sup> Finally, Article 14(1) of the ICCPR states “[a]ll persons shall be equal before the courts and tribunals.”<sup>99</sup> According to the Human Rights Committee, this “ensures that the parties to the proceedings in question are treated without any discrimination” and in accordance with the principle of the “equality of arms.”<sup>100</sup> Article 25(1) of Pakistan’s Constitution further says: “All citizens are equal before law and are entitled to equal protection of law.” Here Khan’s right to equality of arms and right to equal protection have been violated as well.

#### 4. Khan was denied the presumption of innocence.

The ICCPR and Universal Declaration of Human Rights (UHDR) afford individuals “the right to be presumed innocent until proved guilty according to law.”<sup>101</sup> The Human Rights Committee has noted that the presumption of innocence is expressed in unambiguous terms, and “the burden of

<sup>96</sup> *Imran Ahmad Khan Niazi v. District Election Commissioner, Islamabad*, CRL.P.921/2023, CRL.P. 938/2023, and CRL.P. 922/2023, SUPREME COURT OF PAKISTAN, 8 Aug. 2023, available at [https://www.supremecourt.gov.pk/downloads\\_judgements/crl.p.\\_921\\_2023\\_23082023.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.p._921_2023_23082023.pdf).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> ICCPR, *supra* note 32, at Art. 14(1).

<sup>100</sup> *General Comment No. 32*, *supra* note 86, at ¶ 8.

<sup>101</sup> ICCPR, *supra* note 32, at Art. 14(2). This same right is established in the Universal Declaration at Article 11(1): “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. Statements made by high-ranking officials against the accused can reveal impermissible prejudgment by authorities.<sup>102</sup> For example, in a WGAD opinion, statements made by officials to the media that a person is “wanted on suspicion of terrorism” were found to have compromised the presumption of innocence.<sup>103</sup> This right is subsumed within the right to a fair trial as protected in the Constitution of the Pakistan.<sup>104</sup> The Supreme Court of Pakistan has interpreted this provision to mean that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”<sup>105</sup>

On 15 April 2022 – months before the six PMD Coalition Members of the National Assembly filed their complaint with Speaker Raja Pervaiz Ashraf on 4 July 2022, beginning the Toshakhana Case – the then new Prime Minister Shehbaz Sharif accused Khan of illegally selling gifts, saying “Imran Khan sold these gifts for Rs140 million [\$503,000] in Dubai.”<sup>106</sup> This was the first of many impermissible prejudgments by authorities that portrayed Khan as a criminal, tainting not only the Toshakhana Case but the Cipher Case possible future cases the interim Government may bring against him. For example, precisely as in the prior Working Group opinion, in May 2023, Sharif said “Imran Khan Niazi and his mob are no less than any terrorist or anti-state groups . . . The punishment for the actions by all those who were a part of this mayhem will be exemplary.”<sup>107</sup> And Interior Minister Rana Sanaullah argued that Khan should be tried in a military court, saying “He carried it all out. He is the architect of all this discord.”<sup>108</sup> Finally, the very fact that Pemra has issued gag orders banning any mention of Khan in the media is also a flagrant violation of the presumption of innocence. These orders relate to *allegations* he is spreading hate speech, but he has never been charged with such crimes. Yet this decision portrays to the public-at-large that Khan is a dangerous criminal.

## 5. Khan’s arrest post-conviction was illegal and he was subsequently denied access to counsel

Article 9(1) of the ICPPR provides that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>109</sup> The Pakistan Constitution similarly states “[n]o person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.”<sup>110</sup> Under Criminal Procedure Code Article 366(2), the accused shall “if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted.”

In the Toshakhana Case, Judge Dilawar failed to inform Khan or his counsel that a judgment would be issued. Instead, on 5 August 2023, the Judge summarily convicted Khan *in absentia* and sentenced him three years in prison on charges of corrupt practices. Thirty minutes later, he released the 30-page written verdict and in a different state, law enforcement personnel broke into Khan’s

<sup>102</sup> *Gridin v. Russian Federation*, Communication No. 770/1997, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/69/D/770/1997, 20 Jul. 2000, at ¶ 8.3.

<sup>103</sup> *Ahmad Suleiman Jami Muhanna al-Alwani v. Iraq*, Opinion No. 36/2017, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2017/36, adopted 28 Apr. 2017, at ¶ 88(c).

<sup>104</sup> Constitution of Pakistan (Updated 2018), at Art. 10A (“For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.”)

