

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE:
AL PAK 3/2021

1 March 2021

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 45/3, 44/5, 43/4, 43/16, 44/8, 43/8, 40/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning what appears to be **a pattern of steady increase in the number of enforced disappearances of persons belonging to minorities, especially Sindhi minorities, of political activists, journalists and human rights defenders, in the province of Sindh, Pakistan.** In relation with these practices, there appears to be an apparent pattern of impunity, resulting from the persistent lack of effective and prompt investigations and the failure to bring perpetrators to justice. The persistence and widespread character of these practices raises the concern that they may reflect a policy, or at least a tolerance on the part of the authorities, that may amount to a policy, deliberate or by omission.

These concerns follow a series of communications on alleged enforced disappearances and other human rights violations of members of minorities in Pakistan (AL PAK 11/2020, UA PAK 8/2020 and AL PAK 6/2020). They also arise against a pattern of numerous allegations over the years, brought to the attention of the Government. Whilst we appreciate the replies by your Excellency's Government to the communications cited above, we reiterate the universally recognized right of every human being to be protected from enforced disappearance and the related obligation of the State, under international law, to protect the human rights of, inter alia, persons belonging to minorities.

According to the information received,

There is an ongoing and growing practice of enforced disappearances in Pakistan. Recently there has been a steady increase in the number of related cases, particularly in the province of Sindh in Southeastern Pakistan. This practice is widespread and, over several decades, has targeted a high number

of individuals belonging to Sindhi, Baloch, Pashtun and Shia minorities, as well as political activists, human rights defenders, and individuals considered to be sympathetic to religious and nationalist groups. Military Intelligence (MI), Inter-services Intelligence (ISI), Sindh Rangers, Sindh Police, and the Intelligence Bureau (IB), are allegedly carrying out enforced disappearances, apparently with the aim of instilling fear and silencing persons belonging to minorities in Pakistan. The perpetrators of these human rights violations seem to operate independently from the central government, which, together with the judiciary, appears to remain unable or unwilling to halt these human rights violations and bring the perpetrators to justice.

Practice of Enforced Disappearances and Lack of Investigations

In many cases, victims of these disappearances are abducted in broad daylight by uniformed security personnel or by men arriving in police vehicles, while their family members are not informed, they are denied access to information about the place of detention and the physical and mental health of their relatives. Many released persons show traces of torture or other ill-treatment while being denied any explanation of the reasons for their arrest and detention or the charges brought against them during their detention. During their secret detention, they are refused access to legal counsel. In many cases their families are not informed, and are denied access to them. No effective safeguard protect them against their illegal arrest and incommunicado detention, or enable them to contest them. Timely investigations are rarely launched once their disappearance is brought to the attention of the authorities. In this regard, it is estimated that the current number of disappeared persons amounts to 3800 cases in Sindh counted over the last five years, while no individual perpetrator has been identified and brought to justice to date. Media outlets are reluctant to effectively report or investigate disappearances due to fear of retaliation. Similarly, when victims are released, after often months of incommunicado detention, they refrain from denouncing their enforced disappearance due to fear of reprisals, including recurrence of disappearance, which forecloses effective avenues for seeking justice. In addition, the fear of becoming a victim of enforced disappearance once again leads to the suspension or outright cessation of political and cultural activities deemed by the authorities illegitimate and that were previously undertaken. In some cases, the remains of forcibly disappeared persons are later found. However, individual perpetrators are not identified during investigations into these deaths.

Lack of Adequate Codification of Enforced Disappearance

While the domestic legal system enshrines safeguards against the practice of enforced disappearance, it is not criminalized as an autonomous offense. Only a few elements of what constitutes an enforced disappearance are legally prohibited by existing provisions in offences such as abduction, kidnapping and unlawful detention. Yet, these norms remain inadequate to reflect the gravity and complexity of the crime of enforced disappearance. While the judiciary condemned the practice of enforced disappearances,¹ it has seemingly failed to end impunity of such crimes, and to bring perpetrators to

¹ See, Supreme Court of Pakistan, Human Rights Case No. 29388-K-2013, 10 December 2013.

account, invoking the lack of their adequate legal codification.

In 2019, the Islamabad High Court (IHC) issued a verdict identifying the ISI, military intelligence and the Intelligence Bureau as responsible for a case of enforced disappearance.² In other instances, however, human rights defenders were often labelled as being involved in anti-state activities by the military, who justified the practice of enforced disappearances on the pretext of war raging in Sindh.³ Furthermore, provincial High Courts and the Pakistani Supreme Court have reportedly failed to take all required operational and investigative measures to promptly trace and acknowledge the location of disappeared individuals. The provincial Courts appear to be unwilling to uphold the right to habeas corpus, the right to be brought before a fair and impartial court and to challenge the legality of one's detention in such cases.

