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Working Group on Arbitrary Detention

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Opinion No. 11/2018 concerning Mesut Kaçmaz, Meral Kaçmaz and two minors (whose names are known by the Working Group) (Pakistan and Turkey)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. 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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 19 January 2018, the Working Group transmitted to the Government of Pakistan and to the Government of Turkey a communication concerning Mesut Kaçmaz, Meral Kaçmaz and two minors (whose names are known by the Working Group). The Government of Pakistan submitted a late response on 16 April 2018, while the Government of Turkey replied on 27 March 2018. Both Pakistan and Turkey are parties to the International Covenant on Civil and Political Rights.

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

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

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

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

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

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language,

religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Kaçmaz, born in 1974, and Mrs. Kaçmaz, born in 1978, are Turkish citizens and a married couple. They have two daughters who are both currently minors, aged 17 and 16 years respectively, whose names are known by the Working Group (referred to below as the "two minors"). The two minors are also Turkish citizens. Prior to their arrest, the Kaçmaz family resided in Wapda Town, Lahore, Pakistan.

5. According to the source, Mr. and Mrs. Kaçmaz are both teachers. Mr. Kaçmaz is a former teacher at the Pak-Turk School, one of the educational institutions linked to the Hizmet movement of Pakistan. The Kaçmaz family hold asylum seeker certificates from the Office of the United Nations High Commissioner for Refugees (UNHCR), valid until 24 November 2017, indicating that they should be protected from forcible return to a country where they claim they face threats to their lives or freedom, pending a final decision on their refugee status.

6. The source alleges that, in 2016, the Government of Turkey pressured almost all countries in the world to take legal action against suspected supporters of Fethullah Gülen, whom the Turkish authorities accused of masterminding the attempted coup of 15 July 2016. Fethullah Gülen and the Hizmet movement reportedly denied the accusations. According to the source, there was abundant evidence of arbitrary detention and torture of detainees who had been suspected of belonging to or expressing sympathy for the Hizmet/Gülen movement, which international and national human rights organizations have also documented.

Arrest and detention in Pakistan

7. The source reports that, on 27 September 2017, at around 2.10 a.m., the Kaçmaz family home in Lahore was raided by about 15 "officers" in plain clothes, including several female officers, who provided no identification. According to the source, the officers arrested the family using pushing and shoving, including Mr. Kaçmaz, who expressed his protest against the raid. Mrs. Kaçmaz, who had been lying on the floor, was pulled to her feet by two female officers. The two minors cried loudly and were carried out by their arms and legs and later slapped. The source alleges that, when a neighbour saw the disproportionate force used on Mrs. Kaçmaz, he protested and was arrested. The officers provided no reasons for the arrest. They did not search the house.

8. According to the source, the Kaçmaz family and the neighbour were forced into pickup trucks. They were dressed only in their pyjamas and not allowed to wear shoes. The officers blindfolded them and later slipped hoods over their heads, including on Mrs. Kaçmaz and the two minors. They handcuffed the neighbour and tightened a cloth strip around the wrists of Mr. Kaçmaz, who continued to protest and received blows to his face. They travelled for about 30 minutes to what is believed to be a military cantonment. The officers informed the neighbour that his name was not on their list and that they would set him free. He was blindfolded and driven back to his housing complex.

9. The source alleges that the Kaçmaz family was kept at an unknown location with opaque windows. They were prevented from going outside and did not see daylight for 17 days. Two officers, who indicated that they were from the Pakistani Counter-Terrorism Department, were placed in charge of them. During the last night, the officers told the family that they would be taken to Islamabad for a meeting at the Turkish Embassy and at the Ministry of Foreign Affairs in order to solve the situation, and that they would then return to their home in Lahore and continue their lives as normal. The officers reassured them that they would not be turned over to the Turkish authorities.

Petition before the Lahore High Court

10. On 28 September 2017, associates of the Kaçmaz family filed a writ petition with the Lahore High Court, requesting that Mr. Kaçmaz and his family members be released and not deported to Turkey. In an order of 28 September 2017, the judge directed the Deputy Attorney-General to provide information on the case and ensure that Mr. Kaçmaz and his family would not be deported before the next hearing.

11. During the hearing of 16 October 2017, the Lahore High Court was informed by the Deputy Attorney-General that the Kaçmaz family had not been deported from Pakistan by any agency or department under the control of the Ministry of the Interior, including the Federal Investigation Agency. The Ministry of the Interior also stated in its report to the Court that the names of the members of the Kaçmaz family, as per the order of the Lahore High Court, had been included in the Exit Control Lists since 12 October 2017.

12. According to the source, the petitioners' counsel informed the Lahore High Court that Mr. Kaçmaz, along with his three family members, had been forcibly deported on 14 October 2017, despite the court order staying their deportation. The counsel submitted a contempt petition against the Government of Pakistan. The Court was also requested to stay the deportation of additional Turkish citizens teaching at Pak-Turk schools and colleges, and to restrain authorities from harassing them.

Forcible deportation

13. The source reports that the Kaçmaz family was forcibly deported on 14 October 2017 and flown on a special, unmarked aircraft from Islamabad to Istanbul, Turkey. While Pakistani staff transported the family to the flight, there were only Turkish agents on board the aircraft. The family was removed from Pakistan without their passports or identification documents. The source alleges that, during the flight, Mr. Kaçmaz was verbally abused and ill-treated by the Turkish agents.

Ongoing incommunicado detention in Turkey

14. The source alleges that, following their arrival in Istanbul, the family members were put into separate vehicles and taken to a police bureau at the terminal, where they waited for several hours, blindfolded and not allowed to speak. Mr. Kaçmaz was subsequently taken away. Mrs. Kaçmaz and the two minors were driven to a police station in Bakirkoy, and later to a hospital, where Mrs. Kaçmaz was given a health report. They spent the night in a detention room. A family friend came to the police station the next day and picked up the two minors, who are not currently deprived of their liberty. Mrs. Kaçmaz stayed at the police station and was taken to Ankara on a flight at 8.00 p.m.