<sup>105</sup> *Suo Motu Action Concerning Malik Riaz Hussain and Dr. Arsalan Iftikhar* [2012 PLD 664].

<sup>106</sup> *Pakistan PM Shehbaz Accuses Imran Khan of Selling Toshakhana Gifts Worth PKR 140 Million in Dubai*, THE ECONOMIC TIMES, 15 Apr. 2022, available at <https://economictimes.indiatimes.com/news/international/world-news/pakistan-pm-shehbaz-accuses-imran-khan-of-selling-toshakhana-gifts-worth-pkr-140-million-in-dubai/articleshow/90864313.cms?from=mdr>.

<sup>107</sup> *Pakistan PM Shehbaz Sharif Calls Imran Khan, His Supporters, “No Less Than Terrorists,”* BUSINESS DESK, 13 May 2023, available at <https://www.businesstoday.in/latest/world/story/pakistan-pm-shehbaz-sharif-calls-imran-khan-his-supporters-no-less-than-terrorist-381199-2023-05-13>.

<sup>108</sup> *Pakistan Minister Says Khan Should Be Tried in a Military Court*, AL JAZEERA, 30 May 2023, available at <https://www.aljazeera.com/news/2023/5/30/pakistan-minister-says-khan-should-be-tried-in-military-court>.

<sup>109</sup> ICCPR, *supra* note 32, at Art. 9(1).

<sup>110</sup> Constitution of Pakistan (Updated 2018), at Art. 10(1).

residence in a different city through the back door without a warrant, assaulting 4–5 of his staff members. Khan was also assaulted and thrown into a car.<sup>111</sup> Subsequent to his arrest, Khan’s counsel were denied access to him for two days, despite having emphasized that they needed him to sign a power of attorney that would enable them to challenge various court orders.<sup>112</sup>

This wasn’t the first time Khan had been illegally arrested. On 9 May 2023, he was arrested on corruption charges by some 100 paramilitary troops with riot gear of the National Accountability Bureau, who broke into a courthouse to grab him, dragging him into an armored vehicle. He was then held inside police headquarters, where he was presented in a closed hearing to a judge who remanded him to custody for eight days. Police argued the move was to keep Khan away from the public to maintain law and order. But following his arrest, at least eight people died and hundreds were arrested as law enforcement personnel used excessive force on his supporters. On 12 May 2023, the Supreme Court of Pakistan issued an order saying the “manner of execution” of his arrest was “invalid and unlawful” and “in contempt of court” and that such actions would have a “chilling effect,” given Khan had already presented himself to the High Court at the time of his arrest.<sup>113</sup>

## 6. Khan was denied access to a competent, independent, and impartial tribunal

ICCPR Article 14 guarantees criminal defendants “a fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>114</sup> UDHR Article 10 similarly establishes that every individual “is entitled . . . to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”<sup>115</sup> The Working Group has consistently held that the rights to a fair and impartial trial form an integral aspect of due process as envisaged by the ICCPR<sup>116</sup> and UDHR.<sup>117</sup>

Unfortunately, this is an area of serious concern in Pakistan. As Chief Justice of the Islamabad High Court Athar Minhallah observed, the judiciary needs to ask if “the people of Pakistan [] have trust and confidence in the fairness, impartiality, accountability, responsiveness and independence of the judicial system. I am afraid that the answer cannot be given in the affirmative with confidence.” He further noted that “Lack of confidence of the people in the judicial system and erosion of the rule of law create an opportunity for repressive and tyrannical forces.”<sup>118</sup> These concerns have been echoed by international observers. For example, the U.S. State Department noted “the law provides for an independent judiciary, but according to NGOs and legal experts, the judiciary often was subject to external influences, such as fear of reprisal from extremist elements in terrorism or blasphemy cases and public politicization of high-profile cases.”<sup>119</sup> And in his recent book on Pakistan’s judiciary, Oxford lecturer Yasser Kureshi explained: “In the past fifteen years, however,

<sup>111</sup> *Ex-PM Khan’s Legal Team Says Denied Access in Jail As Controversy Surrounds His Trial and Arrest*, ARAB NEWS, 6 Aug. 2023, available at <https://www.arabnews.com/node/2350356/world>.

