

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL PAK 13/2020

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Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 45/3, 43/4, 43/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged enforced disappearance of the journalist and human rights defender, Mudassar Mahmood, alias Naaru, and threats and acts of intimidation against persons associated with him, as well as the alleged short term enforced disappearance of the journalist Matiullah Jan and ongoing acts of intimidation against him.**

These concerns follow a series of communications on alleged enforced disappearances of journalists, human rights defenders and activists in Pakistan who have reportedly been targeted for their activities related to human rights advocacy and journalism (UA PAK 6/2020, UA PAK 8/2020 and AL PAK 11/2020). Whilst we appreciate the replies by your Excellency's Government to these communications, we would like to take this opportunity to stress the importance and legitimacy of protecting the work of journalists against any acts of intimidation and retaliation.

Mr. Mudassar Mahmood, alias Naaru, is a well-known writer, poet, journalist and human rights defender. He is also a member of EMPRA (Electronic Media Producers association), who is known for denouncing the pattern of enforced disappearances and related lack of prompt and thorough investigations in Pakistan. Mr. Mahmood has been vocal on social media about his dissenting views in the light of the Pakistani elections in 2018, two months before his alleged disappearance. After his alleged disappearance, three literary associations adopted resolutions on his case calling on the State to take immediate action to search and locate him.

Mr. Matiullah Jan is a well-known Pakistani journalist who works for several major media organisations in Pakistan. Mr. Jan has reportedly criticised the Pakistani government, the security establishment and the judiciary in his publications, often expressing his critical views concerning these institutions. In 2018, Mr. Jan was among the journalists accused by the Pakistani army of spreading anti-state views through social media.

According to the information received,

Concerning the Case of Mr. Mudassar Mahmood

The journalist and human rights defender, Mr. Mudassar Mahmood, alias Naaru, worked as a content producer for many television stations, including Geo and Express News and as a producer of a television programme until his dismissal from Dunya TV in May 2018. He was also very active in Urdu literary circles and was elected twice office bearer at the Halqa Arbab-e-Zauq, in addition to volunteering for the Anjuman Taraqqi Pasand Musanaffeen. Mr. Mahmood was vocal about his anti-establishment views, support of minority groups and demands of accountability from leading Pakistani authorities, including army generals, particularly prior to the 2018 elections in Pakistan.

On 20 August 2018, Mr. Mahmood residing in Ghulam Muhammadabad, Pakistan, was allegedly abducted near Kamal Bun, Khyber Pakhtunkhwa, about 4 km ahead of Mahandri and 10 km before Kaghan by persons suspected to be state agents.

Mr. Mahmood and a person associated with him arrived in Mahandari on the morning of 19 August 2018, where they had reserved a small guest house for their stay. On 20 August 2018 at 1:20 p.m., they went to the riverbank area called Kamal Bun. Mr. Mahmood left the person accompanying him at around 2 p.m. indicating that he will be going for a walk along the river and that he will return shortly. However, he did not come back.

After an hour, a search for Mr. Mahmood commenced with local residents. One of the residents reported that he saw Mr. Mahmood at 2 p.m. at the place where a smaller path led back to the road and ended near a cemetery next to the road. A team of police officers allegedly ordered this resident to leave his house at midnight on the second day of the police investigation and verbally threatened him, whereupon he changed his statement and the related time frame of the incident. There were no other witnesses to the incident and no further information was reported in relation to the day of the incident. At 8 p.m. on the same day, Mr. Mahmood was reported missing. However, the police initially refused to register a First Information Report (F.I.R.) in connection with the abduction of Mr. Mahmood. The police also reportedly refused to search for Mr. Mahmood anywhere else than in the river or the jungle near the scene of the incident. After three days, the investigation into his whereabouts was closed without further action.

On 22 November 2018, a petition was filed at the Commission of Inquiry on Enforced Disappearances (COIED), which instructed the police to file an F.I.R. for abduction.

The murder investigation against persons associated with Mr. Mahmood who denounced Mr. Mahmood's disappearance was reportedly initiated and continued for six months until they were declared innocent. Later, the Military Intelligence visited the home of the parents-in-law of a person associated with Mr. Mahmood in Faisalabad. They indicated that their purpose of visit was to verify the address. No further information relating to Mr. Mahmood's case was provided on that occasion. When persons associated with Mr. Mahmood

launched a campaign to put pressure on the authorities to reveal his whereabouts, the internet device of these persons was found to be disconnected from their names, which did not allow to access them, and they had to buy new devices. Nine months after Mr. Mahmood's abduction, persons associated with Mr. Mahmood received unconfirmed reports that he was allegedly being held in a military prison in Abbottabad. As a result, they sent a letter to the COIED to verify this information but were denied any response.

