



## **Submission for the thematic study by the Working Group on Enforced or Involuntary Disappearances**

The sanctity of fair elections, free from violence and interference, is paramount to upholding not only democracy, but also fundamental human rights. In reality, however, elections are paradoxically fraught with violence. Electoral violence is a subdivision of political violence which involves coercive acts by state and non-state actors to either intimidate or influence victims to manipulate the process and outcome of elections. Such acts are not only a blatant violation of fundamental constitutional rights, but also go against the core values of democracy. Pakistan is one of the many developing countries that has failed to place and implement mechanisms to guarantee the extent of inclusion and protection that a traditional democracy seeks to achieve. It is for this reason that its elections have been said to be inherently undemocratic and persistently marred by violence.

### **Enforced disappearances its rationale**

Pakistan has witnessed the most egregious infringements of human rights during the electoral process. Enforced disappearances are the epitome of such a violation and have been carried out to instil a sense of fear and in breach of various rights enshrined in the Constitution of Pakistan such as, for instance, Article 4 (the right to be dealt in accordance with the law), Article 9 (security of a person), Article 10 (safeguards as to arrest and detention), Article 19 (freedom of speech) and Article 25 (equality before the law). An enforced disappearance has been defined in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) as the arrest, detention, abduction or any form of deprivation of liberty by agents of the state or by individuals or groups with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, placing the victim out of the protection of the law.<sup>1</sup> Such disappearances, in the context of elections, may occur to intimidate candidates and supporters, target journalists and political activists or to stifle dissenting voices. Hence, victims commonly include politicians, activists, and journalists. This not only exacerbates the existing problems incurred by the country, but also undermines its already weak democracy.

### **Victims of enforced disappearances**

A notorious case was the disappearance of Ali Haider Gilani, the son of Pakistan's former Prime Minister, Yousuf Raza Gilani, during a political rally a few days before the polls opened in 2013.<sup>2</sup> While the rationale behind the abduction remained unclear for the most part, it could not be denied that the event disrupted what was already known as a relatively violent election

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<sup>1</sup> "International Convention for the Protection of All Persons from Enforced Disappearance." General Assembly of the United Nations in its resolution 47/133. 23 December 2010.

<sup>2</sup> "Former Pakistani PM's son kidnapped at election rally". VOA News. 9 May 2013.

campaign. Ali Musa Gilani, the brother of the victim, also threatened to halt voting in his district until the issue was addressed and resolved. Raza Rumi, a political analyst, theorised that the kidnapping was likely to intimidate and further pressurise the political party, known as the Pakistan People's Party (PPP), and its supporters.<sup>3</sup> More recent examples include the sudden detentions and abductions of candidates of Pakistan Tehreek-e-Insaaf (PTI) prior to the general elections held on 8<sup>th</sup> February 2024. The former Prime Minister, Imran Khan, referred to these occurrences as a ploy to keep him out of the upcoming elections. A letter addressed to the Election Commission of Pakistan (ECP) identified the names of six senior PTI members who have been victims of enforced disappearances since September 2023 including Sadaqat Ali Abbasi, Usman Dar, Abdul Kareem Khan, Awais Younus, Farrukh Habib and Sheikh Rasheed.<sup>4</sup> Such practices are not only in breach of Pakistan's constitutional rights but also a flagrant violation of a multitude of international covenants such as the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) and the International Covenant on Civil and Political Rights (ICCPR). It appears that these disappearances follow a general pattern whereby upon recovery victims announce leaving their political party and are systematic in the sense that they have been predominantly targeting members of certain political parties. However, politicians have not been the sole victims of enforced disappearance. Amid the violence that had erupted following the arrest of PTI leader, Imran Khan, Jibran Nasir, a lawyer and human rights activist had also been abducted and later recovered.<sup>5</sup>

