

STATEMENT
UPR Pre-session on Pakistan
Geneva, 30th November 2022
Delivered by: Defence of Human Rights -Amina Masood

This statement, presented by Defence of Human Rights Pakistan (DHR), focuses on the situation of enforced disappearances in Pakistan. The statement highlights various recommendations to Pakistan by the international community in previous UPRs and Pakistan's performance in this regard.

Defence of Human Rights Pakistan is an independent non-governmental, non-profit organization that was born out of the personal experience of torture and deprivation of human rights of the victims of enforced disappearances. I, being the wife of a disappeared since 2005, an artist turned activist, will relate the first-hand experience and pain of this journey.

https://en.wikipedia.org/wiki/Amina_Masood_Janjua

Follow Up on the previous Three Reviews

In First UPR Cycle 3 countries namely, Brazil, France, and Mexico, in Second Cycle 10 countries namely Spain, Uruguay, Argentina, Mexico, France, Switzerland, Germany, Sweden, Belgium, and the USA and in the Third Cycle 15 countries namely Afghanistan, Argentina, Czechia, France, Germany, Iraq, Japan, Montenegro, Paraguay, Senegal, Sierra Leone, Switzerland, and Uruguay made recommendations to Pakistan regarding the rampant practice of enforced disappearance in Pakistan. 23 out of 28 recommendations were of Category-5, asking Pakistan to ratify International Convention to Protect all persons from Enforced Disappearance, take measures to Stop this practice, End Impunity and Criminalize Enforced Disappearances in domestic law.

Response of Pakistan & New Developments since the Last Review

Pakistan accepted all of these recommendations but in reality, did not take any significant action in this regard. Incidents of enforced disappearances are taking place at the same pace as before. A Commission of Enquiry on Enforced Disappearance (COIOED) has been working since 2010 to date, but it has wholly failed to address the issue, rather entrenched impunity, leaving victims and their loved ones without any redress, also it is working more as a shield for the perpetrators..Commission could not comply by its own 600 production orders to compel the State agencies to produce the Disappeared.

<https://icj2.wpenginepowered.com/wp-content/uploads/2020/09/Pakistan-Commission-of-Inquiry-Advocacy-Analysis-Brief-2020-ENG.pdf>

The most important step which Pakistan must take and which we consider as the only way towards the eradication of enforced disappearance from Pakistan is the ratification of the International Convention and accepting the jurisdiction of the Committee on Enforced Disappearance formed under the said Convention.

Pakistan is supposed to present a national report before the upcoming fourth UPR cycle, prepared with consultation with all the stakeholders but we are not aware of any such consultation ever having taken place, however, there is a Cabinet Sub Committee that is working since June 2022 in response to the Court's stern action.

But if such a national report is presented by the Pakistan Government it might boast of a partial passage of the Criminal Amendment Bill in October 2022 which was tabled in Parliament in 2021. This bill, although welcomed as a positive step but lacks a holistic approach to solving this issue. On the other hand, this bill does not address the weaknesses and flaws of Pakistan's criminal justice system which totally lacks provisions to investigate and prosecute the military establishment, police and other perpetrators.

Courts mostly fail to provide any relief to the victims of Enforced disappearances but in a handful of cases they have given courageous decisions but the political and military apparatus uses every available resource to defy or deflect court orders. In the case of Mahira Sajid, (W. P. No. 2974/2016) the High court ordered compensation to the family and imposed a fine on certain government officials for failing to trace her husband. The Government is presently in an appeal against this order.

http://mis.ihc.gov.pk/attachments/judgements/Mahera_Sajid_v_SHO_Shalimar_etc_WP_No_2974_of_2016_636669175440972079.pdf

In a few other cases, courts had ordered to provide sustenance allowance or compensation for the victims but the Government failed to comply. In a certain case Prime Minister was summoned on the 9th of September 2022, he promised to come up with a solution for the Disappeared within two months i.e, by November 14th, 2022. But the Prime Minister's office could not come up with any solution even after two months. Unfortunately the Islamabad High Court was informed that since the Law Minister had resigned, the Committee tasked to examine the issue was no longer functional.

In other words, despite assurances by the Chief Executive, not only were Disappeared not recovered/produced before the Court on November 14th, but also the Government has failed to comply with order of the IHC dated 25.05.2022 wherein the Federal Government was directed *inter alia* to issue and serve notices on General (R) Pervaiz Musharraf and all other successor Chief Executives (i.e. former PMs) including the incumbent holder of the office. They were to submit their respective affidavits in Court explaining why the Court may not order proceedings against them for alleged subversion of the Constitution in the context of the undeclared tacit State policy of disappearances.

The practice of enforced disappearance continues unabated to this day. Where old cases, such as the disappearance of Masood Janjua and Faisal Faraz who disappeared in 2005, (HRC-965/2005) are still unresolved, and where Mr. Sadiq Amin was picked up in 2021 and disappeared just because he had been pursuing the case of the disappearances of his older brother Zahid Amin (W.P No. 1655 / 2022), new cases of disappearances are being reported every day - ethnic, religious groups, human rights defenders and journalists are mostly targeted.

In October 2022 alone, 128 cases were reported whereas the total official figures are 9035 Disappeared Citizens.

Achievements

In two instances the Islamabad High Court ordered the release of the detenu's by evening or else there would be strong action against the station commander of the Intelligence agency. After which both the detenu's were produced before the Court, this shows the effectiveness of the Courts rather than tackling the issue through inquiry commissions. Civil society became more vibrant and united in raising voices against the disappearances from all five provinces of Pakistan. The Supreme Court closed its doors in 2018, but High Courts of the country dared to take up these matters. Social Media played a very important role in highlighting the stories of the victims and the Government's inability to address this issue. Owing to the consistent struggle of families many Disappeared were released and got united with their families, Zakhail, Bakht Shahzaib, Razzaq Baloch and Engineer Abdulrehman are a few examples.

Other Perspectives: linked to enforced disappearances are the arbitrary detention centers, extra judicial killings, custodial killings in the detention centers, harassment of victim families, human rights defenders, and journalists. There is a strong military hold on the arbitrary detention centers & they exist without any due process of law.

Recommendations

1. Ratify or accede to the UN Convention for Protection of All Persons From Enforced Disappearances .
2. Make enforced disappearance a distinct and autonomous crime under domestic law with necessary provisions to make prosecution possible.
3. Implement recommendations of UN WGEID and invite the Working Group for a follow up visit.
4. Take concrete steps to clarify and resolve 799 outstanding cases submitted to UN WGEID. Especially take all measures to trace Masood Janjua and Faisal Faraz whose case awaits clearance since 2008.
5. Take action to address the legal uncertainty created by the absence of the disappeared person, resolve their inheritance issues. The Government should pay subsistence allowance to the victim families - make arrangements for reparations, physical and mental rehabilitation.

-Thank you very much for your time.

Amina Masood (Janjua)

Chairperson Defence of Human Right Pakistan

Address: Office No. 24th, 3rd Floor, Majeed Plaza Bank Road,
Saddar Rawalpindi Pakistan.

Mobile: 0301-5240550

Email ID: chairpersondhr@gmail.com

Website: www.dhrpk.com