

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 44/5, 42/22, 45/3, 43/16 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 prosecution and imprisonment of Yuri Alexeevich Dmitriev, a historian and human rights defender, that suggests the charges against him have been fabricated and are without grounds. It is alleged that the authorities targeted Mr. Dmitriev as part of an ongoing effort to delegitimize his longstanding work to bring to public attention the full and complete truth about the executions of Soviet citizens during the Great Purge and the location of their remains in Karelia. This letter also refers to information concerning excavations of Sandarmokh Memorial allegedly carried out without respect for the wishes of the relatives of the deceased and which went against existing laws and regulations. The information also indicates a lack of investigations by relevant Russian authorities into the cases of all those who were disappeared and killed during the Great Purge, and the lack of respect for their rights and those of their relatives, and of others impacted whether resident in Russia or abroad.

According to the information received:

Case against Yuri Alexeevich Dmitriev

Mr. Yuri Alexeevich Dmitriev is a historian and human rights defender who has dedicated his life to the search for truth about, and the commemoration of, victims of the Great Purge, a period of political repression orchestrated by Joseph Stalin, in which it has been estimated that, between 1930-1940, over a million Soviet citizens died.

Mr. Dmitriev, who began his work in the 1980s, has focused on identifying the locations of execution sites and mass graves in his native Republic of Karelia, as well as the names of those buried there. He discovered the execution site of the Solovki prison camp, the largest known site in Karelia, where at least eight thousand people were killed and buried. He assisted in the naming of ten thousand persons executed in Karelia's Sandarmokh Forest. Due to his meticulous work, all the 1,297 men and women shot and buried at Krasny Bor have been named. To ensure that the atrocities of the Great Purge are never forgotten, Mr. Dmitriev established an event in commemoration of the victims,

held annually in Sandarmokh since 1998. He has also authored several books on the Great Purge and mass graves in Karelia. For his work, he has received awards both in Russia and abroad.

Mr. Dmitriev was himself adopted. He and his wife have two biological children, and in 2008, they also adopted a third child.¹ Medical records from the time of the child's adoption, and in the following years, show that due to the child's state of health and physical underdevelopment, the child required dedicated care and support. Mr. Dmitriev provided this constantly and consistently, bringing about marked improvements in the child's physical and mental state and documenting, including photographically, the child's recovery and development as medical authorities recommended that he do.

Over the course of the eight years since the adoption, no concerns have ever been expressed or otherwise documented by relatives or others who came into contact with the child, either about the nature or quality of his care.

In early December 2016, law enforcement authorities in Petrozavodsk, Mr. Dmitriev's city of residence, received an anonymous letter accusing the historian of taking inappropriate photos of the child, accompanied by two photographs. The letter asked law enforcement to act on this information. To this day, it is unclear who authored that letter, and the authorities appear to have never attempted to identify that person or otherwise validate the letter's origins.

On 10 December 2016, a week after receiving the letter, a district police officer summoned Mr. Dmitriev, and told him it was in order to clarify some concerns in respect of his hunting rifles. Mr. Dmitriev spent four hours at the police station for this purpose. Upon returning to his home, he discovered that his apartment had been broken into.

Three days later, police arrested Mr. Dmitriev at his home. His apartment and his personal computer were searched by police who discovered a computer file containing photographs, including some of the child. While this police operation was underway, the child welfare authorities took steps to remove the child from school and then transferred the child to a rehabilitation center. Neither Mr. Dmitriev nor anyone in his family were notified of this action. The next day, one of the historian's other children visited their sibling at the rehabilitation centre. The child complained of being scared and asked to return home. This was the last time the siblings were able to meet in person.

On 15 December 2016, the authorities opened a criminal case against Mr. Dmitriev for allegedly using minors to produce pornographic materials. He was placed in detention to prevent him, it was said, from placing the child under pressure. Meanwhile, the authorities transferred the guardianship of the child to the biological grandmother, despite having previously denied her guardianship.