Two weeks prior to Mr. Mahmood's disappearance, he reportedly received a call from an unknown number threatening him to suspend his activities or face severe consequences. Subsequently, Mr. Mahmood informed persons associated with him about the steps to be taken in case of his arrest. Five or six years before this incident, agents of the security services dressed in plainclothes met Mr. Mahmood in his flat several times. They often offered him gifts and opportunities to work for them, but he refused. Persons associated with Mr. Mahmood suspected that his name as a journalist who was vocal about his anti-establishment position had become known to the public during his employment with Dunya TV and that he had been disappeared because he did not want to tune down his dissenting views.

Since the date of Mr. Mahmood's abduction, persons associated with him received no further information from intelligence services about his fate and whereabouts, and were denied access to relevant documents or related information about his case, such as information relating to the COIED proceedings of the last two years or responses from state officials to the allegations of abduction. They were frequently harassed on their social media site #findnaarualive and targeted by attempts to hack their facebook accounts. In addition, another person associated with Mr. Mahmood was threatened by an unknown person, suggesting that further efforts to raise public awareness of the case would compromise the safety of this person and the security of Mr. Mahmood who may be held in custody.

Despite the submission of a petition to the COIED in November 2018, the matter is reportedly still under investigation without any tangible result having been documented while there exists strong pressure from the police to close the case.

At the time of the present communication, the fate and whereabouts of Mr. Mudassar Mahmood, alias Naaru, remain unknown.

Concerning the Case of Mr. Matiullah Jan

On 21 July 2020, Mr. Matiullah Jan was reportedly abducted in sector G-6 in Islamabad, Pakistan, by a group of unknown individuals dressed in plainclothes in a white car with police lights and taken to an unknown location identified as the site of an official police prison.

Mr. Jan accompanied a person associated with him to that person's place of work at a school near the Lal mosque in sector G-6 of Islamabad when he was pulled from his car by the above-mentioned individuals. Immediately after this incident, a dozen police officers in uniform bearing the words "anti-terrorist

squad" on their clothing arrived at the scene with two other vehicles. Mr. Jan was locked into one of their vehicles. He was handcuffed, blindfolded and hooded while being beaten by the individuals in the vehicle. While Mr. Jan faced difficulty breathing, the individuals reportedly shouted at him: "Keep quiet, why do you do all this? Now we will teach you a lesson."

The footage from a CCTV surveillance camera, which filmed the scene at the entrance to the senior school, indicated that there was a seemingly coordinated action between the individuals involved in Mr. Jan's alleged abduction. The footage also suggested that a school guard witnessed the incident.

After a 30-minute drive, Mr. Jan assumed that he arrived at a prison due to sounds of iron gates opening and closing, which he heard blindfolded. A few hours later, when the blindfold slipped on his forehead by accident, he recognised the facilities as belonging to an official police prison. In prison, while still being held blindfolded and hooded, he was allegedly beaten with a wooden stick on his back, legs and on the head. The incident took place the day before Mr. Jan was due to appear for a hearing before the Supreme Court of Pakistan, in response to a summons which he had received for allegedly "using derogatory/contemptuous language and maligning the institution of judiciary" in his tweets criticizing the Supreme Court. Mr. Jan repeatedly tried to draw the attention of those who beat him to the fact that he had been summoned to appear before the Supreme Court for a judicial hearing. However, the individuals refused to disclose to Mr. Jan any information concerning the reasons for his abduction. Instead, they asked about the whereabouts of his children. When Mr. Jan asked them to inform persons associated with him of his arrest, he was ignored and threatened with severe bodily harm.

After several hours Mr. Jan was blindfolded and handcuffed again, and his mouth was taped. He was carried out of the prison and put in a vehicle. After an hour's drive, the vehicle stopped in a quiet side street where Mr. Jan was dropped off, his handcuffs were taken off and he heard persons who accompanied him in the car moving away quickly from the scene. By the alleged statement of one of his companions "This guy is not Zarak Khan", Mr Jan concluded that probably a mistake had led to his abduction.

At the hearing before the Supreme Court on 22 July 2020, the judge reportedly refused to acknowledge the fact that Mr. Jan had been abducted. The trial against Mr. Jan is believed to be an act of retaliation against his critical views of the Pakistani military and judiciary. The most recent police report No 48/2020 of 24 October 2020, submitted to the Supreme Court, reportedly failed to examine the CCTV video footage. Other failures in the investigative proceedings included insufficient analysis of evidence, the active removal of evidence from the abduction site and the failure to hear eyewitnesses to the incident, such as the junior school security guard, whose telephone records had not been documented. Although an F.I.R. was registered, any further investigation has been closed.

