

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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(Please use this reference in your reply)

29 July 2022

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 situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 45/3, 44/5, 43/16, 44/8, 43/8, 49/5, 49/10 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **continued lack of identification and preservation of unmarked single and mass burial sites in Indian-administered Kashmir, including the failure to adequately protect such sites and to conduct forensic investigations, in accordance with international standards, to identify the remains of individuals buried in these graves and to establish the cause, manner and circumstances of their deaths, as required for the search processes of the forcibly disappeared.**

Concerns relating to the sudden closure of the Jammu and Kashmir State Human Rights Commission (SHRC) on 31 October 2019 which had been investigating the alleged existence of thousands of unmarked and mass gravesites across Indian-administered Kashmir were raised in communication [IND 11/2020](#), sent on 1 July 2020. We thank your Excellency's Government for its [reply](#) dated 31 July 2022. The Working Group on Enforced or Involuntary Disappearances' also expressed concerns regarding alleged enforced disappearances in the former Indian State of Jammu and Kashmir (now Union Territories) and the existence of unmarked graves containing the remains of unidentified individuals on multiple occasions including in General Allegations transmitted respectively on 22 July 2009, 11 February 2011, 29 April 2013, and 28 March 2019. We regret that no replies have been received to date.

According to the information received:

As of July 2022, the Indian Government has not implemented the recommendations of the Jammu and Kashmir State Human Rights Commission (SHRC), established under the Jammu and Kashmir Protection of Human Rights Act, 1997,¹ and reiterated in IND 11/2020, nor does it appear to

¹ Act No. XV of 1997 (30 May 1997).

have conducted independent, prompt, and effective forensic investigations of reported unmarked and mass grave sites in the districts of Baramulla, Bandipora, Kupwara, Rajouri and Poonch.

Unmarked and mass grave sites across Indian-administered Kashmir

Between 1990 and 2009, 2,700 unmarked and mass grave sites containing more than 2,940 bodies were documented across 55 villages in the districts of Baramulla, Bandipora and Kupwara located in Indian-administered Kashmir. Among these, 154 graves contained two bodies each and 23 were mass graves containing more than two (ranging from 3 to 17). Civil society organizations estimate that in the former Indian State of Jammu and Kashmir, 100,000 individuals have been extrajudicially killed and 8,000 individuals have been subjected to enforced disappearances in so-called staged “encounters” with State forces since 1989. A large number of the bodies buried in these unmarked and mass grave sites are believed to be victims of extrajudicial killings, enforced disappearances, gender-based and sexual violence, torture, and other cruel, inhuman, or degrading treatment or punishment, allegedly committed by members of the Indian armed forces, paramilitary and police units. Most of the victims are reportedly civilians, mainly belonging to the Muslim minority in India.

In addition, 2,717 unmarked and mass grave sites were discovered in Poonch district and 1,127 such graves in Rajouri district. The Indian Government claimed that foreign fighters were buried in these graves, but reportedly did not substantiate this claim with clear evidence.

Records were available only for 49 allegedly identified bodies of killed persons buried in the respective grave sites in Indian-administered Kashmir. The basis on which the Indian Government had classified the bodies in the unidentified burial sites as “unidentified foreign fighters” was not disclosed. Groups not affiliated with the State indicated that only one person of these identified bodies was revealed to be a local militant, seven bodies remained unidentified, and the outstanding 41 bodies were identified to be local civilians. Thirty-nine individuals of the 49 identified bodies were reported to be members of the Muslim minority in India, four were of Hindu faith, and the religious affiliation of seven individuals remains unknown.

Clandestine burial sites, often unmarked, were allegedly unprofessionally dug by locals under instructions by the Indian armed forces and Kashmiri police next to houses, fields, and schools, on roadsides, in prayer grounds, and in forests in rural and urban areas. In cases where the number of bodies brought by security forces for burial in a particular location exceeded the number of graves initially ordered to be prepared there, multiple bodies were reportedly buried in one grave. Land for the construction of these grave sites was reportedly forcibly expropriated.