The Anti-Terrorism Act (ATA), introduced in 1997, and the Pakistan Protection Ordinance (PPO), promulgated in 2014, constitute the legal basis on which most cases of arrest and detention that constitute enforced disappearances are carried out and justified. In this context, it has been widely denounced in the country that the ATA undermines constitutional protections against unlawful arrest and detention and that law enforcement personnel are granted sweeping powers by the PPO as part of counter-terrorism measures. It was reminded that the UN Global Counter-Terrorism Strategy provides that human rights should be respected.

Ineffectiveness of the Commission of Inquiry on Enforced Disappearances

A Commission of Inquiry on Enforced Disappearances (COIED), which was established in 2010, was a step in the right direction. Concerns about its effectiveness have arisen however, from the difficulties it has encountered in responding adequately to the high number of disappearances, due to the lack of effective and prompt investigation in these cases; its lack of structural and functional independence; its limited powers and authority; its insufficient resources; the inadequate protection afforded to witnesses and victims; the insufficiency of its own protection; and the lack of public reporting of its work. Civil society organisations have highlighted these limitations, including its limited powers to hold alleged perpetrators of disappearances to account, the persistent under-reporting of cases, and the lack of involvement of victims' and civil society organisations in their operational processes. The COIED reportedly located 982 missing persons by 2016 but failed to solve 1,273 other cases. As of 2019, the Commission reported 2178 unresolved cases.⁴ The number of cases of disappearances recorded and/or documented by local organisations exceeds the figures reported by the COIED. In addition, many cases of enforced disappearance go unreported because family members fear retaliation and the competent authorities at local and other levels may also fear similar apprehensions leading to obstruction to investigative procedures. The lack of appropriate operational capacities of the COIED and of political will tend to perpetuate an entrenched climate of impunity in the province of Sindh.

² See <https://www.dawn.com/news/1419433>.

³ See <https://www.dawn.com/news/1481416/our-hearts-beat-with-the-families-of-every-missing-person-dg-ispr>.

⁴ See <https://www.amnesty.org/en/latest/research/2019/03/pakistan-enduring-enforced-disappearances/>.

Persistence of Impunity

The failure by the Government to take concrete and effective steps to ensure prompt investigations to prevent enforced disappearances results in a climate of impunity surrounding disappearances, and the related widespread sentiment of impunity for these crimes causing further suffering to family members of the disappeared. Although the government often proceeds to the release or recovery of the human remains of disappeared persons, no criminal investigation has thus far resulted in the identification of the perpetrators, due to its unwillingness to hold the military and intelligence agencies accountable for this practice. The Sindh High Court and the Supreme Court of Pakistan treated several hearings in relation to enforced disappearances, but an elevated number of cases could not be resolved due to the lack of cooperation with governmental departments, especially security agencies under control of the Military. Although the Sindh High Court reportedly informed the heads of the Sindh Rangers and the police and security agencies about cases of disappeared individuals, this has not led to their identification and localization. Despite the establishment of a task force to search for missing persons by the local government of Sindh, only a few missing persons have been identified, while the total number of forcibly disappeared persons is reported to have continued to steadily increase.

The seemingly systematic pattern of enforced disappearances, lack of adequate investigations thereof, and the alleged complicity of state officials in the commission of these disappearances fuel mistrust, a sense of abandonment, powerlessness and profound injustice, on the part of family members of the disappeared. Families oftentimes are subject to intimidation, harassment and retaliation for complaining to local authorities or organisations, as well as to international organizations in order to report cases of enforced disappearances, and seek assistance, support and protection. They thus risk being disappeared in turn, tortured or even killed. Widespread and diffuse fear of retaliation deters them from reporting the disappearance of their relative(s) and from publicly demanding truth and justice for these violations. This creates an environment in which fear and physical and psychological trauma prevail, exacerbated by the continued lack of effective remedies, affecting minority communities residing in Sindh. For women in particular, the disappearance of their husbands or other male relatives, often primary breadwinners, means a considerable impairment of their economic well-being and brings with it financial burdens that affect them and their entire families. In addition, many communities cannot engage in their traditional cultural practices and expression because of the hostile climate against minorities in Sindh and the fear of becoming victims of enforced disappearances like many of their cultural leaders, which limits any possible exercise of political and cultural activities in these communities.

