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South Asian States must criminalize enforced disappearances and give justice to thousands of victims

Tens of thousands of enforced disappearances in South Asia can only be addressed if all the region's governments immediately criminalize this serious human rights violation, said lawyers and activists from Bangladesh, India, Nepal, Pakistan, and Sri Lanka during a Conference on Enforced and Involuntary Disappearances, organized by the International Commission of Jurists (ICJ) and Human Rights Commission of Pakistan (HRCP) on the eve of the International Day of the Victims of Enforced Disappearances.

South Asia has among the highest number of alleged victims of enforced disappearances in the world: tens of thousands of cases have been documented in Sri Lanka, Nepal, Pakistan and India, and since 2009, there has also been a surge in enforced disappearances in Bangladesh.

"Sri Lanka's ratification of the Convention on Enforced Disappearance and its pledge to criminalize the practice is a welcome step," said I. A. Rehman, Secretary General for the Human Rights Commission of Pakistan. "Other States in the region should now follow suit and show that they are serious about their commitment to human rights by making enforced disappearance a specific crime in their domestic law."

Under international law, an enforced disappearance is the arrest, abduction or detention by State agents, or by people acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the detention or by concealing the fate or whereabouts of the "disappeared" person which places the person outside the protection of the law.

The UN General Assembly has repeatedly described enforced disappearance as "an offence to human dignity".

At present, enforced disappearance is not a distinct crime in any South Asian country, which is one of the major hurdles to bringing perpetrators to justice.

In the absence of a legal framework on enforced disappearance, unacknowledged detentions by law enforcement agencies are considered "missing persons" cases. On the rare occasions where criminal complaints are registered against alleged perpetrators, complainants are forced to categorize the crime as "abduction" or "kidnapping".

These categories do not recognize the complexity and the particularly serious nature of enforced disappearance, and often do not provide for penalties commensurate to the gravity of the crime. They also fail to recognize as victims relatives of the "disappeared" person and others suffering harm as a result of the enforced disappearance, as required under international law.

"Despite thousands of cases of enforced disappearance across South Asia, the governments have failed to follow their legal obligation to treat these crimes as the serious human rights violation they are," said Sam Zarifi, ICJ's Asia Director. "South Asian governments have done very little to support the victims and

survivors of enforced disappearance, or to ensure the rights of their family members to truth, justice and reparation.”

Other barriers to bringing perpetrators to account are also similar in South Asian countries: military and intelligence agencies have extensive and unaccountable powers, including for arrest and detention; members of law enforcement and security forces enjoy broad legal immunities, shielding them from prosecution; and military courts have jurisdiction over crimes committed by members of the military, even where these crimes are human rights violations.

Victims’ groups, lawyers, and activists who work on enforced disappearance also face security risks including attacks, harassment, surveillance, and intimidation.

A comprehensive set of reforms, both in law and policy, is required to end the entrenched impunity for enforced disappearances in the region - criminalizing the practice would be a significant first step, said ICJ and the HRC.

The ICJ also launched *Practitioners’ Guides No. 9 Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction* and *No. 10 Enforced Disappearance and Extrajudicial Execution: the Right of Family Members*, which provide legal practitioners, activists and policy-makers with detailed and practical references on international standards on enforced disappearances and extrajudicial killings at the event.

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Additional information

In Pakistan, the practice of enforced disappearance has in recent years become a nationwide problem. While most prevalent in Balochistan, the federally and provincially administered tribal areas and Khyber Pakhtunkhwa, a number of cases are now also being reported from Sindh. To date, not a single perpetrator has been held to account.

In Nepal, even after ten years since the end of the armed conflict, the fate and whereabouts of more than a thousand possible victims of enforced disappearance remain unknown and perpetrators have still not been brought to justice.

In India, between 1989 and 2009, more than 8,000 enforced and involuntary disappearances were reported in Kashmir alone. Many cases have also been reported in the northeast of India, particularly in Manipur. Immunities granted by the Armed Forces Special Powers Act (AFSPA), in addition to other laws, has made prosecuting suspected perpetrators close to impossible.

Since 2009, there has also been a surge in enforced disappearances in Bangladesh, with reports of dozens of opposition political activists, human rights defenders students and journalists being “disappeared”. Sri Lanka has among the highest incidence of enforced disappearances cases in the world as a result of its decades-long conflict. In 2015, Sri Lanka became the first South Asian State to ratify the International Convention on the Protection of All Persons from Enforced Disappearances has since then taken steps to enact legislation to give effect to the obligations under the Convention.