The burial grounds are located far away from the sites where the killings are believed to have taken place, rendering it difficult for the victims' relatives to identify the grave sites. Mourning ceremonies and the placement of gravestones or other markers of remembrance have reportedly been prohibited. In addition, local residents who were forced to dig the clandestine graves

reportedly suffer from ongoing adverse effects on their psychosocial and physical health conditions.

Allegations of failure to adequately identify, investigate, and preserve unmarked and mass grave sites

The SHRC and victims' rights groups reportedly requested the then Government of Jammu and Kashmir to conduct DNA tests to identify human remains buried in the grave sites.

On 13 August 2012, the then Government of Jammu and Kashmir filed an Action Take Report to the SHRC stating that all the unidentified bodies buried in unmarked graves were of “terrorists” or “combatants” that had died during “engagements with security forces” and belonged to either “foreign land” or to areas where encounters had taken place. The then Government of Jammu and Kashmir later agreed to DNA profiling, although under certain conditions. The Jammu and Kashmir Home Department declared that the family of a disappeared person would have to inform the police of the graveyard and the single grave in which the person might be buried before the police could conduct DNA testing, thereby shifting the responsibility for locating human remains to the families of the victims.

On 18 October 2014, the SHRC recommended, inter alia, the use of DNA testing, dental examinations, identification of unique medical or physical characteristics, fingerprinting, forensic pathology and other relevant techniques to identify bodies buried in the unmarked and mass graves; the disclosure of records and information relating to these bodies to persons seeking to identify the disappeared and those killed extrajudicially; the establishment of a commission of inquiry to investigate these cases; and the provision of compensation to the families of the victims.

On 24 October 2017, the SHRC further requested the then Government of Jammu and Kashmir to complete investigations into the unmarked and mass graves in the districts of Rajouri and Poonch within six months by conducting a thorough forensic examination, including DNA testing.

Despite these recommendations, the Indian Government has reportedly made no transparent or independent attempts to collect and preserve human remains and associated forensic evidence of the grave sites, to adequately identify human remains, or to disclose relevant information, such as photographs or first information reports, to family members of the victims to date. Instead, the Government of Jammu and Kashmir has reportedly rejected requests for further investigation of the grave sites on the grounds that they would belong to unidentified foreign fighters and that any investigations could attract unwanted media attention and cause severe public disturbances. In addition, the Indian Government claimed that it lacked the expertise to conduct thorough forensic examinations.

The Indian authorities have allegedly failed to identify, investigate and bring to justice the perpetrators of the reported violations, as they are covered by laws that grant immunity, specifically enshrined in the Armed Forces (Jammu

and Kashmir) Special Powers Act, (AFSPA, 1990),² Jammu and Kashmir Public Safety Act (PSA, 1978, amended 2012)³ and Jammu and Kashmir Disturbed Areas Act (1998),⁴ as members of the State armed forces. In this context, the aforementioned laws have reportedly further exacerbated the general state of increasing rights violations in Indian-administered Kashmir, including in relation to the clarification of numerous cases of enforced disappearance, extrajudicial killings, gender-based violence and torture.

The use of unmarked single and mass burials to dispose of victims of enforced disappearance and extrajudicial executions is reportedly a method employed by the Indian Government to intimidate and discriminate against Kashmiris of Muslim faith by denying victims and family members of victims the right to mourn their loved ones and to seek redress. Kashmiri civil society was reportedly not consulted on the parameters of measures of reparation for enforced disappearance, torture, sexual violence and extrajudicial killings.

Continuous failure in establishing an equivalent investigative body to the State Human Rights Commission (SHRC)

In October 2019, despite ostensibly taking genuine steps toward accountability and compensation for victims in Indian-administered Kashmir, the SHRC, along with six other human rights bodies, was closed based on a decision by the Indian Government. At the time of SHRC's dissolution, over 100,000 cases of gross human rights violations were still under investigation. At the time of writing, the Indian Government had not informed the affected victims whether the pending cases and investigations would proceed.

