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**Human Rights Council**  
**Working Group on Arbitrary Detention**

**Opinions adopted by the Working Group on Arbitrary Detention at its ninety-ninth session, 18–27 March 2024**

**Opinion No. 22/2024 concerning Imran Ahmad Khan Niazi (Pakistan)\***

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,<sup>1</sup> on 7 November 2023 the Working Group transmitted to the Government of Pakistan a communication concerning Imran Ahmad Khan Niazi. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

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

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

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

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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

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

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\* Miriam Estrada Castillo did not participate in the discussion of the case.

<sup>1</sup> A/HRC/36/38.

## 1. Submissions

### (a) Communication from the source

4. Imran Ahmad Khan Niazi is a citizen of Pakistan, born in 1952. Mr. Khan has residence in Islamabad.

#### (i) Context

5. Mr. Khan was the Prime Minister of Pakistan from August 2018 to April 2022. He is the founder and Chairman of the Pakistan Tehreek-e-Insaf, a political party. With over 10 million members, the Pakistan Tehreek-e-Insaf is reportedly one of the largest political parties. Following the 2018 general election, the Pakistan Tehreek-e-Insaf became the largest party in the National Assembly and formed a coalition Government, with Mr. Khan as Prime Minister.

6. In his roles as Prime Minister and Chairman of the Pakistan Tehreek-e-Insaf, Mr. Khan has been an outspoken critic of corruption and has also spoken out about the dangers of the unconstitutional overreach of power in the military. Reportedly, on 10 April 2022, he was removed from office for those activities, following a no-confidence vote sought by the Pakistan Democratic Movement, a coalition of political parties founded in September 2020 to oppose him.

7. Since the repression of the Pakistan Tehreek-e-Insaf, which intensified after the mass protests against Mr. Khan's arrest in May 2023, Mr. Khan has continued to criticize certain military officials, the previous Pakistan Democratic Movement Government and the interim Government. Mr. Khan and his party remain popular and would win the general election if it is held in November 2023. That popularity is reportedly the reason why the previous Pakistan Democratic Movement Government and the interim Government convicted and imprisoned Mr. Khan, as he would thereby be disqualified from running for political office, and the leadership of the Pakistan Tehreek-e-Insaf would be dismantled.

8. Following the May 2023 protests against Mr. Khan's arrest, hundreds of Pakistan Tehreek-e-Insaf leaders were compelled to resign from their positions. Thousands of Pakistan Tehreek-e-Insaf supporters present at the protests were detained. Many civilians remain on trial in military courts, while others have been disappeared.

9. Beginning in April 2022, the Pakistan Electronic Media Regulatory Authority sought to ban Mr. Khan from television on four occasions. In March 2023, the Authority banned broadcasts of Mr. Khan's speeches and press conferences, claiming that he was promoting hate speech and attacking State institutions. In May 2023, the Authority issued a directive prohibiting media outlets from giving airtime to those promoting hate speech, which was reportedly aimed at Mr. Khan and the Pakistan Tehreek-e-Insaf.

#### (ii) Arrest and detention

10. Mr. Khan was arrested on three occasions. On 9 May 2023, he was arrested for the first time by some 100 paramilitary troops of the Pakistan Rangers. The corresponding arrest warrant, issued by the National Accountability Bureau, was not shown to Mr. Khan at the time of his arrest.

11. The arrest was reportedly intended to prevent Mr. Khan from exercising his rights to freedom of opinion and expression, freedom of association, and political participation and resulted in widespread national protests. The Supreme Court then issued an order to release Mr. Khan, finding that his arrest had been illegal. It is noted that, although that case remains ongoing, it is not connected to the alleged arbitrary detention of Mr. Khan.

12. In relation to the second and third arrests, the source explains that, on 4 July 2022, six Members of the National Assembly of Pakistan filed a complaint with the Speaker of the National Assembly, claiming that Mr. Khan – who was then a Member elect – had been disqualified from serving. Members of the Pakistan Democratic Movement alleged that Mr. Khan had retained gifts that he had received as Prime Minister but had failed to disclose them in his statements of assets and liabilities for the financial years 2017/18 and 2018/19, in breach of the Elections Act, 2017. Gifts received by public officials are managed by the

Toshakhana, the Government's gift repository. On 2 August 2022, the Speaker, also a member of the Pakistan Democratic Movement, referred the complaint to the Election Commission, making similar allegations.

13. Mr. Khan explained that his statements of assets and liabilities contained all the necessary disclosures. However, on 21 October 2022, after an allegedly procedurally flawed process, the Election Commission found that Mr. Khan's statements of assets and liabilities for the financial years 2018/19, 2019/20 and 2020/21 contained false information relating to various gifts that he had received and that he had therefore violated sections 137, 167 and 173 of the Elections Act. The Election Commission declared that Mr. Khan was disqualified under article 63 (1) (p) of the Constitution of Pakistan and that he could no longer serve as a Member of the National Assembly. The Commission filed a criminal complaint against Mr. Khan with the Islamabad Sessions Court, and he was indicted on 10 May 2023.

14. The trial before the Sessions Court began on 12 July 2023 and was marked by serious violations of Mr. Khan's due process rights. The presiding judge did not allow the defence to call any witnesses or to make a closing argument. Furthermore, the court ignored two High Court orders to address the defence counsel's arguments regarding jurisdiction and maintainability.

15. On 5 August 2023, the judge found that Mr. Khan had committed corrupt practices by making false declarations regarding gifts that he had received in the financial years 2018/19, 2019/20 and 2020/21, in violation of sections 167 (a) and 173 of the Elections Act. Mr. Khan was sentenced to three years' imprisonment, the maximum allowable sentence.

16. Approximately half an hour after the court had rendered its decision, Mr. Khan was arrested at his home in Lahore. Law enforcement personnel reportedly broke into the residence and assaulted several staff members. Mr. Khan was not informed of the reason for his arrest, nor was he shown any arrest warrant. He was assaulted and thrown into a car and was then transported to Attock Jail, despite the court having ordered that he be taken to Adiala Jail. He was not transferred to Adiala Jail until a few weeks later.

17. On 8 August 2023, on the basis of the conviction, the Election Commission disqualified Mr. Khan from running for office for five years, citing article 63 (1) (h) of the Constitution and section 232 of the Elections Act.