Mr. Dmitriev's adopted child was interviewed and physically examined in January 2017. Neither medical nor psychological examinations found evidence

¹ To protect the interest and privacy of the child, no specific mention as to their age, gender, and other identity markers have been included in this letter.

of physical or sexual abuse. The child testified that Mr. Dmitriev had never done anything strange or unpleasant. The same month, the child was transferred some 600 kilometers away from Petrozavodsk, where the child had been living for eight years with Mr. Dmitriev, to the grandmother's house. In February 2017, the child sent a letter to Mr. Dmitriev indicating the hope that Mr. Dmitriev would be released and asking for a response if possible.

In April 2017, Mr. Dmitriev was charged on three counts of child abuse and one count of illegal firearms possession. The child abuse charges were based on testimonies of State experts, witness statements, and nine family photos out of the 239 discovered on Mr. Dmitriev's computer. The latter charge related to the discovery by police of modified parts of a hunting rifle in his apartment.

The court hearings lasted a full year. In April 2018, after successive experts found that the photographs were not in any way sexual but designed to monitor the child's recovery, a court ruled that Mr. Dmitriev was not guilty of child abuse but found him guilty of illegal possession of a firearm. He was sentenced to two years and six months in prison. Taking into account Mr. Dmitriev's already lengthy detention, the court allowed him to return home for the remaining three months of his detention but prohibited him from leaving Petrozavodsk.

A week later, the prosecutor and the child's biological grandmother appealed the sentence. At this point, without warning, all written communication between Mr. Dmitriev's family and the child stopped.

In May and June 2018, the authorities interrogated the child once again. The child was reportedly brought to the verge of tears and felt humiliated by the aggressive questioning of the investigator. The testimony obtained from that interrogation served as the basis for a new charge being brought against Mr. Dmitriev of sexual assault against a person under 14 years of age. He was re-arrested in August 2018.

In October 2018, the prosecutor who had led Mr. Dmitriev's case since its inception suddenly resigned from her post. New hearings began against Mr. Dmitriev in December 2018 and continued for two years.

In October 2019, more than two hundred Russian writers, scientists and cultural figures issued a public letter stressing that the lack of objectivity in pursuit of Mr. Dmitriev's prosecution means that the life of the child had also been destroyed.

In April 2020, the Petrozavodsk pre-trial detention center, where Mr. Dmitriev is being held, detected two cases of coronavirus infection. However, subsequent appeals for Mr. Dmitriev to be placed under house arrest, given concerns for his health after several years in pretrial detention including an unbroken stretch since mid-2018, were dismissed by the Petrozavodsk City Court.

In June 2020, 400 scientists from around the world called on the Russian authorities to release Mr. Dmitriev and to guarantee academic freedom and the

pursuit of research about the Gulags.

In July 2020, the Petrozavodsk City Court found him guilty of child sexual abuse and sentenced him to three and a half years of imprisonment, but acquitted him of other charges.

In September 2020, the Supreme Court of Karelia finalized the appeal against the initial ruling and found Mr. Dmitriev guilty and increased his sentence to 13 years in a high security prison colony. The Supreme Court remanded the case to the lower court for further hearings over charges of producing pornography using minors as well as of lecherous activities against minors. If Mr. Dmitriev is found guilty of these other charges, his 13-year sentence could be further increased.

A third appeal has now been lodged and accepted by the Petrozavodsk City Court. However, despite this, on 24 November 2020, a judge ruled that Mr. Dmitriev must remain in custody.

Concerns that Mr. Dmitriev was prosecuted on trumped up charges and in proceedings that failed to meet fair trial guarantees were raised by Members States of the Organization for Security Cooperation in Europe as well as the Commissioner for Human Rights of the Council of Europe. These States and regional actors called on the Russian authorities to release Mr. Dmitriev, to restore his human rights, particularly in light of his age and given the coronavirus pandemic, and they urged Russia to create a safe environment for human rights defenders, including Mr. Dmitriev, to undertake their work.