On 19 September 2020, a petition was filed before the Supreme Court of India seeking the reinstatement of seven rights bodies in the new Union Territories but without success. The closure of the independent SHRC has reportedly left citizens, human rights activists, and civil society in Jammu and Kashmir, particularly individuals belonging to the Muslim minority in India, with limited legal avenues for seeking redress and accountability. This appears particularly concerning as the SHRC was widely viewed as a unique platform for victims of human rights violations that could be reached by individuals living in remote locations in Jammu and Kashmir to seek acknowledgement of human rights violations and receive compensation and other forms of redress without paying fees or requiring legal representation.

In April 2020, it was reported that the Delhi-based National Human Rights Commission (NHRC) would receive and process human rights cases from Jammu and Kashmir as it had jurisdiction over the area.

In February 2022, it was revealed that more than 630 human rights cases initially filed with the SHRC had been locked up in the SHRC offices for at least 27 months and consequently not been forwarded to the NHRC. Despite appeals by human rights organisations to the NHRC to open a local office in Jammu and Kashmir, no such local office has been established, severely limiting the ability of the people of Kashmir to approach the NHRC.

² Act No. 21 of 1990 (10 September 1990).

³ Act No. 6 of 1978 (amended 5 April 2012).

⁴ Act No. 26 of 1998 (15 March 1998).

Furthermore, the revocation of Jammu and Kashmir's autonomous status under Article 370 and Article 35A of the Constitution of India through the Jammu and Kashmir Reorganization Act, 2019⁵ on 5 August 2019 and the alleged fragmentation of the rule of law has reportedly negatively impacted the necessary preservation of grave sites in Indian-administered Kashmir, placing the sites at increasing risk of destruction and desecration. In addition, these measures have largely contributed to the increasing marginalization of minorities, including the large community of Kashmiris of Muslim faith in India, and the gradual deprivation of their rights and cultural identity.

Acts of intimidation and threats against persons involved in the preservation of the unmarked and mass grave sites

Survivors of enforced disappearances, family members of victims, scholars, lawyers, human rights activists, and others calling for a sustained investigation of burial sites and seeking justice for victims have reportedly been intimidated and harassed by units of the Kashmiri police, paramilitary forces, and armed forces. In addition, gravediggers and individuals attempting to locate and identify community members and relatives have allegedly been subjected to repeated threats over several years. While Indian authorities reportedly have not initiated investigations into these acts of harassment, in October 2020 they conducted raids against human rights groups and journalists calling for investigations of these graves and the identification of the human remains buried therein. Indian authorities labelled these activists as “terrorists.”⁶

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned by the alleged continued lack of identification, protection and preservation of large numbers of unmarked single and mass burial sites in Indian-administered Kashmir, including the failure to conduct proper forensic investigations, search processes for the forcibly disappeared, and the lack of progress in identifying the remains of individuals buried therein in accordance with international standards. In this context, we stress the importance of locating, protecting and preserving these burial sites in order to avoid irreparable damage that would make it impossible to realize the right to know the truth, which pertains both to family members of the victims and to the Kashmiri society as a whole. We are further troubled by the reported acts of intimidation and harassment against individuals and civil society organizations, including human rights defenders and journalists, who call for investigation and accountability in this regard.

Should the facts alleged above be confirmed, they may amount to a violation of the rights to an effective remedy, the right to life, the right to be protected from torture and ill-treatment, the right to liberty and security of persons, to recognition as a person before the law, privacy and family life, the rights to freedom of thought, conscience, religion or belief, the right to seek information, and to equal and effective protection against discrimination on any ground, including religion, and to the rights of minorities guaranteed in Articles 2, 6, 7, 9, 16, 17, 18, 19 (2), 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR), which India acceded to on 10 April 1979, as well as several provisions of the 1992 Declaration on the

⁵ Act No. 34 of 2019 (9 August 2019).