This incident is reported to be one of a series of abductions, forced censorship and restrictions on the freedom of expression and opinion of activists and

journalists by Pakistani security authorities. The Pakistani police failed to investigate the decade-long threats and repeated arrests of Mr. Jan. Before the 2018 elections, Mr. Jan was warned of possible terrorist attacks that could be directed against him and other journalists. Accused of belonging to an anti-state network, Mr. Jan and his family were regularly monitored and harassed. As a result of these incidents, Mr. Jan was subjected to a governmental investigation for having published the image of the murdered Saudi journalist Jamal Khashoggi as his profile picture in his social media account during a visit by the Saudi Crown Prince to Islamabad. Shortly after his investigative talk show was discontinued on the local television channel Waqt Television, Mr. Jan was charged with contempt of court following a tweet criticising the Supreme Court of Pakistan.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the alleged enforced disappearance of Mr. Mudassar Mahmood and Mr. Matiullah Jan and the reported lack of progress in the search and investigations into these disappearances. We reiterate that enforced disappearance is a serious violation of human rights which may amount to torture or other cruel, inhuman or degrading treatment or punishment and unequivocally prohibited under international law. We are further alarmed by allegations of the subsequent intensification of harassment, interference with social media accounts and acts of verbal and physical intimidation of persons associated with Mr. Mudassar Mahmood which appear to be carried out in retaliation to their demands for justice and accountability in relation to Mr. Mahmood's alleged disappearance. Similarly, we express grave concern about the threats and acts of intimidation and bodily and psychological injury suffered by Mr. Matiullah Jan. We fear that these allegations, which seem directly related to the exercise of Mr. Mahmood's and Mr. Jan's right to freedom of expression and defense of human rights, constitute emblematic cases demonstrating the undermining of the work of journalists and human rights defenders in Pakistan more broadly. We express concern that, if confirmed, these cases evidence a hostile environment for the exercise of fundamental freedoms in Pakistan and reveal serious obstacles to the functioning of an institutional framework and society based on the rule of law and human rights.

If confirmed, the allegations would be contrary to the obligations of Pakistan under the International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified on 23 June 2010, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Pakistan on 23 June 2010 and the Declaration on the Protection of all Persons from Enforced Disappearance adopted by the General Assembly Resolution 47/133 of 18 December 1992.

We express grave alarm at the alleged enforced disappearance of Mr. Mudassar Mahmood, alias Naaru, which exposes both Mr. Mahmood and his family to anxiety and stress amounting to cruel, inhuman or degrading treatment, or even torture and significantly jeopardizes Mr. Mahmood's health, well-being and due process rights. With regards to the alleged short-term disappearance of Mr. Matiullah Jan, we reiterate that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.

We are further concerned that there has been no adequate investigation into the institutional and criminal responsibilities for Mr. Mahmood and Mr. Matiullah Jan's abduction and alleged disappearance, denying any form of redress, rehabilitation and compensation for them and their families. We remain particularly concerned at the alleged lack of cooperation of the Military Intelligence and unwillingness of the State authorities to file a F.I.R. to initiate a prompt and effective investigation into the fate and whereabouts of Mr. Mahmood. We note that relatives of Mr. Mahmood have reportedly been denied access to information relating to the case. We are also seriously concerned at the alleged failure to gather relevant evidence in the course of the investigative procedures in the case of Mr. Jan and the subsequent closure of these investigations despite the submission of an F.I.R.

We further express our grave concern at allegations of threats and acts of intimidation directed against Mr. Mahmood's family members and associates. Reiterating paragraphs 3 and 5 of article 13 of the Declaration, we highlight that your Excellency's Government holds the duty to ensure that all persons involved in the investigation of cases of enforced disappearance remain protected against ill-treatment, intimidation or retaliation and that any of such acts or forms of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished. If confirmed, the reported interference and seizure of media accounts of persons associated with Mr. Mahmood, could adversely affect and compromise their search and efforts to seek accountability for his alleged enforced disappearance.

We are further alarmed that the alleged acts of intimidation and threats may be aimed at discrediting the journalistic activities of Mr. Mahmood and Mr. Jan in an effort to stop their reporting on regional and national political and human rights affairs in Pakistan. Should it be confirmed that the alleged acts are carried out in retaliation to Mr. Mahmood's and Mr. Jan's critical views, they would constitute acts of intimidation and retaliation initiated against the legitimate activities related to human rights advocacy, journalism and freedom of expression. This would constitute a blatant violation of the right to freedom of expression. We further remind that repressing journalism not only affects the immediate victim, but it has serious chilling effects on the exercise of journalism more generally. This, in turn, has serious consequences for the public's right to receive information.