15. The source reports that, at the time of its communication to the Working Group, no further information was available about the situation of Mr. and Mrs. Kaçmaz, including as to whether any charges had been brought against them, or whether Mr. and Mrs. Kaçmaz had been brought before a judicial authority or granted access to legal counsel.

16. The source is concerned that Mr. and Mrs. Kaçmaz have been placed beyond the protection of the law in Turkey and are at high risk of torture or other ill-treatment, unfair trial or other serious human rights violations, following their apprehension and expulsion to Turkey. According to the source, the couple is being held incommunicado and there is no news of their condition. The source submits that their deprivation of liberty is arbitrary.

Responses from the Governments to the regular communication

17. On 19 January 2018, the Working Group transmitted the allegations from the source to the Government of Pakistan and to the Government of Turkey under its regular communication procedure. The Working Group requested both Governments to provide detailed information by 20 March 2018 about the situation of Mr. and Mrs. Kaçmaz and the two minors. The Working Group also requested both Governments to clarify the legal provisions justifying their detention, as well as its compatibility with the obligations of Pakistan and Turkey under international human rights law. The Working Group called upon

the Government of Turkey to ensure the physical and mental integrity of the Kaçmaz family.

18. The Government of Pakistan responded on 16 April 2018. The Government of Pakistan had not requested an extension of the time limit for its reply, as provided for in the Working Group's methods of work. The response in the present case is therefore late, and the Working Group cannot accept the response as if it was presented within the time limit.

19. On 14 March 2018, the Government of Turkey requested that the deadline be extended. The extension was granted, and a new deadline set for 27 March 2018. The Government of Turkey submitted its response on 27 March 2018.

Background information

20. In its response, the Government of Turkey provides an overview of the terrorism threats faced by Turkey and the measures taken in response to the security challenges posed by terrorist organizations. The Government of Turkey submits background information, especially with regard to the alleged armed terrorist organization, Fetullahist Terrorist Organization/Parallel State Structure. The Government of Turkey also refers to the attempted coup of 15 July 2016, noting that there are ongoing investigations into and trials pending against the organization's members in relation to the alleged attempt to overthrow the Government.

21. According to the Government of Turkey, in order to combat the Fetullahist Terrorist Organization/Parallel State Structure, and in line with the recommendation of the National Security Council, a nationwide state of emergency was declared by the Council of Ministers from 21 July 2016 for three months, pursuant to article 120 of the Constitution and article 3 (1) (b) of Law No. 2935. The Council of Ministers extended the state of emergency for another three months from 19 January 2018.

22. Following the declaration of the state of emergency, the Government of Turkey derogated from its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) and the Covenant. Notification of that derogation, and the extensions of the state of emergency, were submitted to the Council of Europe under article 15 of the Convention and to the Secretariat of the United Nations under article 4 of the Covenant. The measures taken are strictly required by the exigencies of the situation, proportionate to the current crisis and necessary to eliminate the influence of terrorist organizations. The scope of the decree laws issued in relation to the state of emergency is limited to terrorist organizations, in order not to interfere with the rights and freedoms of others.

23. The state-of-emergency procedures are set out in articles 119 to 122 of the Turkish Constitution. According to article 15 of the Constitution, "the exercise of fundamental rights and freedoms may be partially or entirely derogated … to the extent required by the exigencies of the situation, as long as obligations under international law are not violated." The Government of Turkey points out that those provisions use similar wording to article 15 of the European Convention on Human Rights and article 4 of the Covenant.

24. In addition, the Government of Turkey states that it is aware of its obligations under international law and is acting with respect for democracy and human rights; that due respect is shown for fundamental rights and freedoms; and that the rule of law is strictly observed. The principles of necessity, proportionality and legality have been complied with in the measures taken under the state of emergency. Since the measures are based on decrees that have the force of law, the principle of legality is satisfied. While taking measures under article 15 of the European Convention on Human Rights, Turkey continues to be subject to the supervision of the European Court of Human Rights.

25. Furthermore, the state-of-emergency measures are monitored in line with changing conditions. The maximum duration of police custody in cases of terrorism has been reduced to seven days in conformity with the jurisprudence of the European Court of Human Rights and can only be extended once, for a maximum of seven days. Persons in custody, their lawyers, spouses or relatives may appeal against the order of the Public Prosecutor in accordance with article 91 (5) of the Code of Criminal Procedure. Detention can be

challenged and release can be requested at all stages. Legal assistance is available to those in custody and medical reports are obtained upon entry into and release from custody. Legal remedies are available, including compensation for the violation of rights pursuant to article 141 of the Code of Criminal Procedure and by individual application to the Constitutional Court, and fair trial rights are respected.

26. The Government of Turkey submits that the allegations in the case of Mr. and Mrs Kaçmaz were not raised at the national level and were brought directly before the Working Group. No action has been brought in Turkey for compensation under article 141 of the Code of Criminal Procedure or by an individual application to the Constitutional Court. International human rights mechanisms are subsidiary remedies, and the examination of a human rights violation by an international body should not be undertaken when it can be redressed within domestic proceedings. The purpose of the Working Group is not to replace domestic judicial authorities. As a result, the allegations should be rejected under article 41 (1) (c) of the Covenant owing to the non-exhaustion of domestic remedies.

Circumstances of the present case

27. The Government of Turkey confirms that Mr. and Mrs. Kaçmaz and the two minors arrived in Turkey from Pakistan on 14 October 2017. Upon their arrival, Mr. and Mrs. Kaçmaz were arrested on suspicion of "being a member of an armed terrorist organization", namely the Fetullahist Terrorist Organization/Parallel State Structure, in connection with the attempted coup on 15 July 2016. The two minors were handed over to a relative, with the consent of their mother. Currently, Mr. Kaçmaz is detained pending trial before the 37th Assize Court of Istanbul (case No. 2017/118) and Mrs. Kaçmaz is detained pending trial before the 33rd Assize Court of Istanbul (case No. 2017/251).