While we do not wish to prejudge the accuracy of these allegations, many of which have been repeatedly brought to the attention of Your Excellency's Government over the years, we are very much alarmed about the continued targeting of persons belonging to minorities in Sindh through the practice of enforced disappearances and the reported enduring climate of impunity.

We reiterate that enforced disappearance is one of the most serious violation of human rights and often amount to the crimes of torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life, which are unequivocally prohibited under international law.⁵

We are also worried by repeated allegations of intimidation, harassment and retaliation against family members who seek to clarify the fate and whereabouts of their disappeared members, who seek access to them, or who document these practices and demand truth and justice for these crimes. We are concerned that these practices directly contribute to the prevailing climate of impunity and the perpetuation of enforced disappearances, and as a result, deter human rights defenders and other civil society actors from safely carrying out their legitimate human rights activities without fear of retaliation. We are also concerned that they will have a lasting deterrent effect on legitimate cultural and political expression and activities of persons belonging to minority communities in Sindh, which would constitute serious obstacles to the functioning of an institutional framework, respectful of an open civic space, based on the rule of law and human rights.

We wish to reiterate that, if confirmed, these allegations would be in violation of articles 2, 6, 7, 9, 10, 14, 18 19, 22 and 27 of the International Covenant on Civil and Political Rights (ICCPR), which Pakistan ratified on 23 June 2010; articles 2, 6, 12, 13, and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Pakistan 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.

The existing widespread impunity associated with enforced disappearances has been and continues to be a matter of very serious concern, which has been brought repeatedly by United Nations human rights mechanisms to the attention of your Excellency's Government. We note the insufficiency of existing measures to promptly respond and timely determine the fate and whereabouts of the disappeared; the lack of proper investigation leading to such clarification; the inadequacy of measures to provide victims and their families with timely information and effective judicial remedy and reparations, so as to fulfil the right to truth for victims and society as a whole as required under international law.

In this regard, we recall that impunity is a central impediment to the rule of law and that States have the duty to lead prompt and effective investigations in order to identify and hold accountable perpetrators of enforced disappearances (A/HRC/45/13/Add.3, para. 16). We further observe that the offenses ascribed to "missing persons" in the Pakistani legal system do not reflect the gravity and legal consequences of the crime and do not provide for commensurate penalties. We reiterate that the criminalization of enforced disappearances as an autonomous offense is a critical element of effective investigations (A/HRC/45/13/Add.3 para. 99). We reiterate our standing recommendation to Pakistan to expeditiously criminalize enforced disappearance, as already stated in the 2016 follow-up report of the Working Group on Enforced and Involuntary Disappearances to the Mission to Pakistan (A/HRC/33/51/Add.7 para. 29).

⁵ See, Communication No. 449/1991, *Mojica v Dominican Republic*, Views adopted by the Human Rights Committee on 15 July 1994, para. 5.7 and Human Rights Committee, General Comment 36, paras 57 and 58.

We are particularly concerned that governmental authorities reportedly justified the practice of enforced disappearances by the history of conflict and violence in Sindh. We observe that labelling human rights defenders as rebels, insurgents or terrorists, is often used to justify, condone or minimize human rights violations committed against them, including enforced disappearances ((A/HRC/13/22, para. 27). In this context, we recall that actions taken to deal with security threats must at all times respect nationally and internationally recognized human rights and that no circumstances whatsoever, whether a threat of war or any other public emergency, may be invoked to justify enforced disappearances (Article 7 of the Declaration; A/HRC/22/45/Add.2 para. 90).

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions [1373 \(2001\)](#), [1456\(2003\)](#), [1566 \(2004\)](#), [1624 \(2005\)](#), [2178 \(2014\)](#), [2242 \(2015\)](#), [2341 \(2017\)](#), [2354 \(2017\)](#), [2368 \(2017\)](#), [2370 \(2017\)](#), [2395 \(2017\)](#) and [2396 \(2017\)](#); as well as Human Rights Council resolution [35/34](#) and General Assembly resolutions [49/60](#), [51/210](#), [72/123](#) and [72/180](#). All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

This obligation is not a clause of style; it is formally outlined in Pillars I and IV of the United Nations Global Counterterrorism Strategy⁶ including, but not limited to, the need to strengthen efforts for the successful prevention and peaceful resolution of prolonged conflict, and the need to promote the rule of law, the protection of human rights and fundamental freedoms, good governance, tolerance, and inclusiveness to offer a viable alternative to those who could be susceptible to terrorist recruitment and to radicalization leading to violence.