Finally, we remain concerned at the broader failure of the Government of Pakistan to take decisive and effective action with a view to terminate the reported pattern of enforced disappearances of journalists engaged in human rights advocacy which, to this day, continues with impunity. Therefore, as already communicated to your Excellency's Government in the light of the Working Group on Enforced or Involuntary Disappearance's follow-up report to the Mission to Pakistan (A/HRC/33/51/Add.7 paragraph 26), we reiterate the obligation to adequately address all cases of harassment and reprisals by the relevant authorities and to take proactive measures to guarantee the safety of the family members of the disappeared, of journalists and activists engaged in human rights advocacy.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please urgently provide information on the fate and whereabouts Mr. Mudassar Mahmood.
3. Please provide information on the factual and legal grounds for the alleged abduction and subsequent enforced disappearance of Mr. Matiullah Jan and Mr. Mudassar Mahmood and explain how these measures were compatible with the international human rights obligations of Pakistan.
4. Please provide the details and, where available, the results of any investigation and judicial or other inquiries which may have been carried out, or which are foreseen to clarify the circumstances of the alleged enforced disappearances of Mr. Matiullah Jan and Mr. Mudassar Mahmood, to bring the perpetrators to justice and to provide prompt and adequate remedies. If no such enquiries have been conducted, please explain why, and how this is compatible with the international human rights obligations of Pakistan.
5. Please provide detailed information on the measures taken by relevant authorities to grant the family members and associates of Mr. Matiullah Jan and Mr. Mudassar Mahmood all necessary access to information in relation to the investigative steps being taken, the progress and results of this investigation and to protect them from further acts of intimidation, threats and retaliation.
6. Please also indicate what measures have been taken to ensure that journalists, activists, human rights defenders, and other civil society actors are able to carry out their legitimate work in a safe and enabling environment in Pakistan, without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to bring to the attention of your Excellency's Government that should the sources submit the allegations concerning Mr. Mudassar Mahmood for the consideration of the Working Group on Enforced or Involuntary Disappearances under its humanitarian procedure, the case will be considered by the Working Group

according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

While awaiting for a reply, we urge your Excellency's Government to take all necessary measures to locate and protect Mr. Mudassar Mahmood including through a comprehensive strategy to search for him, investigate the alleged enforced disappearance of Mr. Mahmood and Mr. Jan, and ensure prompt and adequate access of their relatives and associates to information in relation to any investigative steps taken and their results. In view of the urgency of the matter, we would also appreciate a response on the initial steps taken by your Excellency's Government in this regard.

Please accept, Excellency, the assurances of our highest consideration.

Tae-Ung Baik

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor

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Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 2, 7, 9, 10, 14, 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified on 23 June 2010; articles 2 and 12 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ratified on 23 June 2010 and articles 2, 3, 4, 7, 9, 10, 13, 14, and 19 of the Declaration on the Protection of all Persons from Enforced Disappearance adopted by the General Assembly Resolution 47/133 of 18 December 1992.

Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Pakistan on 23 June 2010, provides that "every human being has the inherent right to life [which] shall be protected by law. No one shall be arbitrarily deprived of his life." This right is similarly guaranteed by article 3 of the Universal Declaration on Human Rights (UDHR). Article 9 of the Constitution of Pakistan reflects the language of article 6(1) ICCPR and provides that "No person shall be deprived of life or liberty, save in accordance with law."

We would further like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which establishes the prohibition to practice, permit or tolerate enforced disappearances (Article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (Article 3); the obligation to criminalize enforced disappearances as autonomous offense in domestic legislation (Article 4) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (Article 7). In addition, the Declaration stipulates the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention (Article 10). In particular, in its paragraphs 3 and 5 of article 13, the Declaration provides that States shall ensure that all persons involved in the investigation of cases of enforced disappearance, including the complainant, counsel and witnesses, are protected against ill-treatment, intimidation or reprisal; and that steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished. Ultimately, the Declaration establishes the obligation to bring perpetrators of enforced disappearances before competent civil authorities for the purpose of prosecution and trial (Article 14) and that victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible (Article 19).