28. According to the Government of Turkey, Mr. Kaçmaz made a request to benefit from the provisions for those who show remorse. Mr. Kaçmaz made a statement explaining that: (a) he had used the encrypted communication programme downloaded by members of the Fetullahist Terrorist Organization/Parallel State Structure; (b) instructive notes for the hierarchical structure had been shared by the organization through that programme; and (c) orders had been given to organization's members via this programme. As a result of the investigation, the Chief Public Prosecutor's Office of Istanbul filed an indictment against Mr. Kaçmaz alleging that he was a member of an armed terrorist organization.

29. The 3rd Criminal Magistrates' Office of Istanbul detained Mr. Kaçmaz on 16 October 2017, having considered the charge against him, that there were reasonable grounds to suspect that he might attempt to escape or interfere with evidence, and that judicial control measures would be insufficient. The 37th Assize Court of Istanbul extended Mr. Kaçmaz's detention. An appeal against that decision was rejected by the 1st Criminal Magistrate's Office of Istanbul on the grounds that the charge was included in article 100 of the Code of Criminal Procedure, there was evidence such as Bank Asya[1] records that had led to a strong suspicion that Mr. Kaçmaz had committed the alleged crime, detention was proportional to the amount of the likely penalty, and judicial control measures would be insufficient.

30. On 13 February 2018, Mr. Kaçmaz's detention was extended by the 37th Assize Court of Istanbul. The Court took into account the statement of the defendant, the date of detention, the existence of a strong suspicion of guilt and that the defendant might attempt to escape, the likely penalty, the fact that the crime was included in article 100 of the Code of Criminal Procedure, and that judicial control measures would be insufficient. The next hearing was scheduled for 26 April 2018. A defence lawyer was appointed to represent Mr. Kaçmaz.

31. In addition, the Chief Public Prosecutor's Office of Istanbul launched an investigation against Mrs. Kaçmaz based on the suspicion that she was a member of a terrorist organization. The 2nd Criminal Magistrate's Office of Istanbul ordered Mrs.

[1] According to the Government of Turkey, Bank Asya was established by the Fetullahist Terrorist Organization/Parallel State Structure in order to finance its activities.

Kaçmaz's detention. The Chief Public Prosecutor's Office filed an indictment against Mrs. Kaçmaz on 8 December 2017 with the 33rd Assize Court of Istanbul on the charge of "being a member of an armed terrorist organization" under articles 3 and 5 of the Anti-Terror Law No. 3713 and under articles 314 (2), 53 (1), 58 (9) and 63 of the Turkish Criminal Code.

32. The 33rd Assize Court of İstanbul extended Mrs. Kaçmaz's detention. The Court took into account the nature and seriousness of the crime, the search and seizure minutes, the statements of the defendants, the existence of a strong suspicion of guilt, the fact that the evidence had not yet been fully collected, the duration of detention, the likely penalty, the fact that the crime was included in article 100 of the Code of Criminal Procedure, the principle of proportionality, and that judicial control measures would be insufficient. Mrs. Kaçmaz was provided legal assistance during the investigation and prosecution.

Submissions on arbitrary detention

33. The Government of Turkey submits that the prosecution of only those who carried out the attempted coup would not be sufficient in the fight against the Fetullahist Terrorist Organization/Parallel State Structure, and that it is also necessary that the masterminds of the attempted coup be identified and held accountable. Given the charges against Mr. and Mrs. Kaçmaz, the confessions made and the existing evidence, any allegation that they have been detained arbitrarily is baseless.

34. In its jurisprudence, the European Court of Human Rights requires the existence of a reasonable suspicion that the person(s) concerned committed the offence in question as a condition for the lawfulness of detention. The suspect must be released if a reasonable suspicion no longer exists. The Government of Turkey argues that there is a reasonable suspicion that Mr. and Mrs. Kaçmaz committed the alleged offence. Mr. Kaçmaz confessed that he was a member of the terrorist organization, showed remorse, disclosed information regarding the structure and functioning of the Fetullahist Terrorist Organization/Parallel State Structure, and partially admitted the charges.

35. According to the Government of Turkey, Mr. and Mrs. Kaçmaz were notified of the charges against them. When Mr. and Mrs. Kaçmaz were placed in custody, forensic reports were taken and they were notified of their rights. There was no finding of assault or ill-treatment in the forensic reports, and no allegation of ill-treatment in their statements given during the investigation period and before the judge. Mr. and Mrs. Kaçmaz gave their statements in the presence of defence lawyers and they were granted the right of defence and legal assistance.

36. Furthermore, the decisions to arrest, detain and extend the detention of Mr. and Mrs. Kaçmaz were made by independent judges. The existence of a strong suspicion of guilt was sufficiently reasoned in the decisions given for the detention of both individuals. They exercised the right to challenge these decisions, and their objections were reviewed by the judicial authorities and reasoned decisions provided. Accordingly, the Government of Turkey submits that there has been no violation of the Covenant and the case should be dismissed on procedural and substantive grounds. Finally, the complaints regarding Mr. and Mrs. Kaçmaz fall within the scope of the notification of derogation.

Further information from the source

37. On 27 March 2018, the response from the Government of Turkey was sent to the source for further comment. The source responded on 9 April 2018.

38. The source provides an extensive background on the Hizmet movement and alleges that it has been unfairly blamed for numerous serious events in Turkey, including being referred to by the Government of Turkey as a terrorist organization. The source notes that a critical component of terrorism is the readiness of any armed group to use violence, whereas the Hizmet movement emphasizes peace and does not support political violence or overthrow of the State. According to the source, the Hizmet movement has not been recognized as a terrorist organization in any final judgment of the Turkish Court of Cassation, which must take place under Turkish law in designating a group as a terrorist organization.