18. On 28 August 2023, the Islamabad High Court suspended Mr. Khan's sentence and ordered that he be released on bail pending the consideration of his appeal. However, instead of being released, he was kept in detention in connection with another case, the so-called cipher case, involving Mr. Khan's alleged wrongful sharing and retention of a classified document. The source notes that Mr. Khan was alleged to have committed a violation of sections 5 and 9 of the Official Secrets Act, even though the document had been officially declassified while Mr. Khan had been Prime Minister. Mr. Khan remains detained in connection with the cipher case to this day, despite the serious violation of his rights under domestic and international law.

### (iii) *Legal analysis*

#### a. *Category I*

19. The source submits there is no legal basis for Mr. Khan's detention in connection with either the Toshakhana case or the cipher case.

20. The Toshakhana case was allegedly both politically motivated and ultra vires as a matter of law. The Members of the National Assembly who accused Mr. Khan of failing to properly report gifts were all members of the Pakistan Democratic Movement coalition that ousted Mr. Khan as Prime Minister in April 2022. The Speaker of the National Assembly, who referred the allegations to the Election Commission on 2 August 2022, was also a member of the Pakistan Democratic Movement.

21. The Speaker's referral of those allegations was purportedly made under article 63 (2) of the Constitution. The source argues that the Speaker can make a referral only in relation to 16 specific situations that are identified in article 63 (1), none of which was applicable in that case.

22. Even if the referral had been valid, the decision by the Election Commission to open an investigation into the complaint was *ultra vires*. The Speaker reportedly referred the complaint, which concerned section 137 (1) of the Elections Act, to the Election Commission some 825 days after the time frame for making such a complaint had expired. Subsequently, the Election Commission *sua sponte* expanded the illegally opened investigation to cover the financial year 2020/21.

23. On 21 October 2022, the Election Commission found Mr. Khan guilty of corrupt practices. In a case of selective prosecution, it referred his case to the Islamabad Sessions Court, having never previously taken such a step in cases brought against former Prime Ministers.

24. After Mr. Khan's conviction, following a trial that featured due process violations, the Election Commission disqualified him from holding office for a period of five years. Any disqualification from membership of Parliament is governed by article 63 of the Constitution. The Election Commission declared him to be disqualified under article 63 (1) (h), which allows for disqualification "on conviction for any offence involving moral turpitude". However, the Supreme Court had never previously labelled a violation of the Elections Act as a crime involving moral turpitude.

25. The Toshakhana case was reportedly politically motivated, as shown by the fact that the Election Commission also postponed the general election that should have been held between November 2023 and January 2024, in violation of article 48 (5) of the Constitution.

26. Similarly, the cipher case is both politically motivated and *ultra vires*. On 15 August 2023, the Secretary of the Ministry of the Interior, who is a member of the interim Government, filed a first information report accusing Mr. Khan of the "unauthorized retention and misuse" of a "secret classified document", in violation of sections 5 and 9 of the Official Secrets Act.

27. On 27 March 2022, Mr. Khan spoke publicly, in general terms, about the document in question. On 9 April 2022, the Cabinet of Pakistan, chaired by Mr. Khan, formally declassified the document. Mr. Khan was removed from his position as Prime Minister on 10 April 2022.

28. The cipher case reportedly has no basis in law. Article 248 (1) of the Constitution stipulates that the President, the Governors and the Prime Minister "shall not be answerable to any court for the exercise of powers and performance of functions of their respective offices". Mr. Khan secured the Cabinet's approval to declassify the document. The new Government has reportedly attempted to reverse that decision.

29. The entire case is based on an *ex post facto* reinterpretation of Mr. Khan's legal actions at the time. Article 15 (1) of the Covenant and article 12 (1) of the Constitution provide that no law may authorize the punishment of a person for an act or omission that was not punishable by law at the time of the act or omission. The new Government has criminalized Mr. Khan's actions for political purposes. If convicted, Mr. Khan can be sentenced to either life imprisonment or death.

30. The information contained in the document was of legitimate public interest, as demonstrated by Mr. Khan's decision to publicly discuss some of its elements and the Cabinet's decision to declassify it. The interim Government's decision to pursue a case against Mr. Khan had no basis in law because it retroactively criminalized actions that, at the time, had not been criminal and because Mr. Khan's public statements had been fully consistent with his right to freedom of opinion and expression.

31. On 27 October 2023, the Islamabad High Court denied Mr. Khan bail because, "where allegations are serious and *prima facie* link the accused with the commission of the offence, bail is to be denied" in cases involving the Official Secrets Act, 1923.<sup>2</sup> That approach was arbitrary and lacked a legal basis because it was founded not on an individualized

<sup>2</sup> Islamabad High Court, *Imran Ahmed Khan Niazi v. the State, etc.* and *Imran Ahmed Khan Niazi v. the Federation of Pakistan, etc.*, judgment sheet, 27 October 2023.

determination but, rather, on a presumption of guilt, in violation of article 14 (2) of the Covenant.<sup>3</sup>

b. Category II

32. Mr. Khan's detention was arbitrary under category II because it resulted from his exercise of fundamental rights and freedoms, including the right to freedom of opinion and expression, the right to political participation and the right to freedom of association.

33. Mr. Khan was detained for exercising his right to freedom of opinion and expression, which is protected by article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. Article 19 of the Constitution also provides that every citizen has the right to freedom of speech and expression. Recognizing the narrow restrictions on the exercise of that right allowed under article 19 (3) of the Covenant, the source argues that those restrictions would not apply in the case of Mr. Khan.<sup>4</sup>

34. Following his removal from the position of Prime Minister, Mr. Khan continued to be an outspoken critic of the Pakistan Democratic Movement and the interim Government. His statements are protected by and consistent with his exercise of the right to freedom of opinion and expression. Besides the criminal cases brought against Mr. Khan, the Pakistan Electronic Media Regulatory Authority banned broadcasts of his speeches and press conferences and later issued a directive urging media outlets not to give airtime to those promoting hate speech, with the authorities allegedly pressuring media outlets not to mention Mr. Khan's name.

35. Mr. Khan was convicted and sentenced to three years in prison, in a trial that reportedly lacked impartiality, for exercising his fundamental right to express his opinions. His deprivation of liberty amounts to an attempt by the authorities to silence a political opponent who has significant popular support.

