

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

Ref.: AL PAK 12/2021  
(Please use this reference in your reply)

29 November 2021

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 **Criminal Laws (Amendment) Bill 2021, codifying enforced disappearance as an autonomous crime in Pakistan, which includes clauses that run contrary to the spirit and objectives of a law to criminalize enforced disappearances.**

This bill has been the subject of two prior communications transmitted by the Working Group to your Excellency's Government on 29 June 2021 (OL PAK 7/2021) and on 13 October 2021 (OL PAK 11/2021). We regret that, to date, no reply has been received to these communications.

According to new information received:

On 9 November 2021, a member of the Committee on Interior presented the amended Criminal Laws (Amendment) Bill 2021 for passage by the National Assembly. The approved bill included revisions proposed by the Standing Committee on Interior in September 2021, which run contrary to the spirit and objectives of a law to criminalize enforced disappearances, and which had been the subject of OL PAK 11/2021 mentioned above.

The Criminal Laws (Amendment) Bill 2021 was first introduced to the National Assembly by Pakistan's Minister for Human Rights on 8 June 2021, with the objective of amending the Pakistan Penal Code of 1860, and codify enforced disappearances as an autonomous crime. The bill introduced the definition of enforced disappearance, as established in the International Convention for the Protection of All Persons from Enforced Disappearance.

On 29 September 2021, the Standing Committee on Interior presented a report proposing the introduction of amendments and additional clauses into the bill, namely clause 514 (1), establishing penalties of five years of imprisonment and fines for "whoever files a complaint or gives information that proves to be false"; and clause 514 (2), establishing that no State official "shall be charged with the offence if there is no evidence available to implicate such officer [...]". The introduction of these clauses was the subject of communication OL PAK 11/2021 mentioned above.

The bill is now to be approved by the Senate, which is currently in session. We are concerned that the bill could be approved as it stands today, including the content of clause 514-1, which harshly penalizes relatives and other sources for reporting possible cases of enforced disappearances. According to the

information received, clause 514-2 may have been removed from the bill.

In addition to expressing concerns regarding the inclusion of these clauses, in OL PAK 11/2021 the Working Group encouraged the Government of Pakistan to enable a process that would allow the participation of victims, families, civil society organizations and other relevant actors, in an open, inclusive and transparent process. However, the information received indicates that the Standing Committee on Interior of the National Assembly did not allow the participation of civil society actors wishing to contribute to the discussion of the bill, and it is feared that the discussion and passing of the bill in the Senate will also be undertaken in a similar non-participatory manner.

While we do not wish to prejudge the accuracy of the information received, we reiterate our serious concern regarding the passing of a bill the contents of which runs contrary to the spirit and objectives of a law to criminalize enforced disappearances based on international human rights norms; in particular, the fact that it introduces harsh penalties to relatives and other sources for reporting cases. This would undoubtedly deter relatives and persons associated to disappeared individuals to report them to the relevant authorities, lead to an increased underreporting of that crime and fostering impunity for the perpetrators.

Should these allegations be confirmed, they would contravene the fundamental principles of the Declaration on the Protection of all Persons from Enforced Disappearance and other international instruments regarding the rights to truth and justice for victims of serious human rights violations, including enforced disappearances.

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 mandate 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 issue mentioned above.
2. Please provide any additional information and/or comment(s) you may have on the Criminal Laws (Amendment) Bill 2021, the Report of the Standing Committee on Interior and the current status and timeline for its approval by the Senate.
3. Please provide information about how the law will enable and protect families of disappeared persons and other concerned parties to search for them without fear of reprisals and collaborate among each other and with the Government to look for them, determine their fate and whereabouts, and seek justice.
4. Please provide information on the steps taken by the Government to ensure the participation of all stakeholders concerned and especially

families of victims and civil society organisations in a transparent and inclusive debate before approval, to ensure a robust law.

While awaiting a reply, we would be grateful if you could transmit a copy of this communication to Senator Mohsin Aziz and the members of the Senate's Standing Committee on Interior.

We reiterate the Working Group's readiness to assist the Pakistani State in its efforts to strengthen the country's legislative and institutional framework and provide technical and other assistance, in compliance with its mandate.

Given the serious shortcomings of this draft legislation – shortcomings which were brought to Your Excellency's attention, we may consider to express our concerns publicly. While the information at hand appears to be reliable, any further clarification from the Government would be appreciated. Given the importance of the matter, and the important role that families of victims of enforced disappearances and civil society organisations can play in the search for disappeared individuals and the accountability of those responsible, we believe that this matter requires a public debate, involving all interested parties. We also believe that the wider public should be informed about the implications of an inadequate law for the protection of their right not to be enforcibly disappeared. Any public expression of concern on our part would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question and recommend changes in line with international human rights norms.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 our highest consideration.

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

## **Annex**

### **Reference to international human rights law**

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

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>1</sup>

As regards the content of proposed clause 514-1, the Working Group would like to recall article 13 of the Declaration on the Protection of all Persons from Enforced Disappearance, which states that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. The Declaration also states that steps shall be taken to ensure that all those involved in the investigation, including witnesses, are protected against ill-treatment, intimidation or reprisal.

The Working Group would also like to refer to its [Report on standards and public policies for an effective investigation of enforced disappearances](#), which specifies that relatives shall not only be enabled to lodge complaints on enforced disappearance without fear of reprisals, but also be closely associated to the investigation and enabled to contribute as much as they can and be kept informed on the progress or the obstacles encountered (see paras. 11-19). In any case, and pursuant to the Declaration, State authorities remain under an obligation to investigate even if no formal complaint has been lodged.

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<sup>1</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).