39. The source refers to the alleged use of an encrypted communication programme in the present case, points to its wide availability and disputes the Government's claim that it was primarily used by members of the Gülen movement. The source also notes that the antiterrorism laws, including articles 312 and 314 of the Turkish Criminal Code, are overly broad and easily manipulated for political purposes, particularly during a state of emergency. In addition, while the Government's derogation from the Covenant referred to articles affected by the emergency measures, it did not include a description of those measures and their anticipated effect, as suggested by the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights. The derogation does not meet the requirements of necessity, proportionality and legality.

40. The source further argues that the victims need not exhaust domestic remedies, particularly in the present case, as the independence of the judiciary in Turkey has been compromised. Remedies are not readily available for the victims, and even if they were available, their exhaustion would have only unduly prolonged the detention of Mr. and Mrs. Kaçmaz.

Discussion

41. The present case involves two States and the Working Group will discuss the issues related to each State separately. In determining whether the deprivation of liberty of Mr. and Mrs. Kaçmaz and the two minors 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 requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Governments to refute the allegations. The Governments can meet this burden of proof by producing documentary evidence in support of their claims.[2] Mere assertions by the Governments that lawful procedures have been followed are not sufficient to rebut the source's allegations (see A/HRC/19/57, para. 68).

Allegations against Pakistan

42. In the absence of a timely response from the Government of Pakistan, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work. The Working Group will base its opinion on the case made out by the source.

43. The source alleges that the Government of Pakistan detained Mr. and Mrs. Kaçmaz and the two minors on 27 September 2017, when they were abducted in the middle of the night from their home in Wapda Town, Lahore. According to the source, the Kaçmaz family was held for 17 days at an unknown location believed to be a military cantonment until 14 October 2017, when they were handed over to the Turkish authorities for transportation from Islamabad to Istanbul.

44. As a preliminary issue, the Working Group will consider whether the arrest, detention and deportation of the Kaçmaz family was carried out by agents acting on behalf of the Government of Pakistan.[3] In its initial communication, the source provided

[2] See opinion No. 41/2013, in which the Working Group notes that the source of a communication and the Government do not always have equal access to the evidence, and frequently the Government alone has the relevant information. In that case, the Working Group recalled that where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was entitled, the burden to prove the negative fact asserted by the applicant is on the public authority, because the latter is "generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law ... by producing documentary evidence of the actions that were carried out". See also *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, ICJ, Judgment, 30 November 2010, para. 55.

[3] The Working Group has previously found that detention carried out by groups acting on behalf and with the support of a government to be within its mandate. See, e.g., opinions No. 4/2016 and No. 3/2016.

information indicating that it was unclear who had arrested the Kaçmaz family or which organization they had represented. The source alleged that the 15 persons who had raided the Kaçmaz home on 27 September 2017 had been wearing plain clothes and had produced no identification, then had taken the Kaçmaz family and their neighbour away in unmarked vehicles. According to the source, the police had denied that the Kaçmaz family had been under police custody. In addition, according to court documents provided by the source, the Deputy Attorney-General had informed the Lahore High Court that no agencies or departments under the control of the Ministry of the Interior had been involved in the deportation.

45. However, subsequent events after the initial arrest strongly suggest that the Government of Pakistan had been involved in all actions taken against the Kaçmaz family. The source alleges that two officers who had stated that they were from the Pakistani Counter-Terrorism Department were placed in charge of the Kaçmaz family while they were detained at the unknown location. The officers reportedly told the family that they would be taken to Islamabad for a meeting at the Turkish Embassy, and appear to have later taken the family to Islamabad for the flight to Istanbul. Moreover, the Working Group considers it highly implausible that an unmarked aircraft could transport four individuals, whose names had reportedly been on an Exit Control List, out of Pakistan without the knowledge and acquiescence of the Government of Pakistan. In the absence of any alternative explanation from the Government of Pakistan, the Working Group considers that the arrest, detention and deportation of the Kaçmaz family was carried out by the Government of Pakistan, through agents (either State agents or otherwise) acting on its behalf and with its support, and at the request of the Turkish authorities.

46. In addition, the Working Group considers that the information submitted by the source indicates that the arrest, detention and deportation of the Kaçmaz family was carried out without any legal basis. The Working Group is convinced that the Kaçmaz family was taken away from their home on 27 September 2017 without any legitimate legal procedure having been followed. That is, the arresting officers did not identify themselves, no arrest warrant was presented, no reasons were given to the Kaçmaz family for their arrests, the family members were taken by force while blindfolded, hooded and handcuffed and detained in a secret location[4] with no outdoor access for 17 days. The Working Group finds that the Government of Pakistan violated the rights of Mr. and Mrs. Kaçmaz and the two minors to protection from arbitrary arrest and detention under article 9 (1) and (2) of the Covenant.[5]

47. Furthermore, the Working Group finds that the Kaçmaz family was held incommunicado at a secret location for 17 days from their arrest on 27 September 2017 until they were deported on 14 October 2017. As the Working Group has consistently held, holding persons incommunicado violates their right to be brought before a court under article 9 (3) of the Covenant and to challenge the lawfulness of their detention before a court under article 9 (4) of the Covenant.[6] Judicial oversight of detention is a fundamental safeguard of personal liberty[7] and is essential in ensuring that detention has a legal basis. While associates of the Kaçmaz family filed a writ petition before the Lahore High Court seeking their release, this does not satisfy articles 9 (3) and (4) of the Covenant. The Government of Pakistan is obliged to ensure that detainees have their detention reviewed before a judicial authority, rather than simply acting as the respondent to legal action initiated by another party. Given that Mr. and Mrs. Kaçmaz and the two minors had been unable to personally challenge their detention, their right to an effective remedy under

[4] See opinion No. 14/2009 and No. 12/2006, in which the Working Group found that detention at a secret location had been per se arbitrary under category I because no legal procedure had been followed.