<sup>112</sup> *Id.*

<sup>113</sup> Sophia Saifi, *Arrest of Pakistan’s Former Prime Minister Imran Khan Was Illegal, Top Court Rules*, CNN, 12 May 2023, available at [https://www.theguardian.com/world/2023/may/11/pakistan-army-deployed-across-country-as-unrest-triggered-by-imran-khan-arrest-continues](https://www.cnn.com/2023/05/11/asia/imran-khan-arrest-illegal-pakistan-supreme-court-gbrintl/index.html#:~:text=Pakistan%27s%20Supreme%20Court%20ruled%20on,nationwide%20protests%20and%20deadly%20clashes;Farhan Bokhari and Chloe Cornish, Imran Khan Arrested by Pakistan Anti-Corruption Force, FINANCIAL TIMES, 9 May 2023, available at https://www.ft.com/content/df03e73c-f791-4239-860e-f8aea1dc32a0; Shah Meer Baloch and Hannah Ellis-Peterson, Pakistan Supreme Court Rules Arrest of Imran Khan Was Illegal, THE GUARDIAN (UK), 11 May 2023, available at <a href=).

<sup>114</sup> ICCPR, *supra* note 32, at Art. 14(1) (“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”).

<sup>115</sup> UDHR, *supra* note 32, at Art. 10.

<sup>116</sup> *See, e.g., Abdallah Hamoud Al-Twijri et al. v. Iraq*, Opinion No. 43/2012, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2012/43, adopted 14 Nov. 2012, at ¶ 46.

<sup>117</sup> *See, e.g., Mohamed Al Jazairy et al. v. Saudi Arabia*, Opinion No. 52/2012, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2012/52, adopted 19 Nov. 2012, at ¶ 28.

<sup>118</sup> Malik Asad, *Independence of the Judiciary is Debatable, Says IHC CJ*, DAWN, 12 Aug. 2021, available at <https://www.dawn.com/news/1640209>.

<sup>119</sup> *Country Reports on Human Rights Practices: Pakistan*, U.S. DEPARTMENT OF STATE, 20 Mar. 2022, available at [https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/#report-toc\\_\\_section-2\\_\\_subsection-5](https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/#report-toc__section-2__subsection-5).

the superior judiciary has moved beyond just arbitrating political disputes to playing a tutelary role of its own within the political system: constraining the authority and vetoing the policies and actions of elected institutions in order to shape politics and policies in line with its own preferences.”<sup>120</sup>

The actions of Judge Dilawar, who so flagrantly violated a wide array of due process rights under both Pakistani and international law, demonstrate that he was either incompetent, in that he did not know or understand basic fair trial rights, or that he was not acting in an independent and impartial manner. Previously, UN Secretary-General Antonio Guterres had expressed concern about the ability of Khan to get a fair trial in Pakistan. In May 2023, after his violent arrest in the Al-Qadir Trust Case, Guterres urged Pakistan authorities “to respect due process and the rule of law in proceedings brought against former Prime Minister Khan.”<sup>121</sup>

## CIPHER CASE

Beyond the Cipher Case’s lack of grounding in law, detailed above under Category I, there have also been egregious violations of international and domestic fair trial rights thus far. Importantly, in Pakistan, all criminal prosecutions, even under the OSA, must adhere fully to the requirements of the Criminal Procedure Code, except in narrow circumstances provided law. Here, the due process violations of have been egregious and are ongoing.

### 1. The Special Court is failing to provide a public trial

Article 14(1) of the ICCPR and Article 10 of the UDHR both state that everyone is entitled “to a fair and public hearing.”<sup>122</sup> Principle 36 of the Body of Principles further elaborates that “a detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a *public trial* at which he has had all the guarantees necessary for his defence.”<sup>123</sup> The right to a public hearing is protected as one of the essential elements of a fair trial, including both the public nature of the hearings and the publicity of the judgment eventually rendered in a case.<sup>124</sup> The right to a public hearing means that the hearing should, as a rule, be conducted publicly, without a specific request by the parties to that effect.<sup>125</sup> The court or tribunal is, *inter alia*, obliged to make information about the time and venue of the public hearing available and to provide adequate facilities for attendance by interested members of the public, within reasonable limits.<sup>126</sup> The Working Group has previously held that a government’s failure to provide a public hearing by an independent and impartial trial violates international law.<sup>127</sup>

The Special Court established for this case under the Official Secrets Act is being run by Special Court Judge Abul Hasnat Zulqarnain, who is holding the hearings of the Tribunal *in camera* inside Adiala Jail where Khan is being held. Khan’s appeal of this decision to the Islamabad High Court was rejected on 16 October 2023.<sup>128</sup> Nonetheless, under Criminal Procedure Code Article 352, the presumption under Pakistan law is that “[t]he place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access.” But under Article 14 of the OSA, proceedings may be held *in camera* if “the publication of any evidence to be given or of any statement to be made in the course of the

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<sup>120</sup> Yasser Kureshi, *Politics at the Bench: The Pakistani Judiciary’s Ambitions and Interventions*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, 23 Jun. 2022, available at <https://carnegieendowment.org/2022/06/23/politics-at-bench-pakistani-judiciary-s-ambitions-and-interventions-pub-87371>.

