

Inputs by Defence of Human Rights in view of special initiative marking the 30th Anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance

### **Organization: Defence of Human Rights Pakistan**

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### **Questionnaire**

1. **Can you please share examples of how the Declaration on the Protection of All Persons from Enforced Disappearances (hereinafter, “the Declaration”) has contributed to the development of domestic legislation in your country (or countries in focus)? Can you kindly share examples of domestic provisions that were adopted in your country (or countries in focus) as a result of the implementation of the Declaration?**

Ans: In Pakistan, the domestic law regarding enforced disappearances was introduced in the lower house of the parliament on June 7th 2021. The law was named **“Criminal Law Amendment Act-2021”** It contains a definition of enforced disappearance, which is relatively close to the Declaration. Had there been no Declaration, it would have been impossible for governments to clearly identify and describe Enforced disappearance in its entirety. The draft law is however not complete or comprehensive and lacks necessary mechanisms to carry it out.

**The Enforced Disappearance Bill not yet passed by the Senate in Pakistan has the following wordings taking the guidance from the Declaration.**

1. Short title and commencement. - (1) This Act shall be called the Criminal Laws (Amendment) Act , 2021 .

(2) It shall come into force at once.

2. Insertion of new section 52B, Act XLV of 1860. In the Pakistan Penal code, 1860 (Act XLV of 1860) hereinafter referred to as the Penal Code, after section 52A, the following new section 52B shall be inserted, namely :-

'' 52B. "Enforced disappearance: - The term enforced disappearance relates to the arrest, detention, abduction or any other form of deprivation of liberty by an agent of the state or by person or group of persons acting with the authorization , 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, which place such a person outside the protection of the law .

Explanation. \_ There are three constitutive elements required to be present for an act to be classified as an ''enforced or involuntary disappearance and include:

a) an unlawful or illegal deprivation of liberty or a deprivation of liberty that was legal but no longer is;

b) an act allegedly carried out by agents of the State or by person or group of persons acting with the support, authorization, or acquiescence of the State; and

c) refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person."; and

3. Insertion of the new section 512 and 513 (Act XLV of 1860). \_ In the said Penal code, after section 511, the following new section shall be added, namely: -

**512. Forcible or involuntary disappearance.** \_ Whoever commits, orders, solicits or induces the commission of attempts to commit, is an accomplice to or participation in the forcible or involuntary disappearance of a person or a group of persons is said to cause forcible or involuntary disappearance of that person.

**513. Punishment for forcible or involuntary disappearance. -** Whoever illegally and without lawful authority causes forcible or involuntary disappearance of any person from Pakistan or within Pakistan shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to a fine.

**514. That allegation or complaint in respect of Enforced Disappearance etc.-** Whoever files a complaint or gives information that proves to be false he or another person has been subjected to Enforced, Forcible or Involuntary Disappearance, or an Attempt has been made in this regard, he Shall be guilty of an offense punishable up to five years imprisonment and fine up to Rupees One hundred thousand.”

(This clause 514 was entered by the Committee on Interior in this Bill)

**4. Amendment of Schedule II, Act V of 1898.** \_ In the Code of Criminal Procedure, 1898 (Act V of 1898 ), in Schedule II, after section 511, in column 1 and the corresponding entries relating thereto in columns 2 to 8, the following shall be added, namely :-

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 512 | Forcible or involuntary disappearance | May arrest without warrant  | Ditto  | Not bailable | Not compoundable  | Imprisonment of either description for a term which may extend to ten years and fine  | Court of Session  |

***STATEMENT OF OBJECTS AND REASONS***

*It is the rule of law, specifically adherence to Rule of Law that is the hallmark of any democratic society. The practice of enforced disappearances is a particularly heinous crime not only because it removes human rights from the protection of the law but also due to the inherent cruelty inflicted upon families as a consequence of denial of information concerning the disappeared person. Enforced disappearance is specifically against the Constitution and international commitments made by Pakistan through ratification of the ICCPR.*