36. Recalling article 22 (1) of the Covenant, the source submits that Mr. Khan has been detained for exercising his right to freedom of association. Furthermore, article 20 (1) of the Universal Declaration of Human Rights provides that everyone has the right to freedom of peaceful assembly and association. Similarly, article 17 (2) of the Constitution states that every citizen has the right "to form or be a member of a political party".<sup>5</sup>

37. The authorities have systemically persecuted Mr. Khan and his party's members to suppress their involvement in politics. Mr. Khan is detained because of his leadership of and affiliation with the country's main opposition party. Mr. Khan's detention therefore violates his right to freedom of association.

38. Mr. Khan has been detained by the authorities for seeking to exercise his right to political participation, which is protected by article 25 of the Covenant<sup>6</sup> and article 21 of the Universal Declaration of Human Rights. This right depends on the ability of individuals to run for political office.<sup>7</sup>

39. On 28 August 2023, the Islamabad High Court suspended Mr. Khan's three-year sentence for alleged corrupt practices. However, the five-year ban on contesting elections will not begin until his sentence has been completed and will persist as long as the conviction remains valid. It is expected that Mr. Khan's appeal to the High Court will not be heard for at least two years, long after the general election now scheduled for January 2024. The suspension of the sentence in the case did not result in Mr. Khan's release pending the outcome of his appeal, which would have allowed him to continue engaging in politics, because the Special Court had ordered that he be detained in connection with the cipher case.

40. Throughout Mr. Khan's arrest, trial, summary conviction and political disqualification in the Toshakhana case, the authorities not only discriminated against him on the basis of his political participation but also directly interfered with his ability to run for office. The

<sup>3</sup> Human Rights Committee, general comment No. 35 (2014).

<sup>4</sup> Human Rights Committee, general comment No. 34 (2011); and *Park v. Republic of Korea* (CCPR/C/64/D/628/1995), para. 10.3; and Constitution of Pakistan, art. 19.

<sup>5</sup> Constitution of Pakistan, art. 19.

<sup>6</sup> Human Rights Committee, general comment No. 25 (1996).

<sup>7</sup> *Ibid.*, para. 15. See also opinion No. 46/2011.

conviction and resulting ban on running for office reportedly demonstrate the determination to silence Mr. Khan and his supporters.

c. Category I

41. Mr. Khan was subjected to numerous violations of his fair trial rights, in breach of article 9 of the Universal Declaration of Human Rights, article 14 of the Covenant and article 4 (1) of the Constitution.

42. In the context of the Toshakhana case, Mr. Khan was not promptly informed in detail of the nature and cause of the charges against him, as required by article 14 (3) (a) of the Covenant.<sup>8</sup>

43. In its order finding Mr. Khan guilty of corruption, the Election Commission included information from documents that it had privately solicited from government bodies and financial institutions and that had never been provided to Mr. Khan's legal counsel. Furthermore, when the Election Commission filed the criminal complaint with the Islamabad Sessions Court, neither the written complaint nor the privately solicited documents were provided to Mr. Khan's counsel. Mr. Khan's counsel therefore had no documents related to the criminal complaint in advance of the first day of the trial. The judge opened the case by allowing the Election Commission, which was serving as prosecutor in the case, to summarize its allegations against Mr. Khan. The charge was neither read out in full nor set out in writing, and Mr. Khan was never asked to enter a plea in the case, in violation of article 14 (3) (a) of the Covenant and articles 265D and 265E of the Code of Criminal Procedure.

44. During the trial, Mr. Khan was subjected to violations of the following due process rights: the right to examine key evidence in advance of trial, the right to fully examine prosecution witnesses, the right to present and examine witnesses in defence, the right to present closing arguments and the right to prepare an adequate defence, in violation of article 14 (3) of the Covenant.<sup>9</sup> In addition, the Constitution enshrines the right to a fair trial and due process.<sup>10</sup>

45. Moreover, Mr. Khan was denied the presumption of innocence, in violation of article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights.<sup>11</sup> This right is subsumed within the right to a fair trial as protected in the Constitution.<sup>12</sup> On 15 April 2022, before the Members of the National Assembly had filed their complaint with the Speaker, the authorities publicly accused Mr. Khan of illegally selling gifts. That was reportedly the first of many statements by the authorities that portrayed Mr. Khan as a criminal, tainting not only the Toshakhana case but also the cipher case. Lastly, the fact that the Pakistan Electronic Media Regulatory Authority banned any mention of Mr. Khan in the media is a further violation of the presumption of innocence, as the ban relates to allegations that Mr. Khan is spreading hate speech, yet he has never been charged with any such crime.

46. Mr. Khan's arrest post-conviction was illegal, and he was subsequently denied access to legal counsel, in breach of article 9 (1) of the Covenant, article 10 (1) of the Constitution and article 366 (2) of the Code of Criminal Procedure.

47. In the Toshakhana case, the presiding judge reportedly failed to inform Mr. Khan or his counsel that a judgment would be issued. Instead, on 5 August 2023, the judge summarily convicted Mr. Khan in absentia and sentenced him to three years in prison on charges of corrupt practices. Thirty minutes later, he released the 30-page written verdict. Law enforcement personnel then broke into Mr. Khan's residence in a different city, through the back door. They had no warrant and assaulted several of Mr. Khan's staff members. Mr. Khan was also assaulted. Following Mr. Khan's arrest, his legal team was denied access to him for

<sup>8</sup> Human Rights Committee, general comment No. 32 (2007), para. 31.

<sup>9</sup> Human Rights Committee, general comment No. 13 (1984), para. 11.

<sup>10</sup> Constitution of Pakistan, art. 10A.

<sup>11</sup> Opinion No. 36/2017, para. 88 (c).

<sup>12</sup> Constitution of Pakistan, art. 10A.

two days, despite having emphasized that they needed him to sign a power of attorney that would enable them to challenge various court orders.

48. That was reportedly not the first instance of arbitrary arrest of Mr. Khan. On 9 May 2023, he was arrested on corruption charges by some 100 officers acting on behalf of the National Accountability Bureau, who broke into a courthouse to apprehend him and dragged him into an armoured vehicle. He was then held inside the police headquarters, where he was presented in a closed hearing to a judge, who remanded him in custody for eight days. The police later argued that remanding Mr. Khan in custody had been aimed at keeping him away from the public, to maintain order. Following his arrest, at least eight people died, and hundreds were arrested, with the authorities allegedly using excessive force. On 12 May 2023, the Supreme Court found that the manner in which Mr. Khan's arrest had been carried out had been unlawful and that such actions would have a chilling effect, as he had already presented himself to the High Court at the time of his arrest.