Considerable evidence exhibits that enforced disappearances are not solely restricted to the context of elections. This topic has therefore elicited a plethora of debate and garnered a variety of narratives and viewpoints. It cannot be denied that the country has failed to put into effect effective measures to prevent such heinous crimes from transpiring which has forced citizens to embark on a journey of endless protests, further putting their lives at stake. For example, four social media activists, namely Salman Haider, Ahmed Waqas, Asim Saeed and Ahmad Raza Nazeer fell victims to such a crime in 2017 and revealed that they were not authorised to speak to the media.<sup>6</sup> A Commission of Inquiry on Enforced Disappearances (COIED) was formed by the government of Pakistan in 2011 to investigate such occurrences and has recently reported an estimate of around 9294 cases in 2023. It is imperative to note that while the inception of such a commission is a necessary step, it has not been as effective in achieving its aims taking into consideration the inability of and problems faced by families of victims from remote areas in the provinces of Sindh, Balochistan and Khyber Pakhtunkhwa to access the commission and in doing so, report the victims. It is for this reason that Gohar Mehsud, a journalist reporting on human rights issues, has stipulated that the figures reported by the commission fail to reflect the reality and true numbers of victims. Imaan Mazari, a lawyer and activist has stated that the commission is "nothing more than a bureaucratic post office."<sup>7</sup>

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<sup>3</sup> "Pakistani candidate kidnapped". The Arkansas Democrat-Gazette. 10 May 2013.

<sup>4</sup> "Khan's party tells Pakistan regulator enforced disappearances being used as 'pre-poll rigging' tactic." Arab News. 21 September 2023.

<sup>5</sup> "Pakistani Human Rights Activist Returns Home After Abduction." Radio Free Europe Radio Liberty. 2 June 2023.

<sup>6</sup> "Second missing Pakistani blogger found, leaves country, says family". Al Arabia. 29 January 2017.

<sup>7</sup> "A looming threat: In Pakistan, enforced disappearances silence dissent." The New Arab. 26

## **Other forms of electoral violence**

Following a fairly long period of political instability and economic downturn, Pakistan held its general election on 8<sup>th</sup> February 2024, which was characterized by electoral violence, restrictions on access to the internet, manipulation of results and a palpable tampering with the process. A few weeks before the polls opened two independent candidates affiliated with PTI, Rehan Zeb Khan and Malik Kaleem Ullah, were shot dead during election campaigns in the province of Khyber Pakhtunkhwa.<sup>8</sup> Pakistan's largest province, namely Balochistan, had also been vulnerable to attacks with two bomb explosions near candidates' offices.<sup>9</sup> The first attack took place outside the office of Asfandyar Khan Kakar, an independent candidate, while the second attack took place less than an hour later outside the election office of a Pakistani religious political party led by Maulana Fazlur Rehman known as Jamiat Ulema-e-Islam.<sup>10</sup> Jan Achakzai, the Information Minister of Balochistan, described these as an attempt to "sabotage elections in the province".<sup>11</sup> The geographic spread of such political violence led to an emergency meeting by Pakistan's Election Commission to discuss the surge in violence. Furthermore, Pakistan's military, following an annual conference, issued a statement that it would not allow anyone to sabotage the "quintessential democratic exercise of conduct of free and fair elections".<sup>12</sup> Electoral violence continued, notwithstanding the military's supposed attempts at curbing such antidemocratic acts.

On 6<sup>th</sup> February 2024, a PPP candidate for a Sindh Assembly constituency in Mirpurkhas, Syed Zulfiqar Ali Shah, fell victim to a similar attack whereby he was shot and wounded by unidentified assailants two days prior to the elections.<sup>13</sup> In addition, Pakistan suspended mobile phone services nationwide on the day of elections. The Ministry of Interior stated that this decision had been taken in response to "recent incidents of terrorism" in the country. This decision was met with considerable criticism primarily by political parties and activists. The Pakistan Tehreek-e-Insaaf party referred to it as a "cowardly attempt by those in power to stifle, dissent, manipulate the elections outcome, and infringe upon the rights of the Pakistani people" whereas Bilawal Bhutto Zardari, the Prime Minister candidate of the Pakistan People's Party, demanded that mobile phone services "be restored immediately across the country".<sup>14</sup> Despite this being an attempt to prevent attacks aimed at disrupting the electoral process, the police reported over 50 attacks.

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July 2023.

<sup>8</sup> "Pakistan election candidate shot dead as violence escalates ahead of nationwide vote." CNN. 1 February 2024.

<sup>9</sup> "Pakistan election: Two blasts kill 28 in Balochistan before vote." BBC News. 7 February 2024.

<sup>10</sup> "At least 30 killed in twin blasts on the eve of Pakistan polls." The Hindu. 7 February 2024.

<sup>11</sup> "28 killed, several injured in bombings in Pakistan day before general elections." Arab News. 7 February 2024.