*Additionally, the United Nations General Assembly, in its resolutions 477/133 of 18th December, 1992 has emphasized that enforced disappearances undermine the “deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms.”*

*The object of this bill is to criminalize the heinous crime of enforced disappearance with impunity that surrounds the practice of enforced disappearances and bring the perpetrators of these crimes to justice so as to provide closure to the families who are in immense pain owing to the fact that the fate and whereabouts of their loved ones are still unknown.*

*In Order to carry out the mandate of the law, the draft bill has been prepared to achieve the above said objects.*

***(Sheikh Rashid Ahmed)***

***Minister for Interio****r*

***Of Pakistan***

1. **Can you please indicate the status of the Declaration in the domestic legal order in your country (or countries in focus), i.e. with respect to ordinary legislation?**

Ans: There is no domestic legislation in Pakistan, so the International Declaration is something the Human Rights defenders are struggling for. In Pakistan, the government introduced a bill namely “**Criminal Law Amendment Act 2021**” that criminalizes enforced disappearances, but it has a Clause (514) in which the victim of Enforced Disappearance has to prove the incident and it suggests 5 years prison in case the victim is unable to prove the allegation on the law enforcing agencies. Further, it adds to say that the perpetrators will not be accountable. That victim-blaming law is passed by parliament and is yet to be presented and passed by the Senate of Pakistan.

 An update by the Government on the status of the proposed bill is as reported in the leading newspaper of the country as follows; <https://www.dawn.com/news/1667443>

1. **Can you please illustrate if the provisions of the Declaration can be invoked before domestic courts in your country (or countries in focus) and, if so, share examples of case law where domestic courts made reference to the Declaration in their verdicts (if possible, summarizing to which provisions of the Declaration reference was made and how they were interpreted)?**

Ans: There are many examples in Pakistani courts where any provisions of the Declaration were used while pleading the cases of the Disappeared through Human Rights petitions. One example is the case of Disappearance of Yaseen Shah from Mardan. Many years after his disappearance he was located in an Internment center of KPK province but as the Supreme Court of Pakistan ordered the production of all 35 detainees which were named to be present in the Malakand internment center, all the 35 were again taken away and disappeared by the Army. In deciding this case Chief Justice of Pakistan mentioned the whole declaration in his order quoting the definition of enforced disappearance from the declaration. This order was given in December 2013 in the case of Muhabbat Shah versus the Government of Pakistan, filed for the disappearance of his brother Yaseen Shah. Human Rights Case No. 29388-K of 2013 date of hearing 9th and 10th of December 2013 Justice Iftikhar Muhammad Chaudhry mentioned Article 1 of 1992, UN Declaration on Enforced Disappearance.

1. **Can you please illustrate how the Declaration contributed to the development of international law on enforced disappearance?**

Ans: The countries which signed the “Declaration on the Protection of All Persons from Enforced Disappearance” have been able to eliminate enforced disappearances to some extent. Accountability of perpetrators is the only factor that protects all Persons from Enforced Disappearances Many countries took inspiration and guidance from the Declaration for example, in Philippines domestic law was enacted, in Srilanka the UN’s Convention ICPPED has been signed, similarly in Thailand etc. The question however remains how much the countries make use of and respect the International Declaration and Convention on the Protection of All Persons from Enforced Disappearances.

1. **Has your State (or countries in focus) ratified or acceded to the International Convention on the Protection of All Persons from Enforced Disappearances? If your State (or countries in focus) has not yet ratified or acceded to the Convention, is there any pending project or initiative to do so?**

Ans: Pakistan has not ratified the Convention on the Protection of All Persons from Enforced Disappearance, this factor supports the perpetrators that is why the rate of Enforced Disappearances in Pakistan is very high. Therefore, on the part of the government, there is no visible initiative or intention to ratify the International Convention.