49. Lastly, Mr. Khan was denied access to a competent, independent and impartial tribunal, in breach of article 14 (1) of the Covenant, article 10 of the Universal Declaration of Human Rights and principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and contrary to the Working Group's jurisprudence.<sup>13</sup> The judge violated numerous due process rights under domestic and international law.

50. The cipher case lacks grounding in law and features serious, ongoing violations of fair trial rights, in breach of article 14 (1) of the Covenant and article 10 of the Universal Declaration of Human Rights.

51. Hearings are being held in camera inside Adiala Jail, pursuant to article 14 of the Official Secrets Act. Mr. Khan's appeal of that decision to the Islamabad High Court was rejected on 16 October 2023. The full document in question had been made public six days prior to the issuance of the first order in the cipher case. Furthermore, Mr. Khan's speech on national television is a matter of public record. There is no evidence that holding the trial in public would pose any risk to the safety of the State. Given the importance of that case, there is no legitimate basis on which to put Mr. Khan on trial in camera.

52. Moreover, the arrest order was issued on 15 August 2023. Neither Mr. Khan nor his lawyer was invited to any hearing or given any opportunity, prior to the issuance of the order, to argue that no such order should be issued. Thereafter, the proceedings relating to Mr. Khan's remand in custody and the trial were held in closed hearings, on 30 August, 13 and 27 September and 4, 9 and 23 October 2023, with only Mr. Khan and two lawyers participating. It was not until 4 October 2023 that, at the request of the judge, the Ministry of Law issued a notification that the trial would continue at Adiala Jail, in view of security concerns. The Special Court formally indicted Mr. Khan on 23 October 2023.

53. Many of Mr. Khan's fair trial rights have reportedly been violated by the Special Court. The source recalls that fair trial rights under article 14 of the Covenant and under domestic law should be upheld in every case.<sup>14</sup> The source highlights the following alleged violations of article 14 of the Covenant:

(a) A violation of article 14 (1) of the Covenant, as the interim Government created a special court by appointment of the Ministry of Justice and bypassed the legal procedure and oversight that a complaint filed with a court would have provided to Mr. Khan, in breach of article 13 (3) of the Official Secrets Act;

(b) A violation of article 14 (2) of the Covenant, as, during the secret hearings, Mr. Khan was detained in a cage;

(c) A violation of article 14 (3) (b) of the Covenant, as only two lawyers were allowed to attend each hearing. They were not provided with relevant documents in advance of each hearing and were not allowed paper or writing implements to take notes. They were prohibited from discussing any details of the hearings with Mr. Khan's other lawyers, which made it impossible for international counsel to learn about those in camera proceedings;

<sup>13</sup> Opinion No. 22/2013.

<sup>14</sup> Human Rights Committee, general comment No. 32 (2007), para. 22.

(d) A violation of article 14 (3) (d) of the Covenant, as, by limiting the number of defence lawyers in each hearing, the authorities denied Mr. Khan the right to defend himself through legal assistance of his own choosing;

(e) A violation of article 14 (3) (e) of the Covenant, as, in June 2023, a close colleague of Mr. Khan was arrested and disappeared for a month. A disappearance report was filed with the Islamabad Police. While in detention, Mr. Khan's colleague issued a recorded statement, reportedly given under duress, stating that Mr. Khan had informed him that he would publicly display the document in question. The prosecution is expected to play the pre-recorded statement of Mr. Khan's colleague but will refuse to allow Mr. Khan's counsel to cross-examine him as a witness.

**(b) Response from the Government**

54. On 7 November 2023, the Working Group transmitted the allegations from the source to the Government of Pakistan under its regular communications procedure. The Working Group requested the Government to provide detailed information, by 8 January 2024, about the current situation of Mr. Khan. The Working Group also requested the Government to clarify the legal provisions justifying his detention, as well as its compatibility with the State's obligations under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Khan's physical and mental integrity.

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

**(c) Further information from the source**

56. On 7 February 2024, the source informed the Working Group that, over a five-day period from 30 January to 3 February 2024, during the week prior to the national parliamentary election, Mr. Khan was convicted and sentenced to an additional 31 years in prison. He has now been sentenced to a total of 34 years in prison, and the sentences will run consecutively.

57. On 30 January 2024, he was sentenced to 10 years in prison in relation to the cipher case. Prior to sentencing, on 26 and 27 January 2024, the court denied Mr. Khan's defence lawyers the right to cross-examine witnesses and appointed public lawyers to conduct cross-examinations on their behalf. Reportedly, on 18 December 2023, it became known that, in August 2023, the Inter-Services Intelligence had concluded that the alleged leak did not present any security threat, which is contrary to the allegations set out in the charge sheet in the case.

58. On 31 January 2024, in a new Toshakhana case, Mr. Khan was sentenced to a further 14 years in prison and a fine of \$2.8 million and was disqualified from contesting elections for 10 years. Reportedly, on 29 January 2024, the Accountability Court judge had denied Mr. Khan the right to cross-examine witnesses.

59. On 3 February 2024, Mr. Khan was sentenced to seven years in prison for breaching section 496 of the Penal Code by entering into an unlawful marriage (the so-called marriage case). It is the first known case in which such proceedings have been initiated.

60. While Mr. Khan had already been barred from contesting elections after his conviction in the first Toshakhana case, in the run-up to the election, multiple media outlets were reportedly asked to impose a ban on coverage relating to Mr. Khan's political party. The Supreme Court barred Mr. Khan's party from using its traditional symbol, which is an important tool for helping voters with low literacy levels to identify party candidates.

**2. Discussion**

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



62. In determining whether the detention of Mr. Khan is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>15</sup> In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

(a) Category I

63. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis.

64. The source submits that there was no legal basis for Mr. Khan's detention in the first Toshakhana case. It submits that the case was politically motivated and explains why it was *ultra vires* as a matter of law from its inception. The source submits that the Election Commission, which reportedly acted as the prosecuting authority, and the Speaker of the National Assembly, who referred the case to the Election Commission, both acted irregularly or *ultra vires* by referring and investigating the complaint. Moreover, the Election Commission postponed the general election that should have been held between November 2023 and January 2024, in violation of article 48 (5) of Constitution, which cemented Mr. Khan's exclusion from participation in that election. Noting the source's detailed and un rebutted submissions regarding the *ultra vires* nature of the prosecution, as well as the context of the political repression of Mr. Khan and his party in which that prosecution occurred, the Working Group concludes that his detention had no legal basis and appears to have been intended to disqualify him from running for political office.<sup>16</sup> Thus, from the outset, that prosecution was not grounded in law and was reportedly instrumentalized for a political purpose.