<sup>12</sup> "Won't allow violence, sabotage of free and fair elections, Pakistan army says." Arab News. 31 January 2024.

<sup>13</sup> "Attack on Peoples Party candidate: A Brush with Death." BNN. 5 February 2024.

<sup>14</sup> "Pakistan's Election Day Marred by Violence and Mobile Phone Service Suspension." Time. 8 February 2024.

Such restrictions on the access to internet were also witnessed prior to the elections to disrupt PTI's virtual election campaign.<sup>15</sup> Moreover, several PTI candidates were forced to run as independent candidates following the Election Commission's decision to ban the party's use of their emblematic symbol. Azim Chaudhry, a political analyst, referred to the treatment of PTI as "pre-poll rigging".<sup>16</sup> Despite the opposition's attempts to undermine the party, early results suggested that out of 257 seats, independent candidates had won 103 seats while the Pakistan Muslim League (PMLN) and Pakistan People's Party had won 73 and 54 seats respectively.<sup>17</sup> PMLN's Nawaz Sharif, nevertheless, declared victory in the election which caused an uproar.

### **Consequences of electoral violence**

Such undemocratic acts can have significant political consequences. Data collected by Niloufer Siddiqui in 2015 as reported in her publication, "Under the Gun", suggested that individuals who had either directly or indirectly been victims to or were witnesses to political violence were less likely to vote.<sup>18</sup> By contrast, it can also foster ethnic parochialism and increase political involvement primarily in support of one's ethnic group. Such violence also leaves a mark on generations and shapes their perception, impacting their future political involvement.<sup>19</sup> For instance, those of Baloch and Pashtun ethnicities have been subject to enforced disappearances for as long as can be remembered with little to no aid from the State, forcing citizens to take matters into their own hands. Organisations such as the Voice for Baloch Missing Persons (VMBP) have reported that the number of missing persons from the province of Balochistan alone go up to around 9000 while the cases highlighted by the COIED fail to address even half of that number. Pakistan's government has failed to take into account the gravity of the situation or respond to the cries of help from across the country. This can be seen in statements given by Anwaar-ul-Haq Kakkar, the caretaker Prime Minister and Sarfaraz Bugti, the caretaker interior minister, that the number of cases reported by such organisations were largely exaggerated, referring to the disappearances as a "small issue."<sup>20</sup>

Another consequence can be discerned in the recent elections in Pakistan following accusations of poll rigging which not only raised concerns within the country but also elicited reactions worldwide. Supporters of PTI as well as other parties held nationwide protests against the delay in results and supposed poll rigging which is an outright violation of the rights of Pakistanis. These protests added to the ongoing cycle of violence prevalent across the country and led to further attacks. The delay in announcing results led to a protest in Shangla which resulted in

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<sup>15</sup> "Pakistan's internet disrupted during virtual rally by Imran Khan's PTI." Deccan Herald. 21 January 2024.

<sup>16</sup> "Ex-Pakistani PM Sharif strikes confidence note in vote marred by controversy, mobile phone shutdown." AP News. 5 February 2024.

<sup>17</sup> "Election 2024 Results: Independents strengthen lead, PML-N and PPP follow closely." Samaa. 9 February 2024.

<sup>18</sup> Siddiqui NA. Under the Gun. In: Under the Gun: Political Parties and Violence in Pakistan. Cambridge: Cambridge University Press; 2022:i-ii.

<sup>19</sup> Lupu, Noam, and Leonid Peisakhin. "The Legacy of Political Violence across Generations." American Journal of Political Science 61, no. 4 (2017): 836–51. <http://www.jstor.org/stable/26379530>.

<sup>20</sup> "In Balochistan, Families Demand Answers for Forced Disappearances." The Diplomat. 12 December 2023.

more violence and caused 3 deaths.<sup>21</sup> On 10<sup>th</sup> February 2024, an estimate of 3 police officers were killed and several supporters injured during a protest in North Waziristan Tribal District.<sup>22</sup> These incidents suggest that an anticipated reaction to such practices is protests by citizens for better protection of their constitutional rights which inevitably results in more violence.

