

## Mandate of the Working Group on Enforced or Involuntary Disappearances

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Excellency,

I have the honour to address you in my capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, pursuant to Human Rights Council resolution 45/3.

In this connection, I would like to bring to the attention of your Excellency's Government, information we have received concerning **the recent tabling in the National Assembly of the bill to criminalize enforced disappearances in Pakistan.**

According to the information received, on 8 June 2021, the Pakistan Minister for Human Rights introduced a bill entitled the Criminal Laws (Amendment) Act, 2021, to amend the Pakistan Penal Code of 1860 and the Code of Criminal Procedure of 1898, and criminalize enforced disappearance as an autonomous crime.

At the outset, the Working Group welcomes the decision by the Government of Pakistan to introduce the bill criminalizing enforced disappearances, as a first yet crucial step to adequately combat this heinous crime and bring its perpetrators to justice. This long-awaited decision is in line with the recommendations made previously to Pakistan by the Working Group, and by other relevant international human rights mechanisms.<sup>1</sup>

The proposed bill would insert a new section (Section 52-B) into the Pakistan Penal Code (PPC), defining the crime of enforced disappearance as contained in the International Convention for the Protection of All Persons from Enforced Disappearance (the Convention), including by enumerating the three cumulative elements of the crime:

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<sup>1</sup> The lack of adequate codification of enforced disappearances in Pakistan, and the inadequacy of the current legislation to address the crime has been raised by the Working Group in a several opportunities, including in its report on the country visit conducted to Pakistan in 2012. The Working Group noted then that the Criminal Code of Pakistan did not contain the crime of enforced disappearance, be it as a crime against humanity or as an autonomous crime, and referring only to different categories of "kidnapping" or "abduction". It therefore recommended that a new and autonomous crime of enforced disappearances be included in the Criminal Code following the definition given by the International Convention for the Protection of All Persons from Enforced Disappearance and with all the legal consequences flowing from this qualification.

This recommendation was later reiterated in the report containing the follow-up to the recommendations made by the Working Group after the visit. The Working Group regretted that the existing provisions in domestic legislation were still being considered by the Government to adequately cover enforced disappearances, and it urged it again to swiftly criminalize this crime.

More recently, the Working Group, together with other Special Procedure mandate holders, issued a communication (3/2021) which referred, *inter alia*, to the limitations in the domestic legal system. The experts regretted that while it enshrines safeguards against the practice of enforced disappearance, only a few elements of what constitutes an enforced disappearance are legally prohibited by existing provisions in offences such as abduction, kidnapping and unlawful detention. Yet, these norms remain inadequate to reflect the gravity and complexity of the crime of enforced disappearance. Furthermore, while the judiciary condemned the practice of enforced disappearances, it has seemingly failed to end impunity of such crimes, and to bring perpetrators to account, invoking the lack of their adequate legal codification.

- (1) Deprivation of liberty against the will of the person;
- (2) Involvement of government officials, at least by acquiescence;
- (3) Refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person.

The bill also proposes the insertion of new sections 512 and 513 in the PPC regarding those criminally responsible of an enforced disappearance. Section 512 establishes that “whoever commits, orders, solicits or induces the commission of attempts to commit, is an accomplice to or participation in the forcible or involuntary disappearances of a person or group of persons is said to cause forcible or involuntary disappearances of that person”. Under Section 513 of the PCC, the punishment for forcible or involuntary disappearances would be “imprisonment of either description for terms which may extend to ten years and shall also be liable to a fine”. These penalties would also be reflected through the amendments proposed to the Code of Criminal Procedure (Schedule II, after section 511), establishing the crime of enforced disappearance as non-bailable and non-compoundable, and to be tried in a sessions court.

The Working Group welcomes the introduction in the bill of the definition of enforced disappearance, as established in the Convention. It suggests that all references to the crime inserted in the amended Pakistan Penal Code and Code of Criminal Procedure, consistently refer to “enforced disappearance/s”.

As regards the proposed penalties in the bill, the Working Group considers that these should be further raised to better reflect the severity of the crime. Article 4, paragraph 1, of the Declaration states that: “All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness”. In its report on [Best practices on enforced disappearances in domestic criminal legislation](#), the Working Group found that a penalty of 25 to 40 years of imprisonment for the offence of enforced disappearance is consistent with the Declaration. Good practices in this regard can be found in a number of States.<sup>2</sup>

According to the information received, the bill is still to be discussed in the Parliamentary Committee on Interior and then passed by the National Assembly, before its implementation. The Working Group calls on the Parliamentary Committee to prioritize the discussion of this bill, and call for its hearing as soon as possible. In this respect, we also invite your Excellency’s Government to ensure that the discussion of the bill allows for the participation of victims, families, civil society organizations and other relevant actors, in an open and transparent parliamentary process.

While welcoming the steps taken to criminalize enforced disappearances, the Working Group remains concerned that Pakistan has not ratified yet the International Convention for the Protection of All Persons from Enforced Disappearance. The Working Group reiterates its call on the Government to ratify the Convention and to recognize the competence of the Committee on Enforced Disappearances to consider individual and inter-State complaints, pursuant to articles 31 and 32 of the Convention. The Working Group also urges the Government of Pakistan to take steps

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<sup>2</sup> Colombia (320 to 540 months of prison and up to 480 to 600 months in case of aggravating circumstances, plus pecuniary sanction, plus disqualification from public offices for 160 to 360 months); Mexico (40-60 years of prison, plus pecuniary sanction, plus disqualification from public offices).

to implement the recommendation on the ratification of the Rome Statute of the International Criminal Court.

The Working Group takes this opportunity to reiterate its willingness to assist the Pakistani State in its efforts to strengthen the country's legislative and institutional framework. In this context, and in compliance with its mandate to provide technical and other assistance to States, the Working Group remains available to provide further information and guidance, including on the implementation of the new legislation on enforced disappearances.

The Working Group invites your Excellency's Government to provide any additional information and/or comment(s) you may have on the bill, as well as on any further steps envisaged to advance its discussion, and to ensure adequate consultation and participation.

Finally, the Working Group wishes to express its solidarity with the victims of enforced disappearances, including the families of persons subjected to this serious violation of human rights, who courageously fight for truth and justice, and whose continued efforts have undoubtedly allowed for this positive step in Pakistan.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Tae-Ung Baik

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