<sup>121</sup> *Pakistan: Guterres Calls for End to Violence Following Arrest of Imran Khan*, U.N. NEWS, 10 May 2023, available at <https://news.un.org/en/story/2023/05/1136532>.

<sup>122</sup> UDHR, *supra* note 32, note 26, at art. 10 and ICCPR, *supra* note 32, at Art. 14(1).

<sup>123</sup> BODY OF PRINCIPLES, *supra* note 31, at Principle 24 (emphasis added).

<sup>124</sup> WHAT IS A FAIR TRIAL? A BASIC GUIDE TO LEGAL STANDARDS AND PRACTICE, LAWYERS COMMITTEE FOR HUMAN RIGHTS, Mar. 2000, at 12–13.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> See, e.g., *Gulgedy Annaniyazov v. Turkmenistan*, Opinion No. 22/2013, U.N. WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/WGAD/2013, adopted 27 Aug. 2013.

<sup>128</sup> Hussain Ahmed Chaudhry, *Cipher Case: IHC Dismisses PTI Chairman’s Plea Against Jail Trial*, ARY NEWS, 16 Oct. 2023, available at <https://arynews.tv/cipher-case-ihc-dismisses-imran-khans-plea-against-jail-trial/>.

proceedings would be prejudicial to the safety of the State.”<sup>129</sup> It is nothing less than astonishing that Judge Zulqarnain would so brazenly order the trial be held *in camera*. Not only was the full Telegram made public<sup>130</sup> on 9 August 2023 – six days prior to his issuing a first order in the Cipher Case – but Khan’s speech to a national television audience, the demarche issued by his NSC, and the reversal by the PDM’s NSC are all public record. In short, there is no evidence of any risk to the safety of the State by holding this trial in public. Indeed, given the importance of this case not only to Khan but to the people of Pakistan, there is no legitimate basis to put Khan on trial *in camera*.

The original order to arrest Khan was made on 15 August 2023 by Judge Zulqarnain. Neither Khan nor his counsel were invited to any hearing nor given any opportunity, prior to the issuance of the order, to argue that no such order should be issued. From there, Khan’s remand and trial have all been held in closed hearings on 30 August, 13 and 27 September, and 4, 9, and 23 October with no participation of anyone but Khan and at most two of his counsel. It was only on 4 October that, at the request of Judge Zulqarnain, the Pakistan Ministry of Law issued a notification that the trial would continue in Adiala Jail, in view of “security concerns.”<sup>131</sup> The Special Court formally indicted Khan on 23 October.<sup>132</sup>

## 2. Many of Khan’s fair trial rights have been violated by the Special Court

Just as under Pakistan law, ICCPR Article 14 fair trial rights apply in all cases. According to the Human Rights Committee, these provisions “apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military . . . . The Committee notes the existence, in many countries, of . . . special courts which try civilians. While the Covenant does not prohibit the trial of civilians in . . . special courts, it requires that such trials are in full conformity with the requirements of Article 14 and that its guarantees cannot be limited or modified because of the . . . special character of the court concerned.”<sup>133</sup> Here, there have already been numerous violations of ICCPR Article 14:

- Article 14(1) (independent and impartial tribunal established by law) – The Secretary of the Ministry of the Interior could not legally begin an OSA prosecution with the filing of an FIR. Under Section 13(3), “no Court shall take cognizance of any offence under this Act unless upon complaint” to a court. Before that happens, Section 12A(2) requires that an investigation undertaken by the FIA be completed within 30 working days. Then, the investigating officer must sign and forward the report through the public prosecutor to an appropriate court. Here, the interim Government simply created a Special Court by appointment of the Ministry of Justice and bypassed the legal procedure and oversight that a complaint filed to a court would have provided Khan.
- Article 14(2) (presumption of innocence) – During the secret hearings, Khan is now being detained in a cage with his co-defendant and deputy Shah Mahmood Qureshi.<sup>134</sup> According to the Human Rights Committee: “Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”<sup>135</sup>
- Article 14(3)(b) (adequate time and facilities to prepare a defence) – Strict limitations have been placed on Khan and his counsel in this case. Specifically, Khan has been arbitrarily limited to two

<sup>129</sup> Official Secrets Act (1923), at Art. 14.