1. **Can you please illustrate how the Declaration has influenced international jurisprudence on enforced disappearance? In particular, can you share examples of judgments/verdicts/Views or decisions delivered by international courts or mechanisms where reference was made to the Declaration (if possible, summarizing to which provisions of the Declaration reference was made and how they were interpreted)?**

***Ans: Not applicable***

1. **Can you kindly indicate the main obstacles – practical and legal – encountered by you/your country (or countries in focus)/ institution/organization in the implementation of the Declaration (if possible, making reference to specific provisions and concrete examples)?**

Ans: The main obstacle in implementation of the Declaration is that democracy exists only in name and in reality, all policy decisions are made by non-civil forces. There is another bigger problem which is that Pakistan's criminal procedure code is outdated and has many loopholes. Resultantly, all the efforts and struggles of the Human Rights defenders, to get the ICPPED incorporated in the Pakistani law, failed. Therefore as a last resort the human rights community campaigned and advocated for implementation and passage of domestic law on enforced disappearances. The proposed BILL which came in June 2021was named "Criminal laws Amendment Act 2021". The law as it came in its primary position and spirit was not detailed but well-meaning and sincere in its intentions to provide legal remedy to the victims of enforced disappearances and punish the perpetrators of this crime. While the initial draft of the proposed legislation makes the offense of enforced disappearances punishable with imprisonment up to 10 years of term, United Nations Special Procedures, opposition parties and human rights groups had reservations on the relatively shorter term of sentence as compared to the severity of the crime and the lack of legal mechanism in the proposed bill to hold perpetrators accountable. There are serious concerns that the proposed bill is not according to the international standards and the International Declaration on the Protection of all Person from Enforced Disappearance (ICPPED). However, it did adopt the similar definition of Enforced Disappearance as mentioned in the Declaration.

As per rules the bill went to the Standing Committee of Interior headed by Raja Khurram Shehzad Nawaz for further deliberations before being presented to the Parliament for voting. However, the Standing Committee recommended changes to the original bill and added such new clauses in the proposed bill which on one hand shows the growing fear among the perpetrators of the pressure of the human rights community and on the other hand intend to intimidate victims of enforced disappearance to the last degree. If the bill is passed with the new clauses added, no one in Pakistan will ever dare to launch a complaint against enforced disappearance of their loved one or raise their voice.

One of the clauses added by the Standing Committee has insert a new section 514 in Pakistan Penal Code which reads:

**The allegation or complaint in respect of Enforced Disappearance etc**.

***“Whoever files a complaint or gives information that proves to be false he or another person has been subjected to Enforced, Forcible or Involuntary Disappearance, or an attempt has been made in this regard, he shall be guilty of an offense punishable up to five years imprisonment and fine up to Rupees One hundred thousand.”***

This amendment restricts the possibility to lodge a complaint with regards to enforced disappearance, a clear conflict can be seen with the fundamental right stipulated through Article 10 of the Constitution of Pakistan which protects against illegal deprivation of life and liberty. Already it is passed by the National Assembly and awaits debate in the Senate of Pakistan as of December 2021.

1. **Can you kindly illustrate whether your country (or countries in focus) has previous experiences with regard to technical cooperation and assistance from Special Procedures and whether you think this could be an effective means to further disseminate and foster the implementation of the Declaration? What other kinds of initiatives could be favoured?**

Ans. We are not aware of any interaction between the Government of Pakistan and UN Special Procedures except for the communications shared in the press releases. However, Defense of Human Rights has close association and cooperation with the UN’s WGEID, Pakistan desk officers, CED, Human Rights Defenders, UNVFVT and with most of the Special Procedures, which are regularly briefed about the situation in Pakistan regarding the campaign against Enforced Disappearances and the proposed law. Upon our request many times statements were issued by UN's WGIED and special communication were sent to the government of PAKISTAN to keep the international standards of justice under consideration, while passing the BILL against enforced disappearances. For example, the Press Release by Special Procedures; issued on the 10th December International Human Rights Day of 2021.

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27937&LangID=E>

This is, no doubt, a great external pressure and help to the victims of Enforced Disappearances, by the Special Procedures of UN, however this needs to be continuous and clubbed with more actions and campaigning on ground to support their statements.