[5] The Working Group has made similar findings in other cases involving the detention of individuals at an undisclosed location prior to their removal to another country to face criminal charges in relation to alleged terrorism offences. See, e.g., opinions No. 2/2015 and No. 57/2013.

[6] See, e.g., opinions No. 79/2017, No. 46/2017 and No. 45/2017.

[7] See United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 3.

article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

48. The Working Group considers that not only was there no legal basis invoked by the authorities for the actions taken against the Kaçmaz family, but the authorities also arrested, detained and deported the family in violation of Pakistani law. The source provided a copy of an order made by the Lahore High Court on 28 September 2017 restraining the Government of Pakistan from deporting the Kaçmaz family before the next hearing on the matter. However, the Kaçmaz family was forcibly deported on 14 October 2017, two days before the next hearing, scheduled for 16 October 2017, in egregious defiance of a judicial order. The source also provided a copy of the contempt petition filed against the Government of Pakistan in relation to the violation of the court order.

49. For those reasons, the Working Group considers that there was no legal basis established for the arrest, detention and deportation of Mr. and Mrs. Kaçmaz and the two minors under article 9 of the Covenant. The Working Group concludes that their deprivation of liberty from 27 September to 14 October 2017 was arbitrary under category I.

50. The Working Group also considers that, in arresting, detaining and deporting Mr. and Mrs. Kaçmaz and the two minors, the Government of Pakistan has committed serious violations of their right to a fair trial.

51. First, the Government of Pakistan placed the Kaçmaz family in secret detention for 17 days without disclosing their whereabouts to the family's friends and colleagues or acknowledging their detention. In 2010, the Working Group and several special procedure mandate holders completed a joint study on global practices in relation to secret detention in the context of counter-terrorism (A/HRC/13/42). The experts reiterated that international law prohibited secret detention, which violates several human rights norms, including the right to fair trial (see paras. 27 and 282). The experts found that certain practices inherent in secret detention, such as the use of secrecy and insecurity caused by the denial of contact with the outside world, placed detainees in a situation of heightened vulnerability to violations of the right to fair trial, including forced confession of guilt, denial of the presumption of innocence, inability to challenge the lawfulness of detention, denial of access to legal representation, as well as torture and ill-treatment.[8] Moreover, in its resolution 37/3, the Human Rights Council stressed that no one should be held in secret detention and urged States to ensure that all persons held in detention under their authority were provided with access to the courts and to investigate all alleged cases of secret detention, including under the pretext of counter-terrorism.[9]

52. In the present case, the Government of Pakistan placed the Kaçmaz family in a vulnerable situation while they were held incommunicado and in secret detention for 17 days. The use of incommunicado and secret detention deprived the Kaçmaz family of their rights to challenge their detention and to legal assistance during their detention.[10] In doing so, the Government of Pakistan violated articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 (3) (b) of the Covenant. The Government of Pakistan also placed Mr. and Mrs. Kaçmaz and the two minors beyond the protection of the law, in violation of their right to recognition as persons before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.[11]

53. Second, as the Working Group has previously observed,[12] international law regarding extradition provides procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country and in ensuring that their right to a fair trial is protected. Those procedures have not been observed

[8] See also opinions No. 14/2009, para. 21; and No. 5/2001, para. 10 (iii), in which the Working Group found that secret detention was per se a violation of the right to a fair trial under category III.

[9] See A/HRC/37/L.11/Rev.1, paras. 8–9.

[10] See United Nations Basic Principles and Guidelines, principle 9 and guideline 8.

[11] See also opinions No. 47/2017, para. 25; and No. 46/2017, para. 23.

[12] See, e.g., opinions No. 2/2015 and No. 57/2013.

in the present case, and the Working Group considers that the clandestine arrest, detention and deportation of the Kaçmaz family did not meet any minimum international standards of due process.

54. As the Working Group has stated, individuals should not be expelled to another country when there are substantial grounds for believing that their life or freedom would be at risk, or they would be in danger of being subjected to torture or ill-treatment (see A/HRC/4/40, paras. 44–45). In addition, the Working Group considers that the risk of arbitrary detention in the receiving State must also be among the elements taken into consideration before individuals are expelled, particularly in the context of counter-terrorism efforts. To remove a person to a State when there is a genuine risk that the person will be detained without legal basis or denied the right to fair trial is not compatible with the obligation under article 2 of the Covenant to ensure the Covenant rights for all persons within the State's territory and subject to its jurisdiction (ibid., paras. 47–49).

55. Several United Nations bodies have documented widespread violations of human rights in Turkey, particularly since the attempted coup in July 2016. These include extrajudicial killings in the context of counter-terrorism operations, arbitrary detention of people arrested under the state-of-emergency measures, the use of torture and ill-treatment during pretrial detention and mass dismissals of teachers accused of being associated with the Gülen movement.[13]

56. The Government of Pakistan should have taken that information into account in its decision to arrest, detain and deport the Kaçmaz family. Instead, it forcibly deported the family to Turkey, without any apparent regard for the dangers that they might face or having performed any assessment of the charges and evidence against Mr. and Mrs. Kaçmaz. The Working Group considers that this represents a violation of the principle of non-refoulement, which was particularly serious given that the Kaçmaz family held UNHCR asylum seeker certificates requesting their protection from forcible return to a country where they claimed to face threats to their life or freedom, pending a final decision on their refugee status. While Pakistan is not party to the Convention relating to the Status of Refugees, article 33 (1) of which enshrines the principle of non-refoulement, the obligation not to repatriate individuals who have reason to fear persecution is also customary in nature.[14]

57. Moreover, the Government of Pakistan violated its obligation under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it has been a State party since 2010, and article 7 of the Covenant,[15] not to return the Kaçmaz family to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment. In June 2017, the Committee against Torture reminded Pakistan of that obligation and expressed concern about documented reports of coercion, including threats of deportation and police abuse, raids and arbitrary detention, to return refugees to their country of origin when they could be at risk of persecution, torture or ill-treatment (see CAT/C/PAK/CO/1, paras. 34–35). The Government of Pakistan has also violated its obligations under article 13 of the Covenant to ensure that aliens lawfully in its territory are expelled only in pursuance of a decision reached in accordance with law, and to allow them to submit reasons against the expulsion and to have the case reviewed by, and be represented before, a competent authority.