<sup>130</sup> The Intercept, *supra* note 39.

<sup>131</sup> Arfa Feroz Zake, *Cipher Case: Law Ministry Issues Notification to Hold Imran’s Trial in Adiala Jail*, GEO NEWS, 5 Oct. 2023, available at <https://www.geo.tv/latest/512797-cipher-case-law-ministry-issues-notification-to-hold-imrans-trial-in-adiala-jail>.

<sup>132</sup> In the Court of Abul Hasn Muhammad Zulqarnain, Judge, Special Court (Official Secret), Islamabad, Case No. 01 of 2023, *The State v. Imran Khan, et al.*, Charge Sheet, 23 Oct. 2023; Munir Ahmed, *Pakistan’s Imran Khan Could Face the Death Sentence in Trial Over Revealing State Secrets*, ASSOCIATED PRESS, 23 Oct. 2023, available at <https://apnews.com/article/pakistan-imran-khan-indictment-official-secrets-a3f267ef56991ec99f1f3e07264f4d2c>;

<sup>133</sup> *General Comment No. 32*, *supra* note 86, at ¶ 22.

<sup>134</sup> Arfa Feroz Zake, *Imran Khan Protests “Poor” Jail Conditions During Cipher Case Hearing*, GEO NEWS, 9 Oct. 2023, available at <https://www.geo.tv/latest/513668-imran-khan-protests-poor-jail-conditions-during-cipher-case-hearing>.

<sup>135</sup> *General Comment No. 32*, *supra* note 86, at ¶ 30.

lawyers to come to each hearing. Those lawyers are provided no documents or information in advance of each hearing. They are not allowed to have paper or writing implements to take notes. And they are prohibited from discussing anything that happens at each hearing with Khan's other lawyers or anyone else. These restrictions have all been imposed because of the purported danger to the State if the trial were to be public. These restrictions have also made it impossible for international counsel to learn about or present any detail of what is happening in these *in camera* proceedings, including to the Working Group.

- Article 14(3)(d) (to defend himself through legal assistance of his own choosing) – By limiting the number of defence lawyers in each hearing, Khan has been denied the right to defend himself through legal assistance of his own choosing.
- Article 14(3)(e) (to have examined witnesses against him) – In mid-June 2023, amid the military crackdown on the PTI, Khan's former head of office, his Principal Secretary Azam Khan, was arrested and disappeared for a month. A case regarding his kidnapping was filed with the Islamabad Police. While in detention, he reportedly issued a recorded statement saying Khan told him that he would display the Cipher and "twist the narrative that a foreign conspiracy was being hatched in collusion with local partners and play the victim card." Given his prior loyalty to Khan and his illegal disappearance, clearly this statement was given under duress.<sup>136</sup> In fact, in response to a pattern of PTI leaders being abducted and coerced into making statements, numerous PTI leaders recently recorded video statements under oath denying Khan's involvement in planning the May 9 protests so that they could not later be abducted and coerced into implicating him.<sup>137</sup> It is expected that, in the Cipher Case, the prosecution will simply play Azam Khan's statement but refuse to allow his counsel to call or cross-examine Azam Khan himself.

### **III. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN**

Khan's domestic counsel appealed his conviction on the Toshakhana Case to the High Court of Islamabad on 9 August 2023. While the High Court suspended his three-year prison term pending appeal, which could take two years or longer, it did not suspend his conviction and therefore the application of the five-year disqualification to run for office. Khan's ongoing trial for allegedly violating provisions of the OSA is being held by the Special Court sitting in Adiala Jail *in camera*.

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<sup>136</sup> *Imran Doubts Veracity of Azam Khan's Alleged Statement on Cipher Controversy*, DAWN, 20 Jul. 2023, available at <https://www.dawn.com/news/1765812>.

<sup>137</sup> *PTI Leaders Record Video Statements to Avoid 'Nefarious Plan' Against Imran Khan*, GEO NEWS, 8 Oct. 2023, available at <https://www.geo.tv/latest/513531-pti-leaders-record-video-statements-to-avoid-nefarious-plan-against-imran-khan>.