65. Furthermore, the Working Group considers that the manner in which Mr. Khan was convicted in the first Toshakhana case (namely, a summary judgment delivered in absentia) and his subsequent arrest by law enforcement personnel who broke into his residence and assaulted him and his staff are concerning and compound the illegality. The presiding judge reportedly failed to inform Mr. Khan or his counsel that a judgment would be issued. At the time of the arrest, Mr. Khan was not informed of the reasons and was not shown any arrest warrant, which the Government does not rebut. The Working Group recalls that the authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>17</sup> Indeed, international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation of liberty under articles 3 and 9, respectively, of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

66. The source argues that the cipher case has been, from its inception, both politically motivated and *ultra vires* because it is, in its entirety, an *ex post facto* reinterpretation of actions that Mr. Khan took that were fully legal and appropriate at the time. Mr. Khan has been accused of the wrongful sharing and retention of a classified document in violation of the Official Secrets Act, although it was formally declassified while he was Prime Minister. The new Government reportedly criminalized Mr. Khan's actions for political purposes, although the information contained in the document was of legitimate public interest. The source notes that, while the Inter-Services Intelligence concluded that the leak of the cipher did not present a security threat to Pakistan, it is alleged in the case charge sheet that Mr. Khan compromised the cipher and security system of Pakistan. Mr. Khan was then convicted and sentenced to 10 years' imprisonment on 30 January 2024.

67. In the absence of any response from the Government, the Working Group finds that Mr. Khan's prosecution in the cipher case lacks a grounding in law, as his actions do not

<sup>15</sup> A/HRC/19/57, para. 68.

<sup>16</sup> Opinion No. 30/2015, paras. 44 and 47.

<sup>17</sup> Opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018, No. 79/2018, No. 89/2020 and No. 72/2021.

appear to have violated the Official Secrets Act, as was apparently corroborated by the intelligence services, according to the source's un rebutted submissions. It observes that neither Mr. Khan nor his lawyer was invited to any hearing or given any opportunity, prior to the issuance of the arrest order on 15 August 2023, to challenge his arrest and detention. It is noteworthy that, on 9 May 2023, Mr. Khan had already been subjected to arbitrary arrest in a different case. That incident led to a Supreme Court order of 12 May 2023 stating that the manner in which Mr. Khan's arrest had been carried out was invalid, unlawful and in contempt of court.

68. The source submits that Mr. Khan received another sentence of 14 years in prison in connection with a new Toshakhana case and, following a conviction under section 496 of the Penal Code in the so-called marriage case, a further sentence of seven years in prison. While the information submitted in connection with the latter two cases is limited, the Working Group cannot but observe the coincidence in the timing of the four prosecutions, which effectively prevented Mr. Khan from contesting the general election originally scheduled for November 2023. It also notes the reportedly novel conviction under section 496 of the Penal Code, leading to an outcome that is tantamount to a life sentence for Mr. Khan, who, at the age of 71, is facing a term of imprisonment that may amount to 34 years. Aside from the fact that he had already been barred from contesting elections after his conviction in the first Toshakhana case, in the run-up to the election, multiple journalists were asked to impose a near blanket ban on coverage of Mr. Khan's party. Mr. Khan's party has allegedly been barred from using its traditional symbol, which identifies it and is significant to rural voters with low literacy levels. That is in addition to the Pakistan Electronic Media Regulatory Authority reportedly banning broadcasts of Mr. Khan's speeches and press conferences, with the authorities allegedly pressuring media outlets not to mention Mr. Khan's name.

69. Noting the convergence of factors that appear to be aimed at removing Mr. Khan from contesting the election and restricting his party's fair participation in the election, and in the absence of any response from the Government, the Working Group finds that, at the very least, Mr. Khan's arrest, detention and prosecution in the first Toshakhana case and the cipher case were without any legal basis and would appear to be politically motivated to exclude his participation in the election.

70. The source argues that the 27 October 2023 decision of the Islamabad High Court to deny Mr. Khan bail lacked any legal basis because it was not founded on an individualized determination but, rather, a presumption of guilt. This is because the sole reason provided for the denial of bail was that, "where allegations are serious and prima facie link the accused with the commission of the offence, bail is to be denied" in cases involving the Official Secrets Act, 1923.<sup>18</sup>

71. In its jurisprudence, the Working Group has repeatedly confirmed that mandatory pretrial detention – for instance, in cases of "non-bailable" offences – is in violation of a State's obligations under international human rights law.<sup>19</sup> Non-bailable offences that do not allow for an individualized assessment are in violation of article 9 (3) of the Covenant, which states that it is not to be the general rule that persons awaiting trial are to be detained in custody. It would appear that Mr. Khan has been charged with non-bailable offences under the Official Secrets Act. The Working Group recalls the view of the Human Rights Committee, as well as its own recurrent findings, that pretrial detention must be the exception and not the rule, should be ordered for as short a time as possible<sup>20</sup> and must be based on an individualized determination that it is reasonable and necessary, taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the

<sup>18</sup> Islamabad High Court, *Imran Ahmed Khan Niazi v. the State, etc. and Imran Ahmed Khan Niazi v. the Federation of Pakistan, etc.*, judgment sheet, 27 October 2023.

<sup>19</sup> Opinions No. 57/2014, No. 24/2015, No. 16/2018, No. 53/2018, No. 61/2018, No. 75/2018, No. 14/2019 and No. 64/2019; [A/HRC/19/57](#), paras. 48–58; and [A/HRC/42/39/Add.1](#), paras. 36–38.