[13] See, e.g., OHCHR, "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East" (March 2018), available at www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf; opinions No. 41/2017, No. 38/2017 and No. 1/2017; communications issued by the Working Group and other special procedure mandates (TUR 12/2017, 11/2017, 9/2017, 8/2017, 7/2017, 6/2017); and CAT/C/TUR/CO/4.

[14] See A/HRC/13/42, para. 43; and UNHCR, "The Principle of Non-Refoulement as a Norm of Customary International Law" (1994), available from http://www.refworld.org/docid/437b6db64.html.

[15] See Human Rights Committee general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 9.

58. Thus, the Working Group considers that the Government of Pakistan is responsible for its own actions in the arrest, detention and deportation of the Kaçmaz family, as well as the subsequent violations of their rights in Turkey (see paras. 68–69 below).

59. In addition, the Working Group wishes to express its grave concern at the treatment of the two minors in the present case. The two minors are not under investigation, yet they were forcibly removed from their home, abducted with their parents, blindfolded and hooded, detained and deported. As a State party to the Convention on the Rights of the Child since 1990, the Government of Pakistan is obliged under article 3 (1) to ensure that the best interests of the child is a primary consideration. The Government of Pakistan has violated its obligations under article 37 of the Convention to ensure that the two minors were not subjected to ill-treatment, that their arrest and detention was not unlawful or arbitrary, that they were treated with humanity and respect for their inherent dignity, and that they had prompt access to legal assistance and the right to challenge the legality of their detention.

60. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Mr. and Mrs. Kaçmaz and the two minors an arbitrary character according to category III.

61. The present case is the fourth case concerning individuals with alleged links to the Gülen movement that has come before the Working Group in the past 12 months.[16] In these cases, the Working Group has found that the detention of the concerned individuals was arbitrary, and it appears that a pattern is emerging whereby those with alleged links to the Gülen movement are being targeted on the discriminatory basis of their political or other opinion. Accordingly, the Working Group finds that the Government of Pakistan has, at the request of the Government of Turkey, detained the Kaçmaz family on the basis of a prohibited ground of discrimination, and that the case falls within category V.

62. The Working Group is concerned at the alleged ill-treatment of the Kaçmaz family during their arrest on 27 September 2017, including the blows that Mr. Kaçmaz allegedly received to his face. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

63. The Working Group also wishes to comment on the arrest of a neighbour of the Kaçmaz family on 27 September 2017. According to the source, the neighbour was arrested and taken away with the Kaçmaz family because he had protested against the force used on Mrs. Kaçmaz. He was later released and taken back to his home. While the Working Group was not asked to consider the neighbour's situation, and the Government of Pakistan was not requested to respond to any allegations in relation to him, the Working Group regards his arrest as a matter of serious concern, which should be investigated by the authorities.

64. In conclusion, the Working Group would welcome the opportunity to conduct its first country visit to Pakistan and to work constructively with the Government of Pakistan to address issues concerning the arbitrary deprivation of liberty, including those identified in the present case. As a current member of the Human Rights Council, it would be timely for the Government of Pakistan to extend an invitation to the Working Group to conduct a visit to Pakistan. The Working Group looks forward to a positive response from the Government of Pakistan to its country visit request made on 30 January 2017.

Allegations against Turkey

65. The Working Group thanks the source and the Government of Turkey for their submissions in relation to the arrest and detention of Mr. and Mrs. Kaçmaz, as well as the information provided on the political and legal context in Turkey.

66. As a preliminary issue, the Working Group wishes to clarify that the procedural rules governing its consideration of communications on alleged cases of arbitrary detention are contained in its methods of work. There is no provision in the methods of work that

[16] See Opinion Nos. 41/2017, 38/2017 and 1/2017.

prevents the Working Group from considering communications due to the lack of exhaustion of domestic remedies in the country concerned. The Working Group has also confirmed in its jurisprudence that there is no requirement for petitioners to exhaust domestic remedies in order for a communication to be considered admissible.[17]

67. As a further preliminary issue, the Working Group wishes to consider the responsibility of the Government of Turkey for actions taken against the Kaçmaz family in Pakistan before and during their deportation to Turkey. In the Working Group's regular communication of 19 January 2018, the alleged incidents in Pakistan and Turkey were conveyed to both Governments. In its response, the Government of Turkey did not comment upon the allegations relating to the arrest, detention and deportation of the Kaçmaz family in Pakistan, and focused solely on their arrest and detention after their arrival in Turkey.

68. The Working Group considers that the arrest, detention and deportation of the Kaçmaz family from Pakistan to Turkey occurred at the request of the Turkish authorities. The source alleges, and the Government of Turkey has not denied, that Turkish agents were on board the flight that removed the Kaçmaz family from Islamabad to Istanbul. Moreover, the Government of Turkey evidently had prior knowledge of the arrest, detention and deportation of the Kaçmaz family from Pakistan, given that the Turkish authorities were present at the airport in Istanbul on 14 October 2017 to arrest Mr. and Mrs. Kaçmaz on suspicion of "being a member of an armed terrorist organization". Furthermore, the Working Group and other special procedure mandate holders have recently sent communications to several Governments in relation to the deportation of Turkish citizens at the request of the Government of Turkey.[18] The Working Group believes that there are strong grounds to conclude that the Government of Turkey is collaborating with other States, in some cases outside the protection of the law, to forcibly return Turkish citizens in connection with terrorism charges.