⁶ See, <https://www.hrw.org/news/2007/02/15/india-investigate-all-disappearances-kashmir>; UA IND 19/2021.

Protection of all Persons from Enforced Disappearance. We recall that the failure to provide information on the fate and whereabouts of disappeared persons and the attitude of official indifference of authorities in the face of the relatives' suffering may amount to a form of ill-treatment vis-à-vis their relatives, in breach of Article 7, read alone and in conjunction, with Article 2 (3) of the ICCPR. The prohibition of enforced disappearance attained the status of *jus cogens*, along with the obligation to investigate these crimes and hold perpetrators accountable. Enforced disappearance is prohibited under customary international law and this norm cannot be derogated under any circumstances, pursuant to, among other, Article 7 of the 1992 Declaration.

With regard to the Home Department of Jammu and Kashmir's indication that all identified bodies belonged to unidentified "foreign fighters" or "terrorists" and that these acts occurred in the context of a counter-terrorist operation (IND 11/2020), we remind your Excellency's Government that in a previous communication we expressed our concern about the vague and broad scope of the counter-terrorism legislation as well as the designation of individuals as "terrorists" in the context of ongoing discrimination directed at religious and other minorities against whom the law has been used (see OL IND 7/2020). We note that the term "foreign fighter" lacks specificity and agreed meaning in international law and is not consistent with the discharge of the state's obligations in the context of armed conflict, rather where relevant provisions of international humanitarian law would apply.

In light of the alleged killings in the course of "engagements with security forces" we recall that under international human rights law on the right to life and the use of force by law enforcement officials, as well as customary international law, the use of force must be proportionate and the use of lethal force, as the *ultima ratio*, must be used only in self-defence and when all other means have been exhausted, including non-lethal force. Any alleged death in the framework of a counter-terrorism operation should be investigated as an individual case, regardless of whether the victim is a civilian or an alleged "terrorist" who died in the course of or as a result of counter-terrorism or security operations.

We are alarmed by the alleged lack of forensic investigations. Investigations of all suspected cases of enforced disappearance and extra-legal, arbitrary and summary executions must be thorough, prompt, independent and impartial and the dead must always be treated with respect and dignity. We would like to highlight our understanding that your Excellency's Government has a significant pool of expertise and forensic capacity, such as the International Centre for Humanitarian Forensics at National Forensic Sciences Institute, Gujarat University, in order to carry out investigations in compliance with international standards, in particular the *UN Principles for the Effective Prevention and Investigation of Extra-Legal, Summary and Arbitrary Executions*, and *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016))*, which includes detailed guidelines including on the excavation of graves, recovery and identification of remains and crime scene investigation amongst others. This is absolutely essential for ensuring that human remains are recovered and managed professionally and in a dignified manner, that their identities may be reliably established, and the causes and circumstances of their deaths accurately determined and documented. We also refer to the Guiding principles for the search for disappeared persons (CED/C/7), in particular principles 6, 7, 12 and 15.

In this regard, the report by the Special Rapporteur on extrajudicial, summary or arbitrary executions on mass graves (A/75/384) also stresses the obligation to protect, document and investigate with due diligence any grave sites of alleged enforced disappearances and extrajudicial killings, with a view to recovering the bodies or human remains reportedly buried there, ensuring their dignified management, documentation, identification, determining their cause and manner of death, bringing those responsible to justice and ensuring full reparations for the victims, including their families. The Special Rapporteur on extrajudicial, summary or arbitrary executions also raised the issue of alleged unmarked graves and enforced disappearances in Jammu and Kashmir in the report on the visit to India in 2012 (A/HRC/23/47/Add.1, paras. 86-87), indicating difficulties to seek accountability and redress in those cases. Should it be the case that your Excellency's Government faces uncertainties as to the conduct of effective investigations and, in particular, the application of the Minnesota Protocol or limitations in capacity, the Special Rapporteur indicates his willingness to provide technical assistance in this regard.