It is a matter of further serious concern that the courts of justice are alleged to repeatedly failing to timely trace and acknowledge the location of disappeared persons, thus denying to the victims themselves, and their families, any form of redress, rehabilitation and compensation. We recall that States must establish effective mechanisms and procedures to investigate thoroughly and promptly – given that in case of enforced disappearances, time is of the essence to safeguard the fundamental rights to life, not to be subjected to torture - by an appropriate impartial and effective body and if necessary ex officio, cases of disappeared persons for as long as the person's fate and whereabouts have not been established (Article 17 of the Declaration; A/HRC/16/48, para. 39)⁷ We recall that a failure to investigate may in itself constitute a violation of the right to an effective remedy as enshrined in the ICCPR.⁸

We also reiterate our previous concerns that the Anti-terrorism Act (ATA) and the Pakistan Protection Ordinance (PPO) do seem to allow forms of arbitrary detention, conducive to the occurrence of prolonged incommunicado detention, torture, and enforced disappearances often resulting in the extrajudicial execution of the victim (A/HRC/22/45/Add.2 paragraph 29) and their reported use as a legal basis

⁶ See: <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>.

⁷ Human Rights Committee, general comment No. 6, para 4;

⁸ Human Rights Committee, general comment No. 31, para. 15.

to abduct and arbitrarily detain individuals deemed or suspected of being involved in dissenting activities in Sindh, **we respectfully reiterate our urgent call to your Excellency's government to carefully examine the compatibility of the aforementioned legislation with Pakistan's international human rights obligations and thoroughly review its policy and existing practices.**

We remain seriously concerned at the reported shortage of financial and human resources of the COIED and the lack of effective cooperation with governmental entities. In its 2013 country-mission report to Pakistan (A/HRC/22/45/Add.2), the Working Group on Enforced and Involuntary Disappearances already observed the COIED's limited powers and the lack of implementation of orders delivered by Courts and the Commission. In its 2016 follow-up report, the Working Group noted that COIED still faces staffing shortages and lack of enforcement of COIED orders (A/HRC/33/51/Add.7 paras. 33 and 34). In this context, we reiterate that your Excellency's Government should take all measures to ensure that the orders by Courts and the COIED are complied with by law enforcement and military personnel and that the COIED can effectively operate in close cooperation with relevant state institutions, as well as victims, their families and civil society organizations.

We further express our grave concern at allegations of acts of retaliation and intimidation directed against family members and associates of disappeared persons. Paragraphs 3 and 5 of article 13 of the Declaration on enforced disappearances, specifically point out that your Excellency's Government has 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. The assistance to family members and victims that have been subjects of acts of retaliation is a crucial factor in order to interrupt persisting cycles of impunity (A/63/313, para. 14).

Finally, we are alarmed that the alleged practice of enforced disappearances and acts of intimidation and threats appear to be aimed at discrediting legitimate cultural and political expression and activities exercised by individuals belonging to minorities. We recall that these acts severely infringe upon the international standards regarding the protection of the rights of persons belonging to minorities. We further remind your Excellency's Government that the lack of cultural rights may be a contributing factor to enforced disappearances (A/HRC/30/38/Add.5 para. 8). Concerning the increased economic hardship that affects women who are spouses, mothers and children of disappeared persons, the Working Group observed that economic and social marginalization is frequently the result of an enforced disappearance and disproportionately affects women and their children (A/HRC/WGEID/98/2 paras. 11 and 12). In this regard, in its 2016 follow-up report to its visit to Pakistan, the Working Group recommended the introduction of a system of declaration of absence as a result of enforced disappearance and the establishment of a special fund to support the relatives of disappeared persons and to minimize the negative impact on the rights and freedoms of families of disappeared persons (A/HRC/33/51/Add.7 para.35 and 36). Therefore, we reiterate the need to ensure the oversight and accountability of law enforcement and intelligence agencies, the need for specific measures to assist relatives of disappeared persons, in particular women, in coping with the consequences of a disappearance, as well as the need to address the issue of reparation for victims of enforced disappearance in the province of Sindh.