<sup>20</sup> Opinions No. 57/2014, para. 26; No. 8/2020, para. 54; No. 5/2021, para. 43; and No. 6/2021, para. 50. See also Human Rights Committee, general comment No. 32 (2007), para. 38; and [A/HRC/19/57](#), paras. 48–58.

recurrence of crime.<sup>21</sup> Courts must examine whether alternatives to pretrial detention would render detention unnecessary in the case in question.<sup>22</sup>

72. In considering whether an individualized judicial review of Mr. Khan's pretrial detention occurred, the Working Group notes that the Government provided no information to rebut the source's allegations that Mr. Khan did not receive an individualized judicial review. As a result, the Working Group finds that Mr. Khan's pretrial detention was not properly constituted and thus had no legal basis and was ordered in violation of article 9 (3) of the Covenant.<sup>23</sup>

73. For these reasons, the Working Group considers that the deprivation of liberty of Mr. Khan is arbitrary under category I.

(b) Category II

74. The source submits that Mr. Khan's detention was arbitrary because it resulted from his exercise of fundamental rights and freedoms, including the right to freedom of opinion and expression, the right to political participation and the right to freedom of association and assembly.

75. Although Mr. Khan was exercising his fundamental rights to express his opinions, he was reportedly convicted and sentenced in proceedings that lacked impartiality, in an attempt by the authorities to silence a political opponent with significant popular support. In relation to the cipher case, the source explains that the information contained in the document was of legitimate public interest, as demonstrated by Mr. Khan's decision to publicly discuss some of its elements and the Cabinet's decision to declassify it. His public statements were fully consistent with his right to freedom of opinion and expression. Besides the criminal cases brought against Mr. Khan, the Pakistan Electronic Media Regulatory Authority banned broadcasts of his speeches and press conferences and later issued a directive urging media outlets not to give airtime to individuals promoting hate speech, with the authorities allegedly pressuring the media not to mention his name.

76. The source submits that Mr. Khan has been detained by the authorities for seeking to exercise his right to take part in public affairs and be elected without unreasonable restrictions, as protected by article 25 of the Covenant and article 21 of the Universal Declaration of Human Rights. In its jurisprudence, the Working Group has consistently found that detention is arbitrary when the context suggests that the authorities have detained a person to prevent him or her from participating in public life, for example by bringing criminal proceedings that result in a political leader being unable to hold or seek political office,<sup>24</sup> as appears to have occurred in the present case. Such participation is supported by ensuring the right to freedom of expression, assembly and association.<sup>25</sup> Noting that the right in question depends on the ability of individuals to run for office, the Working Group recalls that the Human Rights Committee has stated that no person should suffer discrimination or disadvantage of any kind because of that person's candidacy.<sup>26</sup> The Working Group's jurisprudence supports the view that the right in question has been violated if individuals are detained solely for exercising their right to freedom of association and their right to take part in the conduct of public affairs.<sup>27</sup>

77. Mr. Khan has reportedly been detained because of his leadership of and affiliation with the country's leading opposition party, the Pakistan Tehreek-e-Insaf, in violation of his right to freedom of association under article 22 (1) of the Covenant and the right to freedom

<sup>21</sup> Human Rights Committee, general comment No. 35 (2014), para. 38; and opinion No. 45/2016, para. 51.

<sup>22</sup> A/HRC/19/57, paras. 48–58; and Human Rights Committee, general comment No. 35 (2014), para. 38.

<sup>23</sup> Opinions No. 68/2019, para. 96; and No. 36/2020, para. 51.

<sup>24</sup> Opinions No. 24/2015, para. 44; No. 30/2015, paras. 39, 44 and 47; No. 33/2015, paras. 83–85; No. 36/2017, para. 108; No. 61/2018, para. 59; and No. 23/2021, para. 85. See also [A/HRC/36/37](#), para. 48 (d).

<sup>25</sup> Human Rights Committee, general comment No. 25 (1996).

<sup>26</sup> *Ibid.*, para. 15.

<sup>27</sup> Opinions No. 46/2011, para. 21; and No. 30/2015, para. 44.

of peaceful assembly and association under article 20 (1) of the Universal Declaration of Human Rights, which is also protected under the Constitution. When issues of freedom of political expression and assembly come before the Working Group, it undertakes a particularly intensive review, as the exercise of those freedoms in the political process concerns the very core of these fundamental freedoms.<sup>28</sup>

78. The Working Group recalls that article 19 (2) of the Covenant provides that everyone has the right to freedom of expression, which includes political discourse, commentary on public affairs and discussion of human rights through any media.<sup>29</sup> It protects the holding and expression of opinions, including those that are critical of, or not in line with, government policy.<sup>30</sup> The 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>31</sup> It has also emphasized that public order and national security may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights. Extreme care must be taken by States to ensure that provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of article 19 (3) of the Covenant.<sup>32</sup> It is incompatible with that provision to invoke such laws to suppress or to withhold from the public information of legitimate public interest that does not harm national security or to prosecute human rights defenders or others for having disseminated such information.<sup>33</sup> The Human Rights Council has called upon all States to refrain from imposing restrictions that are not consistent with article 19 (3) of the Covenant.<sup>34</sup>

79. The source argues that the full document in question was made public six days before the judge issued the first order in the cipher case. Furthermore, Mr. Khan's speech on national television and other information related to the document are a matter of public record and are of public interest. There is no information to suggest that Mr. Khan's activities could reasonably be considered to pose a threat to national security, public order, public health or morals or the rights or reputations of others. There is nothing to suggest – and the Government has not argued – that the permissible restrictions on the above rights as set out in articles 19 (3), 21 and 25 of the Covenant would apply in the present case. The Government has not explained how the prosecutions brought against Mr. Khan are necessary to protect a legitimate interest under those provisions or how bringing charges under the Official Secrets Act, which provides for severe penalties, and other legislation was a proportionate response to his peaceful activities.

80. In the absence of any rebuttal from the Government, it would appear that the prosecutions brought against Mr. Khan are related to his leadership of the Pakistan Tehreek-e-Insaf and indicate a determination to silence him and his supporters and exclude their political participation.<sup>35</sup> It is evident to the Working Group that the basis for the arrest and subsequent detention of Mr. Khan was also his exercise of freedom of assembly. While freedom of expression and freedom of assembly are not absolute rights, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.<sup>36</sup>

81. The Working Group therefore finds that Mr. Khan was detained for exercising his right to freedom of expression and opinion under article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights, his right to freedom of association under article 22 (1) of the Covenant, his right to freedom of peaceful assembly and association under article 20 (1) of the Universal Declaration of Human Rights and his right to take part in the conduct of public affairs under article 21 (1) of the Universal Declaration of Human

<sup>28</sup> Opinion No. 13/2011, para. 9. See also opinion No. 46/2011.