It is further noted that, while in detention, Mr. Dmitriev has been honored with several awards in Russia and abroad for his scientific and human rights work. Further, his new book, “Sandarmokh – the Place of Memory” has now been published.

Excavations of Sandarmokh memorial

On the anniversary of World War II in 2016, the military television channel Zvezda aired a claim that thousands of Red Army soldiers had allegedly been killed by Finnish forces and buried at Sandarmokh memorial. In June 2018, with the support of Russia’s Ministry of Defense, the Russian Military and Historical Society arrived in Karelia to excavate the Sandarmokh memorial to identify the soldiers that had allegedly been killed there. Mr. Dmitriev and International Memorial, a human rights organization which, among its many activities, seeks to shed light on atrocities committed during the Great Purge, repudiated the Russian Government’s hypothesis that the Sandarmokh mass graves contained the remains of Red Army soldiers.

Relatives of the victims of the Great Purge issued a letter to the authorities asking that the excavation be halted in order to protect the integrity of the site and to prevent further disturbance of the remains of the deceased. Further, the Sandarmokh Memorial is officially recognized as a regional historical cultural memorial, and therefore any excavations or other work that may compromise its integrity can occur only after an assessment by a relevant government organ who should then document that such work is needed and on what grounds. It

would seem that the Ministry of Defense and the others involved began excavating the site without requesting, or receiving, the mandated assessment. Thus, it would appear that the excavation was conducted, not only in violation of the wishes of the relatives of the victims and against expert opinion, but also in contravention of the relevant law and regulations.

The initial excavation ended in late August 2018, after the discovery of the remains of reportedly five individuals. In September 2018, the authorities held a press conference but presented no findings from the excavation and instead focused on justifying the excavation and on asserting its legality. The excavations then continued in the following year, despite further pleas against this from the families of victims of the Great Purge.

Mass graves, other memorials and systematic lack of investigations and adequate compensation

A general law on rehabilitation of victims of political repression was adopted by Russia in 1991 that admits violations of rights of citizens by the Soviet state and creates a process to clear the names of individuals imprisoned or executed during the Soviet period for political crimes and to seek remedy. However, the law has been ineffective and it is very difficult to obtain compensation. The Russian authorities may be considering amending the law on the rehabilitation of political repression, almost thirty years after it was initially adopted.

No official body has been mandated by the Russian government to establish, in an open and transparent manner, a full public record and thus public memory of the atrocities committed between 1930-1940, nor has any official body been mandated to investigate individual or collective responsibility for them.

Many mass burial sites that are the product of that era have never been the subject of a systematic inventory and protection by the authorities. Among other consequences, this leaves unanswered the fate of more than a million disappeared in that period.

The remains of the labor camps (including Dalstroj, Belamorkanal and Volgolag) have gradually been destroyed by the weather and the passing of time.

The information received, also alleges that the Russian authorities are attempting to partially obfuscate the true extent of what took place during this period. This is done by excavating existing mass graves under the guise of looking for Red Army soldiers and suggesting that known places in relation to the Gulag are actually places where violations were supposedly committed by foreign actors against Soviet citizens. It is reported that the authorities undermine and delegitimize the important work of organizations such as International Memorial by placing it on the roster of foreign agents. Allegedly, even students have become targets of the authorities' seeming campaign of restricting interest in the topic of Soviet Gulag and other violations. Allegedly, in 2019 security officials interrogated teachers and students about their participation in a two-decade old history contest that challenges the future generation to research Russia's past.

Without making any judgment as to the accuracy of the information made available to us, we express concern that the grounds to arrest and detain Mr. Dmitriev do not seem to have been reasonably established and substantiated on evidence (either factual, documentary or testimonial) during his successive trials, which if true, would make of his prolonged deprivation of liberty in prison not only a grave injustice to him, but also to the child that he and his wife adopted and raised for several years. His imprisonment could also be aimed at silencing him and delegitimizing his research, and through it delegitimizing and discouraging further research into the history of the 1936-1938 “Great Terror” period and the Gulag. If this is the case, his imprisonment would constitute persecution on the ground of his opinion, the free and peaceful expression of his views, his right to research historical matters without political interference, through which he has been promoting and defending for years the right to truth, justice and memory due to both the victims of these purges, their families, and future generations about the recent history of their country.