The UN can help the victims further by active engagement with the relevant government's Ministers and head of the States, in person as well as through targeted use of social media handles. Pakistan is a country where Enforced Disappearances are rampant, ongoing and systematic. There are new cyber laws in place to avert the criticism and pressure exerted by social media upon the government policies and its failures. Therefore, it is an established truth that the social media pressure is seriously felt by the relevant Pakistani authorities.

A follow-up visits by Chair Rapporteur of WGEID and members to Pakistan and scheduled meetings with victims, Human Rights defenders and stakeholders in Pakistan is highly recommended. It will not just put the right pressure on the government and stakeholders, but the UN will be able to take direct complaints interviewing the victims and thus also educating the victims and Defenders about UN mechanisms and Declaration.

1. **Can you kindly illustrate any activity undertaken in your country (or countries in focus) to raise awareness and further disseminate the content of the Declaration? To your knowledge, has the Declaration been translated in any local language other than the six UN languages? If so, could you please share a copy?**

Ans. There is hardly any mentionable activity regarding the Declaration in which Defense of Human Rights does not try to disseminate the information regarding the Declaration as we know that it is the “Best” solution for the issue of the Disappeared in any country. Collectively as well, Defense of Human Rights Pakistan and other HR groups do lobby and advocacy for the ratification of the UN Convention and Declaration. Defense of Human Rights has conducted National and provincial consultations to give recommendations for the solution of this burning issue and to build awareness about the Declaration, in which advocates, victim families, civil society and political parties participated and gave their opinion about ratifying and signing the convention. It is one of the most important and grave concerns for the stakeholders to eliminate Enforced Disappearances from Pakistan. Yes the Declaration has been translated in the national Urdu Language, and can be found in the educational pamphlets about the issue of the enforced disappearances.

1. **Can you kindly share information on existing training programs (directed both at authorities and at civil society organizations) in your country (or countries in focus) where the Declaration is analyzed and disseminated? Any information on the nature and frequency of such training is welcome.**

Ans: There are considerable efforts done by Defense of Human Rights and major lobbying, activity done over years and years directed towards the authorities and government officials, however repeatedly, they were found, not ready to listen and accept the complete legal solution for the Disappeared of Pakistan. In the support group of Defense of Human Rights the Advocates, the Victim families and Human Rights defenders are given briefing about the Declaration and since it is a final and complete legal framework for the Protection of All Persons Against Enforced Disappearances, there is discussion on how we can get the Government of Pakistan to signing and ratifying the Convention. The nature of these activities are meetings with Parliamentarians and Senators, Awareness building seminars, National Consultations, press briefings and even protest demonstrations. And the frequency is once a month and sometimes these activities take place after a fortnight.

1. **Is there any other information that you deem relevant for the purposes of the study?**

Ans: It should be noted that the UN Convention for the Protection of All Persons from Enforced Disappearance is better known in Pakistan as compared to the Declaration. In Pakistan both the victims and defenders want the United Nations to help them, so that the Declaration is accepted, and Convention is signed and used in the legal mechanisms of the country, so that its reference is given more often, while pleading the cases of the disappeared in Pakistan. The courts in Pakistan, unlike many Asian countries, are taking up the cases of the disappeared in all the four provinces of Pakistan, and the precedents being set are quite encouraging, however, sometimes the families do have to face a wall. The case of Mahera Sajid against the State being fought in the Islamabad High Court, is worth mentioning in which for the first time in the history of Pakistan’s disappearance a monthly subsistence allowance has been ordered for the family, equaling the monthly income of her disappeared husband Sajid Mehmood. This is not compensation but can be called a survival for the wife and three daughters. Many cases of the Disappeared reach a high-profile level in the media and in the courts however when at a certain point the good decisions by the judges went down the drain when the government files appeal against the good decisions in the countries High and Supreme courts. Litigation, lobbying for UN’s declaration and Campaign remain the only options with the victims’ families and Human Rights defenders to struggle against the **“Worst Torture on Earth” - Enforced Disappearances.**

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