We are also concerned that the above allegations fall within a broader pattern of systematic restrictions on fundamental rights in Jammu and Kashmir, particularly for individuals of Muslim faith and other minorities in India. The continued failure to establish an equivalent investigative body to the SHRC will exacerbate this situation by further curtailing already scarce remedies to seek justice and redress for such serious human rights violations as enforced disappearances, extrajudicial killings, torture and sexual violence. The recently reported delays in investigations appear to confirm previously expressed concerns (AL IND 11/2020) about the uncertainty of how pending cases will be handled in future. To be exercised in continuity, rights cannot be curtailed abruptly for uncertain time without any due process of law. The failure of the State to investigate without delay does not relieve it of its duty to investigate at a later date: The duty does not lapse even if much time passes.

We remain concerned about the lack of prosecution of the perpetrators and the cited legislation that supposedly allows their immunity for the reported crimes. Special Procedures mandates already highlighted the lack of investigations into alleged sites of mass graves in the Kashmir Valley and Jammu region and expressed concerns for the impunity resulting therefrom in 2018. We recall that impunity contributes to perpetuating or even reinforcing a vicious cycle of human rights violations in the future. In this vein, we recommend the repeal of all laws that can lead to impunity for the perpetrators of the crimes alleged herein, including, where applicable, the Armed Forces Special Powers Act, 1958 (AFSPA); the Public Safety Act, 1978; the Disturbed Areas Act, 1976; and the Unlawful Activities (Prevention) Act, 1967.

We consequently urge your Excellency's Government and the local authorities in the former Indian State of Jammu and Kashmir (now Union Territories) to undertake **prompt, thorough, and impartial investigations into the alleged cases of extrajudicial killings, enforced disappearances, torture and sexual violence and to take adequate measures to identify the remains in each of the thousands of unmarked and mass grave sites that have reportedly been found in Indian-administered Kashmir in accordance with international standards, particularly the Minnesota Protocol. We continue to urge your Excellency's Government to reconsider the closure of the SHRC or to promptly establish an equivalent independent body, or bodies that could assist and guide official investigations and help ensure that they are in full compliance with international human rights**

norms.

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 your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide any information on steps taken or envisioned to be taken to comply with the recommendations made in IND 11/2021 as well as with the recommendations made by the Special Rapporteur on on extrajudicial, summary or arbitrary executions in this mandate's report on mass graves (A/75/384, paras. 86-92), in particular the disclosure, preservation and protection of all mass graves from any interference, manipulation of evidence or loss of human remains, and what steps have been taken to date to that end.
3. In addition, please provide further information:
 - a. On steps taken to locate and exhume unmarked single and mass burial sites in the districts of Baramulla, Bandipora, Kupwara, Poochi and Rajouri and to respect and identify the human remains buried therein. Please also indicate the extent to which families were consulted and kept informed about this process and the number of individuals identified. Please provide information, if any identification has been successful, if human remains have been returned to their family members.
 - b. On the steps taken to ensure that families of persons forcibly disappeared and allegedly buried in the aforementioned burial sites have a centralized and easily accessible process to request information on search and investigation activities. In particular, please provide further information on how the 2019 Guiding Principles on the Search for Disappeared Persons will be considered and implemented, especially taking into account Principles 2.4, 3.3, 7.3, 11.2, 11.4, and 12.4.
 - c. On the status and outcome of any criminal investigations carried out to identify the perpetrators of the alleged enforced disappearances and extrajudicial killings in scenarios of so-called "encounters" with Indian state forces. If no investigations have been carried out, please provide the reasons for this.
 - d. On how your Excellency's Government plans to use available forensic expertise to investigate the concerned unmarked burial sites in Indian-administered Kashmir and what measures have been taken or are

envisioned to be taken to preserve and protect the unmarked grave sites from destruction or desecration and as evidence in cases of potential domestic and international crimes. In this regard, please include information on the implementation of the *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016))* in this regard.