While allegations of sexual abuse or exploitation of children are extremely serious and should be thoroughly and independently investigated, such investigations should be undertaken in good faith and without bias. We are concerned that in this case the prosecution appears to have been brought as a reprisal for Mr. Dmitriev’s research. We are concerned that this could be part of a larger, concerted effort by certain authorities to hamper historical research and prevent new evidence emerging from such research, that may call into question official history of the Soviet Union period, bound by its nature, to be constantly revised as new evidence is excavated and produced by researchers, historians and archaeologists.

The alleged excavations of Sandarmokh memorial by the army without respect for the wishes of the relatives and against existing laws and regulations, and the lack of investigations into the tragedy of all those who were disappeared and killed during the Great Purge, as well as the lack of protection of relevant sites and the remains of labour camps, are also ground for concern.

In view of the above, we respectfully call on your Excellency’s Government to promptly review the case of Mr. Dmitriev and in the meanwhile to release him and allow him to return home and pursue his life and research efforts, until fair judicial proceedings determine in a transparent manner whether the charges that led to his imprisonment are grounded on reliable evidence. We also encourage your Excellency’s Government to ensure that a victim-centered and human rights compliant law is promptly adopted in compliance with relevant international norms ratified by the Russian Federation to ensure unhindered research into the past, and allow the victims of the Gulag and their families to claim reparation to which they should be entitled.

In light of these allegations, the imprisonment and continued proceedings against Mr. Dmitriev appear to be incompatible with articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which the Russian state ratified on 16 October 1973, which guarantee the right to liberty and security of persons, the right to a fair trial and the right to freedom of expression, respectively. The existence of a mass grave almost invariably points to a violation of the right to life as set out in article 6 of the ICCPR. We also draw your Excellency’s Government’s attention to considerations of the human right to the last rites attached to the dignified treatment of the body in death and of its remains. These civil, cultural and religious rights are largely attached to the family of the deceased and, under international law,

must be upheld.

The right to truth is owed by the State to the victims, their families and to the larger society. This requires that the facts of the crimes of the past, are brought to light through independent research so that people know what happened to their relatives and the country at large, and the public memory of those events is preserved. These rights to truth and to know, are related to the existence, treatment and future management of mass graves; they are also the rights of future generations and, in order to reduce the risk of repetition, should be respected and implemented.

The Special Rapporteur on extrajudicial, summary or arbitrary executions highlighted in her most recent report to the General Assembly, the emotional, personal, religious, social, legal and historical significance of mass graves for the families of those whose remains are there buried, and also for survivors, affected communities, the countries concerned and for all humanity. The Special Rapporteur specifically noted that “under no circumstances should the existence of mass graves be denied or covered up. Sites must not be damaged or destroyed, and those searching for or speaking of mass graves must not be imprisoned, threatened or silenced. Such acts amount to multiple human rights violations, including of the prohibition against enforced disappearances, the obligation to investigate extrajudicial killings, the right to truth, the suppression or annihilation of individual identity, as well as of collective cultural, racial, ethnic, religious, political or other identity in death,” (A/75/384, para. 61).

We recognize that your Excellency’s Government has taken some positive steps towards explaining the brutal past of the Gulag, including events of the Great Purge. The 2017 creation of the national monument of political repression in Moscow, as per the orders of President Putin, is one important symbolic gesture. However, symbolic measures lack merit if their purpose is to create a one-sided interpretation of events, or worse still, to give birth to a false memory of the nature and circumstances of past crimes, whatever their scale. It is for this reason that, in respect of the treatment of mass graves, the Special Rapporteur on extrajudicial, summary or arbitrary executions has suggested that “the goal must be to create the conditions for a debate within society on the causes and consequences of these past crime and on the attribution of direct and indirect responsibility, in order to make it more possible to go beyond ‘completely separate and unreconciled accounts of what had happened,’ and to explain a brutal past without justifying it, thereby easing existing tensions and allowing society to live more peacefully with the legacy of past divisions,” (A/75/384, para. 79).