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 indicate in detail what effective measures the Government of Pakistan has taken, or intends to take, to effectively prohibit, curb and eradicate the reported pattern of enforced disappearance targeting individuals belonging to a minority in Sindh; to ensure that arrests and detention of these persons are officially accounted for; that they are promptly given access to defense lawyers and their families; that they are afforded the protection of habeas corpus; that they are charged with recognizable criminal offences if they are to remain detained or that they be released; that they are afforded fair judicial proceedings; that an end is put to impunity and that adequate remedies is provided to the victims and their families.
3. Please also provide detailed information on specific cases where perpetrators of enforced disappearances in Sindh have been held accountable. If no such measures have been undertaken or are foreseen, please explain why, and how this is compatible with the international human rights obligations of Pakistan under the conventions it has ratified, notably ICCPR and CAT.
4. Please provide the details and, where available, the results of any investigation and judicial or other inquiries which may have been carried out to clarify the circumstances leading to the alleged pattern of enforced disappearances occurring in Sindh, and their continued perpetuation. If no such enquiries have been conducted, please explain why and how this is compatible with the international human rights obligations of Pakistan under ICCPR and CAT.
5. Please provide detailed information on the existing safeguards in the Pakistani legal system guaranteeing the protection against enforced disappearances; guaranteeing due process and prompt and effective investigation into enforced disappearances; how these safeguards are effectively implemented, and what are the mechanisms to monitor and control their application.
6. In this respect please also detail what measures have been taken to facilitate the functioning and effectiveness of the COIED, to strengthen its structural and functional independency, to provide it with the necessary resources it requires to be able to effectively perform its

functions, and to increase the participation of victims, families, civil society organizations and others, such as lawyers, in its processes.

7. Please provide also detailed information on the measures taken by relevant authorities to ensure the full protection of families and close associates who are seeking to clarify the fate of their disappeared members; and to grant them all necessary access to information about the fate and whereabouts of their disappeared relatives, and about the investigative steps being taken, the progress and results of the investigation; and to protect them from acts of intimidation, threats and retaliation.
8. Please also indicate what measures have been taken to ensure that journalists, political 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, harassment and violence of any sort.
9. Please provide information on any measures taken to implement the recommendations that the Working Group on Enforced or Involuntary Disappearances made in the context of its country visit and its follow-up, including the typification and criminalization of enforced disappearance as an autonomous offense following Pakistan's previous commitment to specifically criminalize that practice.

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.

While awaiting a prompt reply to a matter that ought to be considered as a priority and with the highest attention, we urge that all necessary measures be taken to halt the practices described in this communication, to prevent their recurrence; and in the event that investigations support or suggest these allegations to be correct, to ensure the accountability of any person(s) responsible.

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

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán

Special Rapporteur on the independence of judges and lawyers

Fernand de Varennes
Special Rapporteur on minority issues

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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, 6, 7, 9, 10, 14, 18, 19, 22 and 27 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 refer to Human Rights Committee, General Comment 36, which highlight that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life, and results in a violation of the right to life. It further observes 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. The obligation to carry out prompt, thorough and impartial investigations shall be conducted *ex officio* if required. 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). Delays in the investigative process impact on the right to access to justice, could put witnesses at risk and foster revictimization (A/HRC/45/13/Add.3 paras. 16 and 17). The situation of relatives who remain without knowledge about the fate or whereabouts of a disappeared person for extended periods of time has been considered to amount to torture or cruel, inhuman or degrading treatment.⁹

We recall that anyone who is arrested or detained has the right to be informed immediately of the reason for the arrest and to be told promptly about any charges.¹⁰ Furthermore, it is a violation of international human rights standards when a person detained is not given access to legal counsel promptly as a protection against incommunicado detention and to enable him or her to challenge the legality of detention.¹¹

The Working Group also reiterated in its most recent thematic report on standards and public policies for an effective investigation of enforced disappearances 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). We also reiterate that due to the collective character of certain economic, social and cultural rights, the disappearance of one person may have a negative effect on the larger community, including on the right to political participation and on the existence and protection of the society's cultural diversity, which is the broader condition for the exercise of all human rights (A/HRC/30/38/Add.5 para. 40).

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 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

⁹ Communications No. 950/2000, *Sarma v. Sri Lanka*, Views adopted by the Human Rights Committee on 31 July 2003, para. 9.5

¹⁰ Body of principles for the protection of all persons under any form of detention or imprisonment, arts. 10, 11(2), 13, 14.

Communication No. 770/1997, *Gridin v Russian Federation*, Views adopted by the Human Rights Committee on 20 July 2000, para. 8.5; Human Rights Committee, general comment No. 20, para. 1.

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 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).¹² 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 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 Torture¹³ and the Human Rights Committee¹⁴ 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.

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:

¹² Communication No. 107/1981, *María del Carmen Almeida de Quinteros et al. v. Uruguay*, Views adopted by the Human Rights Committee on 21 July 1983, para. 14.

¹³ 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).
CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.

- 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 fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- and 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.

Finally, we wish to refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in General Assembly resolution 47/135, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them.