<sup>29</sup> Human Rights Committee, general comment No. 34 (2011), paras. 11 and 12.

<sup>30</sup> Opinions No. 79/2017, para. 55; and No. 8/2019, para. 55.

<sup>31</sup> *Marques de Moraes v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

<sup>32</sup> Human Rights Committee, general comment No. 34 (2011), para. 30.

<sup>33</sup> Ibid.

<sup>34</sup> Human Rights Council resolution 12/16, para. 5 (p).

<sup>35</sup> Opinion No. 91/2017, paras. 80–85 and 96–100; and No. 9/2018, paras. 45–47 and 57.

<sup>36</sup> Human Rights Committee, general comment No. 34 (2011), para. 21.

Rights and article 25 (a) of the Covenant.<sup>37</sup> It finds that Mr. Khan was detained in relation to the proceedings against him as a result of the peaceful exercise of those rights and that the deprivation of liberty of Mr. Khan is therefore arbitrary under category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

(c) Category III

82. Given its finding that the deprivation of liberty of Mr. Khan is arbitrary under category II, the Working Group wishes to emphasize that, in such circumstances, no trial should have taken place. However, Mr. Khan was tried in the Toshakhana cases, the cipher case and the marriage case. Given his age, Mr. Khan is currently facing an effective sentence of life imprisonment. The Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give his deprivation of liberty an arbitrary character.

83. Mr. Khan was reportedly not promptly informed in detail of the nature and cause of the charges against him in the first Toshakhana case. On the first day of his trial, the charge was neither read out in full nor set out in writing, and he was never asked to enter a plea in the case. The source submits that Mr. Khan was subjected to violations of the following due process rights throughout that trial: (a) the right to examine key evidence in advance of trial; (b) the right to present defence witnesses and the right to fully examine prosecution witnesses; (c) the right to present a closing argument; and (d) the right to prepare an adequate defence. Lastly, the source submits that Mr. Khan's right to equality of arms and right to equal protection of the law have been violated.

84. The Working Group has held in its jurisprudence that the right to a fair trial is violated when a Government denies the defendant adequate time and facilities for the preparation of a defence.<sup>38</sup> That standard is reflected in article 11 of the Universal Declaration of Human Rights, which states that all due process guarantees required for accused persons to prepare their defence should be provided. Considering the source's unrebutted and detailed submissions in that regard, the Working Group finds that article 14 (1) and (3) (a), (b) and (e) of the Covenant has been violated in both Toshakhana cases and the cipher case. As the Working Group has previously found, a refusal to allow any witnesses on behalf of the defence bears the hallmarks of a serious denial of equality of arms in the proceedings.<sup>39</sup> It recalls that there is a strict obligation under article 14 (3) (e) of the Covenant to respect the right to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses for the prosecution at some stage of the proceedings.<sup>40</sup>

85. In relation to the first Toshakhana case, the source submits that Mr. Khan was denied access to his legal team for two days following his arrest, despite having emphasized that he had to sign a power of attorney that would enable his lawyers to challenge various court orders. The source argues that, by limiting the number of lawyers in each hearing related to the cipher case, the authorities denied Mr. Khan the right to defend himself through legal assistance of his own choosing, making it impossible for international counsel to follow the in camera proceedings. In addition, the court reportedly terminated the defence lawyers' cross-examination of witnesses and appointed public lawyers instead. The Working Group therefore finds that Mr. Khan's right to adequate time and facilities for the preparation of his defence under article 14 (3) (b) of the Covenant and principles 17 (1) and 18 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

<sup>37</sup> Human Rights Committee, general comment No. 25 (1996), para. 8. See also opinions No. 15/2020 and No. 16/2020.

<sup>38</sup> Opinions No. 14/2012, para. 38; No. 18/2018, para. 53; and No. 78/2018, paras. 78 and 79. See also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 18 (2).

<sup>39</sup> Opinions No. 4/2021, para. 101; and No. 19/2022, para. 66.

<sup>40</sup> Human Rights Committee, general comment No. 32 (2007), para. 39.



was violated, as was his right to present an effective defence through counsel of his choosing under article 14 (3) (d) of the Covenant.<sup>41</sup>

86. With regard to the first Toshakhana case, the source submits that the presiding judge violated numerous due process rights under both domestic and international law, which demonstrates that he was not acting in an independent and impartial matter. For instance, he reportedly failed to inform Mr. Khan or his counsel that a judgment would be issued. Instead, on 5 August 2023, the judge convicted Mr. Khan in absentia and, 30 minutes later, released the 30-page written verdict, which led to his violent arrest at his home. The Working Group recalls that trial in absentia is a serious violation of fair trial rights, noting that Mr. Khan was not forewarned that judgment would be passed during the hearing. With regard to the new Toshakhana case, in its further submissions, the source submits that Mr. Khan was denied the right to cross-examine witnesses by the judge. In relation to the cipher case, Mr. Khan and his counsel were reportedly not given the opportunity to contest the order for his arrest. The Working Group has consistently held that the right to a fair and impartial trial forms an integral aspect of due process as envisaged in the Covenant<sup>42</sup> and the Universal Declaration of Human Rights.<sup>43</sup> It is further recalled that the right is absolute and cannot be subject to any exceptions.<sup>44</sup>

87. The interim Government reportedly created a special court by appointment of the Ministry of Justice and bypassed the legal procedure and oversight that a complaint filed with a court would have provided to Mr. Khan, in violation of article 14 (1) of the Covenant. The Working Group recalls that the independence of a court requires that it be independent of the executive and legislative branches of government or enjoy in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature.<sup>45</sup> 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 has noted the existence, in many countries, of special courts that try civilians. While the Covenant does not prohibit the trial of civilians in special courts, the Working Group has observed that all courts, whether regular or special, must be competent, independent and impartial,<sup>46</sup> and the trial of civilians in special courts requires that there be full conformity with the requirements of article 14 and that its guarantees not be limited or modified because of the special character of the court concerned.<sup>47</sup> Consequently, according to the Committee, it is important to take all measures necessary to ensure that such trials take place under conditions that genuinely afford the full guarantees stipulated in article 14. In the absence of a response from the Government, and in the light of the source's detailed submissions on the matter, the Working Group finds that those violations of due process constitute a violation of Mr. Khan's right to be tried by an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.<sup>48</sup> The Working Group refers the case to the Special Rapporteur on the independence of judges and lawyers.