69. Accordingly, the Working Group finds that the Government of Turkey is jointly responsible with the Government of Pakistan for the arrest, detention and deportation of the Kaçmaz family to Turkey without any legal basis. As the Working Group and other experts stated in paragraph 36 of the joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42):

> Secret detention, involving the denial or concealment of a person's detention, whereabouts or fate has the inherent consequence of placing the person outside the protection of the law. The practice of "proxy detention", where persons are transferred from one State to another outside the realm of any international or national legal procedure … for the specific purpose of secretly detaining them, or to exclude the possibility of review by the domestic courts of the State having custody of the detainee, or otherwise in violation of the well-entrenched principle of non-refoulement, entails exactly the same consequence. The practice of "proxy detention" involves the responsibility of both the State that is detaining the victim and the State on whose behalf or at whose behest the detention takes place.

70. Turning to the allegations against Turkey, the Working Group notes that Mr. and Mrs. Kaçmaz have been in pretrial detention in Turkey for over six months since their arrest by the Turkish authorities on 14 October 2017. The Government of Turkey argues that their situation falls within the scope of the derogations that it has made under the Covenant. On 21 July 2016, the Government of Turkey informed the Secretary-General that it had declared a state of emergency for three months, in response to the severe dangers to

[17] See, e.g., opinions No. 19/2013 and No. 11/2000. See also opinions No. 41/2017, para. 73; and No. 38/2017, para. 67, in which the Working Group clarified that it did not require the exhaustion of domestic remedies.

[18] See, e.g., UA KSV 1/2017, available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23435. There have been several communications to other Governments in relation to the deportation of Turkish citizens to Turkey, but they have not yet been published in the special procedures communications report and remain confidential at the time of the adoption of the present opinion.

public security and order, amounting to a threat to the life of the nation within the meaning of article 4 of the Covenant. The Government of Turkey stated that the measures taken might involve derogation from its obligations under articles 2 (3), 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27 of the Covenant.[19]

71. While acknowledging the notification of those derogations, the Working Group emphasizes that, in the discharge of its mandate, it is also empowered under paragraph 7 of its methods of work to refer to the relevant international standards set forth in the Universal Declaration of Human Rights, and to customary international law. Moreover, in the present case, articles 9 and 14 of the Covenant are most relevant to the alleged detention of Mr. and Mrs. Kaçmaz. As the Human Rights Committee has stated in its general comments No. 35 (2014) on liberty and security of person and No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, States parties derogating from articles 9 and 14 must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation.

72. The Government of Turkey states that Mr. Kaçmaz has been indicted on the basis of his statement that he used the encrypted communication programme downloaded by the Fetullahist Terrorist Organization/Parallel State Structure, that information about the organization was shared through that programme, and that orders were given to members through the programme. The Working Group does not assess the sufficiency of evidence before domestic tribunals. However, it considers that the Government of Turkey has not given a satisfactory explanation of how these admissions, if they were made of Mr. Kaçmaz's free will, demonstrate his membership of an armed terrorist organization or that he has committed any criminal activity, nor how criminal accusations involving use of an encrypted communication programme are compatible with the rights to freedom of expression and association. Moreover, the provisions under which Mr. and Mrs. Kaçmaz have been charged appear to be very broad and lacking in specificity.[20] The Government of Turkey has not demonstrated that it was necessary and proportional for the authorities to arrest and prosecute Mr. and Mrs. Kaçmaz under these broad provisions, or that the measures taken against them were strictly required by the exigencies of the situation.

73. As the Council of Europe Commissioner for Human Rights has noted:

> Despite deep suspicions about its motivations and modus operandi from various segments of the Turkish society, the Fethullah Gülen movement appears to have developed over decades and enjoyed, until fairly recently, considerable freedom to establish a pervasive and respectable presence in all sectors of Turkish society, including religious institutions, education, civil society and trade unions, media, finance and business. It is also beyond doubt that many organizations affiliated to this movement, which were closed after 15 July, were open and legally operating until that date. There seems to be general agreement that it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another.[21]

74. In the light of the above, the Commissioner pointed out that there was a need "when criminalizing membership and support of this organization, to distinguish between persons who engaged in illegal activities and those who were sympathizers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence".[22]

[19] See depositary notification C.N.580.2016.TREATIES-IV.4 of 11 August 2016 (notification under article 4 (3): Turkey), available at https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf.

[20] See A/HRC/10/21, paras. 50–55, in which the Working Group set out principles applicable to the detention of persons accused of acts of terrorism, including that the detention be accompanied by concrete charges.

[21] See memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, CommDH (2016) 35, 7 October 2016, p. 4. Available at https://rm.coe.int/16806db6f1.

[22] Ibid.

75. In addition, the Government of Turkey asserts that Mr. and Mrs. Kaçmaz were afforded their rights, including to be notified of the charges against them, to have their detention reviewed by a judicial authority, and to have the assistance of legal counsel. The Government of Turkey asserts that Mr. Kaçmaz confessed that he was a member of the Fetullahist Terrorist Organization/Parallel State Structure and provided information on its structure and functioning, and that both Mr. and Mrs. Kaçmaz gave their statements in the presence of lawyers and before the judge. As noted earlier, the burden of proof is on the Government to provide evidence, and mere assertions that lawful procedures have been followed are not sufficient. As the Human Rights Committee has stated in paragraph 41 of its general comment No. 32, any statement that is not given through the free will of a defendant is not admissible in criminal proceedings, in accordance with articles 7 (which is non-derogable, according to article 4 (2) of the Covenant) and 14 (3) (g) of the Covenant.