We further refer to the General Comment No. 31 in which the Committee has observed that there is a positive obligation on States Parties to ensure protection of

Covenant rights of individuals against violations by its own security forces. We further highlight that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life and that States are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate these cases thoroughly, by independent and impartial bodies leading to the identification of potential perpetrators (Human Rights Committee, General Comment 36).¹ We also highlight that a failure to investigate or to provide prompt and adequate reparation for any harm suffered may in itself constitute a violation of the right to an effective remedy as enshrined in article 2(3) of the ICCPR (A/HRC/22/45, para. 48; HRC, General Comment No. 31 (2004), para. 18). The obligation to carry out prompt, thorough and impartial investigations shall be conducted *ex officio* if required.² To this purpose, adequate complaint mechanisms should be made available, which should be independent and committed to carrying out impartial and prompt investigations into all allegations of enforced disappearances (A/HRC/45/13/Add.3 paragraph 11). We reiterate that delays in the investigative process impact on the right to access to justice, could put witnesses at risk and foster re-victimization (A/HRC/45/13/Add.3 paras. 16 and 17).³

We would also like to appeal to your Excellency's Government to take all necessary steps to respect and ensure the right to freedom of opinion and expression in accordance with article 19 of the ICCPR. The Human Rights Committee has affirmed that "States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression". (General Comment 34 para. 23) Attacks on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. (*id.*) Journalists and those who publish human rights-related reports are frequently subjected to threats, intimidation and attacks because of their activities. "All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress." (*id.*)

The Working Group also reiterated in its most recent thematic report on standards and public policies for an effective investigation of enforced disappearances that authorities in charge of the investigation must have access to all relevant information, including military, police and intelligence information (A/HRC/45/13/Add.3, para. 24). Furthermore, the Working Group observed that having access to information during and at all stages of the investigation and the active participation of victims and their families in the investigation is a crucial means to guarantee transparency and accountability of the investigative process (A/HRC/45/13/Add.3, para. 60).

In its country visit report to Pakistan (A/HRC/22/45/Add.2), the Working Group on Enforced or Involuntary Disappearances recommended the establishment of a

¹ *Kimouche v. Algeria* HRC (2007), para. 9.

² Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, Case No. 7920, Judgment, 29 July 1988, para. 177.

³ Inter-American Court of Human Rights, *Terrones Silva et al. v. Perú*, Case 11.053, Judgment, 26 September 2018, para. 196; A/HRC/10/9/Add.1, para. 76.

constitutional, legal and regulatory framework, in particular in relation to the issue of the deprivation of liberty, be in full conformity with international standards in order to ensure that it does not give license to secretly detain or disappear anyone, or that it does not lead in practice to circumstances where enforced disappearances could be perpetrated (paragraph 91). Moreover, in light of the documented pattern of denials by state authorities to file First Information Reports (F.I.R.) in relation to alleged enforced disappearances, the Working Group reiterated that there should be effective complaint mechanisms and that a program of integral reparation should be set up for all victims of enforced disappearances (paras. 43 and 99). In its follow-up report to the Mission to Pakistan (A/HRC/33/51/Add.7), the Working Group stressed that all cases of harassment and reprisals should be adequately addressed by the relevant authorities and that proactive measures should be taken to guarantee the safety of the family members of the disappeared and of human rights defenders (paragraph 26).

We underline that an enforced disappearance continues until the fate and whereabouts of the individual concerned are established irrespective of the time passed, and that the family members have a right to truth which means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s) (A/HRC/16/48). We further recall that all victims of enforced disappearances, including relatives of those disappeared whose suffering is rooted in the primary violation against the disappeared person, and anyone who has suffered harm as a direct result of an enforced disappearance, have the right to know the truth and to reparation, including compensation (A/HRC/16/48, para. 39).⁴ We highlight that the anguish and sorrow of relatives of disappeared persons may reach the threshold of torture. The right to truth is therefore an absolute right which cannot be restricted and there is an absolute obligation to take all the necessary steps to find the disappeared person (A/HRC/16/48, General Comment, para 4).

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and

⁴ *María del Carmen Almeida de Quinteros et al. v. Uruguay* HRC (1983), para. 14.

fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Moreover, we would like to draw your Government attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which “reminds States of their obligation to respect and fully protect the [right] of all individuals to... associate freely, online as well as offline... including human rights defenders... seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the [right] to freedom of... association are in accordance with their obligations under international human rights law”.

Finally, we would also like to remind your Excellency’s Government that while enforced disappearance is a crime in itself, it may also amount to torture or other cruel, inhuman or degrading treatment or punishment, and is a serious violation of international law. The Committee against Torture⁵ and the Human Rights Committee⁶ have concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of the disappeared. The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is an international norm of *jus cogens*, reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

⁵ See, for example, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

⁶ CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.