88. The source argues that the statements made by the authorities that portrayed Mr. Khan as a criminal violated his right to the presumption of innocence and have tainted both the Toshakhana and cipher cases. The orders of the Pakistan Electronic Media Regulatory Authority banning any mention of Mr. Khan in the media are also a violation of the presumption of innocence, as they relate to allegations that Mr. Khan was spreading hate speech, although he has never been charged with such a crime. As the Working Group has stated, public statements by high-ranking officials violate the right to be presumed innocent if they declare persons guilty of an offence for which they have not yet been tried, thereby creating a public perception of guilt, besides attempting to influence or prejudice the

<sup>41</sup> [A/HRC/30/37](#), principle 9; opinion No. 14/2017, para. 58; and [CCPR/C/VNM/CO/3](#), paras. 35 and 36.

<sup>42</sup> Opinion No. 43/2012, para. 46.

<sup>43</sup> Opinion No. 52/2012, para. 28.

<sup>44</sup> Human Rights Committee, general comment No. 32 (2007), para. 19.

<sup>45</sup> *Ibid.*, para. 18.

<sup>46</sup> Opinion No. 79/2021, para. 89.

<sup>47</sup> Human Rights Committee, general comment No. 32 (2007), para. 22.

<sup>48</sup> Opinions No. 24/2020, para. 108; No. 31/2020, para. 56; and No. 61/2020, para. 88.

examination of the facts by the competent judicial authority.<sup>49</sup> The Working Group recalls that it is a duty of all public authorities to refrain from prejudging the outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused.<sup>50</sup>

89. Moreover, the Working Group recalls that, on 9 May 2023, Mr. Khan was arrested on corruption charges by some 100 paramilitary troops in riot gear acting on behalf of the National Accountability Bureau. Officers reportedly broke into a courthouse and dragged Mr. Khan into an armoured vehicle, even though he had already presented himself to the High Court at the time of his arrest. The Working Group has previously found that a large presence of security personnel at a detainee's trial jeopardizes the presumption of innocence, as it indicates that he or she may be a dangerous criminal, warranting heavy security.<sup>51</sup>

90. Furthermore, during the secret hearings conducted in the cipher case, Mr. Khan was reportedly detained in a cage, further jeopardizing the presumption of innocence. The Working Group recalls that, 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>52</sup> The presumption of innocence is expressed in unambiguous terms, the burden of proof of the charge is on the prosecution, and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Furthermore, the presumption of innocence implies a right to be treated in accordance with this principle. For these reasons, the Working Group finds that the acts described above undermined Mr. Khan's right to the presumption of innocence.<sup>53</sup>

91. The source submits that the Special Court is failing to provide Mr. Khan with an opportunity to have a public hearing in the cipher case. That case is being held under the Official Secrets Act, and the hearings are being held in camera, inside Adiala Jail. Mr. Khan's appeal against that decision was denied by the Islamabad High Court. The full document in question had reportedly been made public six days prior to the issuance of the first order in the cipher case. Furthermore, Mr. Khan's speech on national television and other information related to the document are a matter of public record. The source thus argues that there is no evidence that holding that trial in public presents any risk to the safety of the State. On the contrary, given the importance of that case, there is no legitimate basis on which to put Mr. Khan on trial in camera.

92. The Working Group recalls that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice.<sup>54</sup> Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media. Noting that the Government has not invoked any of those exceptions to justify the closed trial and that the relevant document had been made public in full prior to the first order relating to the cipher case, it finds that Mr. Khan has not received a public hearing in that case, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

93. The Working Group therefore concludes that the breaches of Mr. Khan's fair trial and due process rights are of such gravity as to give the deprivation of liberty an arbitrary

<sup>49</sup> Opinion No. 3/2020, para. 94. See also opinions No. 36/2017, para. 88 (c); No. 76/2018, paras. 67 and 68; No. 82/2018, para. 45; No. 6/2019, paras. 122–128; No. 12/2019, paras. 112–116; No. 81/2019, para. 67; and No. 59/2020, para. 81.

<sup>50</sup> Human Rights Committee, general comment No. 32 (2007), para. 30.

<sup>51</sup> Opinion No. 40/2016, para. 41; No. 79/2017, para. 62; No. 36/2018, para. 55; No. 83/2019, para. 73; and No. 36/2020, para. 68. See also Human Rights Committee, general comment No. 32 (2007), para. 30.

<sup>52</sup> Human Rights Committee, general comment No. 32 (2007), para. 30.

<sup>53</sup> Opinion No. 5/2010, para. 30; No. 40/2016, para. 41; No. 74/2017, para. 60; No. 79/2017, para. 62; No. 26/2018, para. 64; No. 36/2018, para. 55; No. 49/2018, para. 98; No. 19/2019, para. 46; No. 83/2019, para. 73; and No. 36/2020, para. 68.

<sup>54</sup> Human Rights Committee, general comment No. 32 (2007), para. 29. See also opinion No. 86/2022, para. 50.

character, such that it falls within category III. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

(d) Concluding remarks

94. Cognizant of Mr. Khan's age of 71 years, the Working Group recalls its deliberation No. 11, noting that States should refrain from holding individuals older than 60 years of age in places of deprivation of liberty, as they face a heightened risk to their physical and mental integrity and life.<sup>55</sup>

95. The Working Group is also gravely concerned about the alleged arrest and disappearance of Mr. Khan's close colleague. It urges the appropriate authorities to act on the complaint filed on his behalf. It is alarmed by the general allegations of widespread arrests, detentions and disappearances of individuals, including many supporters of the Pakistan Tehreek-e-Insaf, and urges the authorities to take swift and appropriate action in that regard.

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

### 3. Disposition

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

The deprivation of liberty of Imran Ahmad Khan Niazi, being in contravention of articles 3, 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 10, 14, 19, 22 and 25 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

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

99. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Khan immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

101. The Working Group requests the Government to bring its laws into conformity with the recommendations made in the present opinion and with the commitments made by Pakistan under international human rights law.

102. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

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

### 4. Follow-up procedure

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

<sup>55</sup> A/HRC/45/16, annex II, para. 15.



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

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

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

107. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>56</sup>

[Adopted on 25 March 2024]

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<sup>56</sup> Human Rights Council resolution 51/8, paras. 6 and 9.