- e. On any envisioned attempts to re-instate the Jammu and Kashmir State Human Rights Commission or an equivalent investigatory body and measures taken to attend the many pending cases initially brought before the SHRC. In particular, also provide information on the measures taken or envisioned to be taken to make public all reports relating to the unknown and mass grave sites
- f. If any reparations, including cessation, restitution, compensation, guarantee of non- repetition, and rehabilitation, have been provided to family members of victims and if they have been part of the consultation process to preserve and identify clandestine burial sites, including single and mass grave sites and to formulate the conditions, terms, and parameters for justice and reparation related to the alleged crimes.
- g. On steps that are envisioned to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).
- h. On steps taken to ensure that civil society, including human rights defenders, are able to carry out their legitimate work in an enabling environment, without fear of harassment or attacks.

We would appreciate receiving a response within 60 days. Past 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 reply, we urge that all necessary interim measures be taken to halt alleged violations, that prompt, thorough and comprehensive search be conducted for individuals forcibly disappeared, and that effective investigations be launched without delay, in accordance with international standards, into unmarked and mass grave sites located in the indicated districts. We also recommend that the located graves are duly preserved from any instance of manipulation.

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

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Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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.

We refer to Articles 2 (3), 6 (1), 7, 9, 16, 17, 18 and 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), which India acceded to on 10 April 1979, which provides that every individual has the right to an effective remedy, the right to life and that no person shall be arbitrarily deprived of his or her life, the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and security of a person, the right to recognition everywhere as a person before the law, the right to be free from arbitrary or unlawful interference into family life, the right to freedom of thought, conscience and religion and the right to seek information. We would further like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. Similarly, the prohibition of enforced disappearance has attained the status of *jus cogens*.

In General Comment No. 36, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted (CCPR/C/GC/36, para. 2). Moreover, in General Comment No. 31 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 (CCPR/C/21/Rev.1/Add. 13, para. 8).

We recall that the use of force must be strictly limited and in accordance with the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. It must be proportionate and the use of lethal force, as the *ultima ratio*, must be used only in self-defence and when all other means have been exhausted, including non-lethal force (A/HRC/43/46/Add.1, para. 45).⁷

We would further like to refer to the obligation to investigate, prosecute and punish gross human rights violations and to provide redress to victims. Article 2 of the ICCPR establishes that States must adopt measures to ensure that persons whose rights or freedoms are violated have an effective remedy. In this regard, we urge your Excellency's Government in line with the *Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles)*, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. In its General Comment No. 31, the Human Rights Committee also established that States have an obligation to investigate and punish serious human rights violations, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances (paragraph 18). Investigations into allegations of violations of the right to life must always be

⁷ A/HRC/43/46/Add.1.

“independent, impartial, prompt, thorough, effective, credible and transparent, (...) and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations... An investigation into violations of the right to life should commence when appropriate ex officio (CCPR/C/GC/36, para. 28).” When civilians have been, or appeared to have been, killed, the State responsible is under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation (CCPR/C/GC/36). This obligation is triggered whenever there is a plausible indication from any source that civilian casualties have been sustained, including where the facts are unclear or the information partial or circumstantial, and whether civilian casualties were anticipated or not (A/HRC/29/51 58). Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties.

The dignified treatment of the dead lies at the core of all international human rights law and failures in this regard constitute a violation of the right to a family life and even a violation of the prohibition of torture and ill-treatment.⁸ In this regard, the *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016))*, also provides detail on the duty to investigate potential unlawful deaths “promptly, effectively and thoroughly, with independence, impartiality and transparency.” This duty continues to apply in situations of internal disturbances and tensions, and armed conflict (para. 20). We note investigators and investigative mechanisms must be, and must be seen to be, independent of undue influence (para. 28). Furthermore, authorities must “conduct an investigation as soon as possible and proceed without unreasonable delays. The failure of the State promptly to investigate does not relieve it of its duty to investigate at a later time: the duty does not cease even with the passing of significant time” (para. 32). Amongst other things, investigations into alleged unlawful killings should seek to determine who was involved in the death, and their individual responsibility for it, and seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist (para 25.). The recovery of human remains should be carried out under the supervision of forensic experts (para. 90) and the identification must be carried out on the basis of scientifically reliable methods of identification such as fingerprints, dental examination and DNA analysis (para. 120).