Only through such lawful and respectful handling of mass graves can your Excellency’s Government meet its obligations of non-repetition and prevention of such atrocities as those of the Great Purge and to the rights of victims to reparation; all of which obligations are elaborated on at length in the relevant standards.

However, the arrests and sentencing of Mr. Dmitriev on what appears to be manifestly trumped-up charges appears to be part of an effort to minimise the space for discussion and debate of the human costs and consequences of Soviet political repression.

We would like to remind your Excellency’s Government that “for the dignity of all directly impacted and out of respect for those killed or disappeared, the process for deciding on the conditions of memorialization and of public display, if any, of human remains should be advanced only once all stakeholders have been given a voice.”

(A/75/384, para. 77). That indeed is how the Sandarmokh memorial, for which Mr. Dmitriev worked over so many years, came about – through full and open consultation with those most affected. However, the alleged manner of the excavation activities sponsored by the Ministry of Defense at the Sandarmokh memorial are precisely counter to this and thus violate the rights and dignity of the victims of the Great Purge and of their surviving relatives.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal grounds for the arrest and detention of Mr. Dmitriev and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR. Please explain if Mr. Dmitriev has had access to legal counsel from the moment of arrest?
3. Mr. Dimtriev was acquitted on 5 April 2018 by the Petrozavosk City Court and cleared of the charges of child pornography and child abuse. On which factual and legal grounds was this acquittal overturned?
4. Please provide information on the new charges that were brought after his acquittal, including when each charge was brought, the evidence on which they were based and the evidence on which basis the Petrozavosk City Court found him guilty in July 2020?
5. Has the purported victim of Mr. Dmitriev's allege abuse, whose testimony may be critical, been confidentially collected by the investigators, independent experts and the court during the retrial? Were the investigators involved trained in interviewing children?
6. Has Mr. Dmitriev's defence lawyer been granted access to the full investigation and prosecution file against his client?
7. On what ground did the Karelian Supreme Court overturn the sentence of 3 years and 6 months in September 2020 and increase it to 13 years imprisonment?
8. Please explain why the criminal investigation into Mr. Dmitriev's alleged mistreatment of the child took such a lengthy period? Why has Mr. Dmitriev been kept in detention during the majority of the investigation and trial stages of his case?

9. Please provide information on Mr. Dmitriev's imprisonment on appeal on the basis of evidence that was considered inadequate to merit imprisonment at the first stage and how this is compliant with Russia's human rights obligations including in relation to fair trial and due process guarantees?
10. Please provide information on any steps taken by your Excellency's Government to acknowledge and preserve the memory of Soviet political repression and particularly of mass graves and sites of mass execution?
11. Please provide information on whether the Ministry of Defense obtained an assessment as required by law to allow it to excavate the Sandarmokh Memorial? If so, what were its results?
12. Please explain why the Ministry of Defense rejected requests of the families of the victims buried in Sandarmokh not to go forward with plans to excavate the memorial?

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

We would like to inform your Excellency's Government that after having transmitted a joint communication to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the joint communication and the regular procedure.

We may publicly express our concerns in the future as, in our view, the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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Mary Lawlor
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Annex

Reference to international human rights law

In connection with the 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 the International Covenant on Civil and Political Rights (ICCPR) which your Excellency's Government ratified on 16 October 1973, including articles 2, 6, 9, 14 and 19 which guarantee the right to remedy, the right to life, the right to liberty and security, the right to a fair trial and the right to freedom of opinion and expression.

Article 19 of the ICCPR provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19(3) of the ICCPR. Any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. The Human Rights Committee has affirmed that "States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression". (General Comment 34 para. 23) Attacks on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. (*id.*) Journalists and those who publish human rights-related reports are frequently subjected to threats, intimidation and attacks because of their activities. "All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress." (*id.*) Under no circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.