76. Accordingly, the Working Group finds that the Government of Turkey has established neither that there was a legal basis for the arrest and detention of Mr. and Mrs. Kaçmaz, nor that they were afforded their rights under articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. The Working Group concludes that their detention was arbitrary under categories I and III. The Working Group calls on the Government of Turkey to release Mr. and Mrs. Kaçmaz immediately and unconditionally, and to ensure that the right of the Kaçmaz family under article 12 (2) of the Covenant to leave Turkey is respected. Given its concerns regarding the lack of a legal basis for terrorism charges in this case, the Working Group refers this case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for further consideration.

77. For similar reasons outlined above in relation to the Government of Pakistan, the Working Group considers that the Government of Turkey has deprived Mr. and Mrs. Kaçmaz of their liberty on the basis of their political or other opinion, in violation of category V.

78. The Working Group welcomes the release of the two minors into the custody of a relative following their arrival in Istanbul on 14 October 2017. According to paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion on a case-by-case basis on whether a deprivation of liberty was arbitrary, notwithstanding the release of the person(s) concerned. The Working Group considers that it is important to consider the situation of the two minors after they arrived in Turkey and were held at a police bureau at the terminal for several hours, as it raises issues relating to the treatment of minors under the Convention on the Rights of the Child, to which Turkey has been a State party since 1995.

79. The source alleges, and the Government of Turkey has not denied, that the two minors spent several hours at the police bureau at the terminal. The two minors were clearly detained and not free to leave during that period, as they were blindfolded and not permitted to speak. As the Working Group has stated in its Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, any confinement or retention of an individual accompanied by restriction on his or her freedom of movement, even if of relatively short duration, may amount to de facto deprivation of liberty (see A/HRC/22/44, para. 55).[23] Given that the two minors are not under investigation in relation to any criminal matter in Turkey, the Working Group finds that their brief detention had no legal basis, and that they were not afforded any basic aspects of due process. As a State party to the Convention on the Rights of the Child since 1995, the Government of Turkey is obliged under article 3 (1) to ensure that the best interests of the child is a primary consideration. The Government of Turkey has violated its obligations under article 37 of the Convention to ensure that the detention of the two minors was not unlawful or arbitrary, and was a measure of last resort. Accordingly, their detention falls within categories I and III.

[23] See also European Court of Human Rights, *Belchev v. Bulgaria* (application No. 39270/98), judgment of 8 April 2004, para. 82, in which the Court stated that "justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities".

80. Furthermore, the Working Group is concerned at the alleged ill-treatment of the Kaçmaz family, particularly Mr. Kaçmaz, during their flight from Islamabad to Istanbul on 14 October 2017 and upon their arrival at the police bureau at the terminal, where the family members were blindfolded and not permitted to speak. The Government of Turkey states that there was no finding of ill-treatment in the forensic reports, and no allegation of ill-treatment in the statements given by Mr. and Mrs. Kaçmaz during the investigation and before the judge. The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

81. In the last two years, the Working Group has noted a significant increase in the number of cases brought to it concerning arbitrary detention in Turkey. The Working Group is aware that a large number of individuals were arrested following the attempted coup of 15 July 2016. With reference to the joint urgent appeal of 19 August 2016 issued by the Working Group and other special procedure mandate holders, as well as the press release issued on that date,[24] the Working Group urges the Government of Turkey to adhere to its human rights obligations and to end the state of emergency as soon as possible.

82. The Working Group would welcome the opportunity to conduct a country visit to Turkey. Given that a significant period of time has passed since its last visit to Turkey, in October 2006, the Working Group considers that it is an appropriate time to conduct another visit. The Working Group recalls that the Government of Turkey issued a standing invitation to all thematic special procedure mandate holders in March 2001, and looks forward to a positive response to its country visit requests of 15 November 2016 and 8 November 2017.

Disposition

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

> With regard to Pakistan, the deprivation of liberty of Mesut Kaçmaz, Meral Kaçmaz and the two minors from 27 September to 14 October 2017, being in contravention of articles 5, 6, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2, 2 (3), 7, 9, 13, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V;
>
> With regard to Turkey, the arrest, detention and deportation of the Kaçmaz from Pakistan to Turkey, as well as the deprivation of liberty of Mesut Kaçmaz and Meral Kaçmaz from 14 October 2017 to the present, and the deprivation of liberty of the two minors upon their arrival in Turkey on 14 October 2017, being in contravention of articles 5, 6, 8, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 2, 2 (3), 7, 9, 13, 14 and 16 of the International Covenant on Civil and Political Rights, are all arbitrary and fall within categories I, III and V.

84. The Working Group requests the Government of Pakistan and the Government of Turkey to take the steps necessary to remedy the situations of Mesut Kaçmaz, Meral Kaçmaz and the two minors without delay and bring them into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

85. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be: (a) for the Government of Turkey to release Mr. and Mrs. Kaçmaz immediately; and (b) for the Government of Pakistan and the Government of Turkey to accord Mr. and Mrs. Kaçmaz and the two minors an enforceable right to compensation and other reparations, including for the impact on their psychological integrity from having been arrested, secretly detained and deported.

[24] See TUR 7/2016, available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3314. See also OHCHR news releases of 19 August 2016, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394&LangID=E, and of 17 January 2018, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22592&LangID=E.

86. The Working Group urges the Government of Pakistan and the Government of Turkey to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. and Mrs. Kaçmaz and the two minors, and to take appropriate measures against those responsible for the violation of their rights.

87. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

Follow-up procedure

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

(a) Whether Mr. and Mrs. Kaçmaz have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. and Mrs. Kaçmaz and the two minors;

(c) Whether an investigation has been conducted into the violation of the rights of Mr. and Mrs. Kaçmaz and the two minors, 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 and of Turkey with their international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

89. The Governments are invited to inform the Working Group of any difficulties they 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.

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

91. The Governments should disseminate through all available means the present opinion among all stakeholders.

92. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.[25]

[*Adopted on 19 April 2018*]

[25] See Human Rights Council resolution 33/30, paras. 3 and 7.