We would like to draw your Excellency’s Government attention to the report on mass graves (A/75/384) by the Special Rapporteur on extrajudicial, summary or arbitrary executions. In particular, the Special Rapporteur indicated that “Governments and parties to a conflict should ensure that mass graves are preserved and protected until, based on an inclusive consultative process, decisions have been made as to their treatment and management. Governments, parties to a conflict and/or international actors present in a country or region should provide a list of known locations of mass graves in the country and proactively search for additional sites, including those that may have been desecrated or further concealed. Safe and confidential processes for individuals to report the existence and location of mass graves should be provided (para. 62).” Furthermore, we urge your Excellency’s

⁸ See *Staselovich v. Belarus (CCPR/C/77/D/887/1999)*.

Government to implement the recommendations made in the report, particularly all measures necessary to locate, disclose, protect and preserve all mass gravesites and the development of legal frameworks governing the respectful and lawful management of mass graves. In this context, the Special Rapporteur stressed that “hiding, damaging or destroying mass graves is strictly prohibited, as is the criminalization of those seeking to uncover mass graves. Such acts would constitute a violation of the right of families and society to know the truth about the circumstances behind the existence of the mass graves, including executions and enforced disappearances or failure to protect (para. 88).”

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 cases of disappearances thoroughly, by independent and impartial bodies (CCPR/C/GC/36, para. 58). We remind that no circumstances whatsoever may be invoked to justify enforced disappearances, that investigations should be conducted for as long as the fate of the victim remains unclarified and that enforced disappearance should be considered a continuing offence for as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified (Article 7, and 17 of the 1992 Declaration on the Protection of all persons from enforced disappearance). We further refer to Article 13 of the Declaration which outlines an obligation to conduct prompt, effective, independent and impartial investigations into alleged enforced disappearances and stipulates that steps shall be taken to ensure that all involved in the investigation, including the complainant, relatives, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. Furthermore, Article 18 of the Declaration prohibits persons who have or are alleged to have committed the offence of enforced to disappearance to benefit from amnesty or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

The failure to provide information on the fate and whereabouts of disappeared persons and the attitude of official indifference of authorities in the face of the relatives’ suffering may amount to a form of ill-treatment, in breach of Article 7, read alone and in conjunction, with Article 2 (3) of the ICCPR.⁹ The impossibility to obtain the mortal remains of a loved one and to perform the last rituals and mourn and obstructions to seek and receive information amount to a violation of the right to privacy and family life and the right to freedom to seek information enshrined in Article 17 and 19 of the ICCPR, respectively. Article 16 also stipulates that everyone shall have the right to recognition everywhere as a person before the law.

In this context, we also refer to the Guiding principles for the search for disappeared persons issued by the Committee on Enforced Disappearances in 2019. In particular, we draw your Excellency’s Government’s attention to principle 2.4 indicating that the body or remains of a disappeared person should be handed over to the family members under decent conditions; principle 3.3 outlining that public policy on searches should be built on the basis of States’ obligations to search for, locate, release, identify and return the remains, as appropriate, of all disappeared persons; principle 5 which outlines the right of relatives, their legal representatives,

⁹ See Human Rights Committee, Communication No. 107/1981, *María del Carmen Almeida de Quinteros et al. v. Uruguay*, 21 July 1983.

counsel or any person authorized by them, to take part in the search; principle 7.3 which states that the search for a disappeared person should continue until his or her fate and/or whereabouts have been determined with certainty; principle 11.2 and 4 indicating that States should establish registers and databases on disappeared persons that cover the entire national territory that include disintegrated data on the reason for the disappearance, location and status of the disappeared person, and in case of death, if the human remains have been identified and handed over to the respective families and that these registers and databases should be maintained even after the search has ended; principle 12.4 indicating that States should take the necessary measures to guarantee the transfer of the knowledge and technology needed for search processes, including those of national and international organizations specialized in searching for disappeared persons and identifying human remains; and principle 13 which stipulates that the search for the disappeared and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing. The comprehensive search process for disappeared persons should be initiated and conducted with the same effectiveness as the criminal investigation.