With regards to the **duty to investigate**, we would like to refer to 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.

The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) also provides detail on the duty to investigate potential unlawful deaths "promptly, effectively and thoroughly, with independence, impartiality and transparency." In particular we note the 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). The duty of promptness does not justify a rushed or unduly hurried investigation. We remind that 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 (para 25).

We would also like to recall the duty of States, as established in the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, to undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and to ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished (principle 19). As established by the Human Rights Committee in its General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations.

We would like to 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 (Human Rights Committee, General

We further note that the family members have **a right to truth** which means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s) (General comment on the right to the truth in relation to enforced disappearance, A/HRC/16/48). We would also like to recall that Principle 2 of the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states that Every people has 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. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.

We would also like to recall the right of victims to receive **adequate, effective and prompt reparation for the harm suffered**, established pursuant to article 2.3 (a) of the ICCPR on access to effective remedy, and to have access to relevant information on reparation mechanisms, as recalled in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (principles 10, 11 and 15).

Moreover, we would like to recall the duty of States to **preserve memory of past human rights violations**. As established in principle 3 of the updated Set of Principles, “a people’s knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State’s duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments”.

We would also like to draw attention to article 9 of the ICCPR, which in its first paragraph guarantees the **right to freedom from arbitrary detention** and establishes that no one shall be deprived of their liberty except on such grounds and in accordance with such procedure as established by law. In its General Comment No. 35, the Human Rights Committee held that any arrest or detention carried out as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR, including freedom of opinion and expression, to be arbitrary.²

In its third paragraph, article 9 holds that it shall not be the general rule that persons awaiting trial shall be detained in custody. As set out by the Human Rights Committee, **pre-trial detention** must be based on an individualized assessment of the reasonableness and necessity of such detention for the purposes of preventing flight, interference with evidence or recurrence of the crime alleged.³

We also wish to refer to Deliberation No. 11 of the Working Group on Arbitrary Detention, where the Working Group underlines that **pre-trial detention should only be used in exceptional cases**, that automatic pretrial detention of persons is incompatible with international law, and that circumstances of each instance of pretrial detention should be assessed; at all stages of proceedings, **non-custodial measures should be taken whenever possible, and particularly during public health emergencies**.⁴ The Working Group also notes that the public health emergency measures introduced to combat the Covid-19 pandemic may limit access to detention facilities, which in turn may effectively prevent persons held in places of deprivation of liberty from attending their court and other judicial hearings, meetings with parole boards or other entities empowered to consider their continued deprivation of liberty, or from holding meetings with their legal counsel and family. This may have an adverse effect particularly on those in pretrial detention, and on detainees seeking a review of a decision to detain them, as well as those seeking to appeal against a conviction or sentence.⁵

With regard to the alleged **violations of due process and of fair trial guarantees**, we would like to recall that article 14 of the ICCPR provides inter alia for the principle of equality before competent, independent and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defence, and the right of accused persons to communicate with counsel of their own choosing.

In this respect, we wish to recall that detained persons should have **access, from the moment of arrest, to legal assistance** of their own choosing. In its most recent report to the Human Rights Council (A/HRC/45/16), the Working Group on Arbitrary Detention highlighted that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty, and that such assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees (see paras. 50-55). The right to legal assistance is also essential to preserve the right to fair trial, as it safeguards the principle of the equality of arms envisaged in articles 10 and 11 (1) of

² Human Rights Committee, *General Comment No. 35 – Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para 17.

³ *Ibid.*, para 38.

⁴ Deliberation No. 11 of the Working Group on Arbitrary Detention on prevention of arbitrary deprivation of liberty in the context of public health emergencies, para. 14.

⁵ *Ibid.*, at para. 20.

the Universal Declaration of Human Rights and article 14 (3) (b) and (d) of the ICCPR.

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

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

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.