### **Obstacles for accountability**

The first major issue that hinders the prevention of enforced disappearances is the impunity enjoyed by certain state and non-state actors as well as the lack of accountability to set precedent for the punishment of such crimes. The culture of immunity that has existed in Pakistan since time immemorial has fostered an atmosphere of rage and has perpetuated the unfairness caused by such an exemption from the law. One example is the case of Zubair Ahmed Mujahid, a senior journalist, who was murdered in 2007.<sup>23</sup> The police investigating the case had mishandled the evidence and failed to investigate the threats made against him. Upon further investigation into the case by the Committee to Protect Journalists (CPJ), Reporters Without Borders (RSF) and Free Press Unlimited (FPU) the police formed the prime suspect as a majority of Mujahid's reporting had been around the police and he had subsequently also been threatened by a police official.<sup>24</sup>

Most of the cases follow a similar pattern with the cases ending in cold storage. Despite the enactment of laws such as the Protection of Journalists: the Sindh Protection of Journalists and Other Media Practitioners Act 2021 and the Protection of Journalists and Media Professionals Act 2021, the government has failed to provide protection and the laws remain non-operational with little being done to counter the impunity of crimes against journalists. This entrenched culture of impunity is further linked to the issue of accountability as highlighted above that a failure to investigate such cases also prevents the provision of justice, thus failing to hold perpetrators accountable for their crimes. This impunity can also be discerned in the disappearances of PTI members, an issue that has still not been fully addressed by the government. The chairman of the political party referred to it as "the most blatant and open form of pre-poll rigging happening in the country."<sup>25</sup> To criminalise enforced disappearances and the immunity surrounding the heinous crime, the National Assembly in 2021 passed certain Human Rights Bills to address such issues including the Protection of Journalists and Media Professionals Bill and the Enforced Disappearances Bill.<sup>26</sup> However, the problem persists with a regrettably high surge in the number of cases. The Islamabad High Court in 2015 attributed the state's inability to safeguard the rights of citizens to the inefficiency of the Prime Minister

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<sup>21</sup> "Three killed as protest turns violent in Shangla." The News. 10 February 2024.

<sup>22</sup> "3 Policemen killed during protests against alleged poll rigging in Pakistan." Asia Pacific. 10 February 2024.

<sup>23</sup> "Mirpurkhas: Journalist shot dead". Dawn. 25 November 2007.

<sup>24</sup> "Journalism is not a crime. What's criminal is the culture of impunity for journalists' killers in Pakistan". Dawn. 2 November 2023.

<sup>25</sup> "Khan's party tells Pakistan regulator enforced disappearances being used as 'pre-poll rigging' tactic." Arab News. 21 September 2023.

<sup>26</sup> "NA passes journalists Protection Bill, five other bills: Dr Mazari". Associated Press of Pakistan. 13 November 2021.

and his Cabinet.<sup>27</sup> The failure of the government to address such issues and identify the root cause of the problem explains why citizens' expectations of any improvements in the situation appear bleak and dismal.

### **Recommendations**

The Commission of Inquiry on Enforced Disappearances has proved ineffective in not only reporting the true number of cases present in Pakistan but has also failed in providing even an iota of hope to the families of victims. The gravity of the situation has been acknowledged by the apex court more recently. The Chief Justice of Pakistan, Qazi Faez Isa, has stated that the Supreme Court seeks to solve the problem "once and for all". Additionally, he requested the court to declare that the Commission "does not adequately comply with legal and international standards".<sup>28</sup> The International Commission of Jurists (ICJ), stated in 2020 that "a Commission that does not address impunity, nor facilitate justice for victims and their families, can certainly not be considered effective".<sup>29</sup> Pakistan should:

- Ratify the ICPPED;
- Reform its existing Commission, ensuring accessibility; or
- Replace it with a new one which complies with international laws and standards;
- Ensure that investigation of cases takes place in an independent manner;
- Ensure criminal accountability to set precedent to prevent such incidents;
- Establish witness protection units for witnesses and recovered victims; and
- Offer reparation programmes for the affected parties.

It is only when the voices of citizens are truly heard and when those in power take accountability for their inefficiencies that the problem can be addressed.

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<sup>27</sup> "End Pakistan's Enforced Disappearances". Human Rights Watch. 22 March 2021.

<sup>28</sup> "Enforced Disappearances: 'Let's solve the problem once and for all,' CJP Isa remarks." Islamabad Post. 2 January 2024.

<sup>29</sup> "Pakistan: Commission of Inquiry on Enforced Disappearances has failed in providing justice to victims." International Commission of Jurists. 8 September 2020.