In this regard, we refer to the Working Group on Enforced or Involuntary Disappearances' report on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3). The Working Group recalls in the report that completion of the criminal investigation, along with any conviction or acquittal of the persons accused of having committed an offence of enforced disappearance or the declaration of absence by reason of enforced disappearance, should not constitute an obstacle to the continuation of search activities or be invoked to justify their suspension. These activities should be pursued until it has been possible to determine with certainty the circumstances of the disappearance and the fate and whereabouts of the disappeared person or their remains.

Given the reported high levels of impunity, we would like to bring to the attention of your Excellency's Government that it is under an obligation to fully investigate and bring to justice the perpetrators of violations of human rights in terms of Articles 2, 6 and 7 of the ICCPR. Further, principle 18 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that Governments shall either bring persons found to have participated in the execution to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. The Human Rights Committee has observed in the case of *Bautista de Arellana v. Colombia* that the "State party is under a duty to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations. This duty applies *a fortiori* in cases in which the perpetrators of such violations have been identified".¹⁰

Moreover, the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity recalls that impunity arises from a failure by States to meet their obligations to investigate violations; to ensure that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations (principle 1).

¹⁰ Communication No. 563/1993, U.N. Doc. CCPR/C/55/D/563/1993 (1995). para 8.6.

We would also like to refer to the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes, as established in the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005 (principle 2). International human rights law has recognized the “autonomous” right to the truth about gross human rights violations for both the community and individual victims of violations, meaning, in essence, a society’s right to know the truth regarding past atrocities, “so as to be capable of preventing them in the future.”¹¹ In this regard, full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 5). In this regard, we refer to the General Comment from the Working Group on Enforced or Involuntary Disappearances regarding the Right to the Truth in Relation to Enforced Disappearances, which highlights that the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. The State has the obligation to let any interested person know the concrete steps taken to clarify the fate and the whereabouts of the person. Such information must include the steps taken on the basis of the evidence provided by the relatives or other witnesses. The relatives of the victims should be closely associated with an investigation into a case of enforced disappearance.

We would also like to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990). Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent those lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

We would like to respectfully remind your Excellency’s Government of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1):

"[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief"; moreover, according to Art 2 (2): “... [t]he expression intolerance and discrimination based on religion or belief means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis”. In Article 4 (1), the General Assembly further states that: "all States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]". According to article 4(2) "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter”.

¹¹ Inter-American Court of Human Rights, *Bamaca Velasquez v Guatemala*, vol 91, Series C, Judgment on reparations of 22 February 2002, para. 77; See also European Court of Human Rights, *El-Masri v the former Yugoslav Republic of Macedonia*, Application No. 39630/09, Judgment of 13 December 2012, para. 191.

We would also like to draw your Excellency Government's attention to article 27 of the ICCPR, which establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, "to enjoy their own culture, to profess and practice their own religion, or to use their own language". 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, refers to the obligation of States to protect the existence and the identity of religious or belief minorities within their territories and to adopt measures to that end (article 1), to ensure that they enjoy their own culture and profess and practice their own religion (article 2), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

We further refer to 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. 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.

We note that to categorise an offense as a 'terrorist act' consistent with good practice in international law implies three elements that must be cumulatively present: a) the means used must be deadly; b) the intent behind the act must be to cause fear among population or to compel a government or international organization to do or refrain from doing something; and c) the aim must be to further an ideological goal. In this regard, we recall that the definition of terrorism and terrorism offences must be confined to acts that are 'genuinely' terrorist in nature in accordance to the elements identified by the Security Council in its resolution 1566 (2004). Criminal offences must thus be set out in "precise and unambiguous language that narrowly defines the punishable offence.