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**THE INTERNATIONAL COMMISSION OF JURISTS'
SUBMISSION TO THE HUMAN RIGHTS COMMITTEE ON
PAKISTAN'S FOLLOW-UP REPORT TO THE COMMITTEE'S
CONCLUDING OBSERVATIONS**

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council in 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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Submission by the International Commission of Jurists (ICJ) on Pakistan's follow-up report to the Concluding Observations by the UN Human Rights Committee

Introduction

1. On 23 August 2017, the UN Human Rights Committee issued its Concluding Observations following its review in July 2017 of Pakistan's first periodic report.¹ Among its many recommendations, for follow-up the Committee prioritized recommendations related to: i) the death penalty; ii) enforced disappearances and extrajudicial killings; and iii) freedom of religion, conscience and belief.²

2. The Committee requested Pakistan to provide information on the implementation on these recommendations within one year of the adoption of the Concluding Observations, which was due on 22 August 2018. On 16 May 2019, Pakistan submitted its follow up report to the Committee.³

3. The International Commission of Jurists (ICJ) welcomes the opportunity to present the Human Rights Committee with its comments on Pakistan's follow-up report, as well as additional information relevant to the Committee's forthcoming consideration of the content of the said report. The ICJ's submission will focus on recommendations related to enforced disappearances in Para 20 of the Committee's Concluding Observations.⁴

Recommendation: Criminalize enforced disappearance and put an end to the practice of enforced disappearance and secret detention

4. In its follow-up report, Pakistan has provided no information about the criminalization of enforced disappearance in the country. In 2018, the Senate's Functional Committee on Human Rights urged the human rights ministry to draft legislation to recognize enforced disappearance as a distinct, autonomous offence. A few days later, the Minister for Human Rights, Shireen Mazari, announced that the Government was considering tabling a law to criminalize enforced disappearance. Such a law, however, has not yet been made public or tabled in Parliament.

5. To date, enforced disappearance is not recognized as a distinct crime in Pakistan. On the rare occasions in which police register criminal complaints in such cases, they do so for the crimes of "abduction" or "kidnapping". Police also register complaints of

¹ UN Human Rights Committee, *Concluding observations on the initial report of Pakistan*, 27 August 2017, U.N. Doc. CCPR/C/P AK/CO/1.

² *Ibid.*, para 50.

³ UN Human Rights Committee, *Concluding observations on the initial report of Pakistan: Addendum Information received from Pakistan on follow-up to the concluding observations*, U.N. Doc. CCPR/C/PAK/CO/1/Add.1, (Pakistan's follow-up report), 20 May 2019.

⁴ UN Human Rights Committee, *Concluding observations on the initial report of Pakistan*, 27 August 2017, U.N. Doc. CCPR/C/P AK/CO/1, para 20: "The State party should criminalize enforced disappearance and put an end to the practice of enforced disappearance and secret detention. It should also review the Actions (in aid of Civil Power) Regulation, 2011 with a view to repealing it or bringing it into conformity with international standards. It should also ensure that all allegations of enforced disappearance and extrajudicial killings are promptly and thoroughly investigated; all perpetrators are prosecuted and punished, with penalties commensurate with the gravity of the crimes; families of disappeared persons and their lawyers and witnesses are protected; and a mechanism is put in place for full and prompt reparation for victims and their families. It should further strengthen the authority and the capacity (financial and personnel) of the Commission of Inquiry on Enforced Disappearances so that the latter can function effectively."

enforced disappearances under section 346 of the Penal Code, which relates to “wrongful confinement in secret”, and which prescribes a penalty of two years’ imprisonment. When registering a complaint under these provisions for alleged enforced disappearances, police often refuse to identify members of the security or intelligence forces as the alleged perpetrators. In most cases, such complaints are filed against “unknown persons”.⁵

6. These offences, however, are inadequate characterizations for enforced disappearance cases: they do not recognize the gravity of the crime; do not provide for commensurate penalties; and do not address the need to remedy the harm to families of those disappeared, as the law, in turn does not recognize them as victims.

7. The practice of enforced disappearance continues unabated. In August 2019 alone, the Commission of Inquiry on Enforced Disappearances received 55 new complaints of enforced disappearance, bringing the total number of pending cases before the Commission to 2265.⁶

Recommendation: It should also review the Actions (in aid of Civil Power) Regulation, 2011 with a view to repealing it or bringing it into conformity with international standards.

8. In its follow-up report to the Committee, Pakistan claimed the Actions (in Aid of Civil Power) Regulations, 2011 “have been formulated strictly in conformity with the International Human Rights Standards.”⁷

9. Not only did Pakistan fail to implement this recommendation, but in August 2019, it clearly flouted both the letter and the spirit of the same by passing an Ordinance to extend the scope of the provisions of the regulations to cover the whole of Khyber Pakhtunkhwa province.⁸

10. The Khyber Pakhtunkhwa Actions (In Aid of Civil Power) Ordinance, which was notified on 5 August 2019, states in the preamble that it has the objective of countering “grave and unprecedented threat to the territorial integrity of Pakistan.” It further provides that upon the request of the Khyber Pakhtunkhwa Government, the Federal Government has directed the armed forces “to act in aid of civil powers” in certain defined areas to counter the threat to “the solidarity and integrity of the Islamic Republic of Pakistan.”⁹

11. The Ordinance retains all the problematic provisions of the Actions (In Aid of Civil Power) Regulations, 2011. The Actions (In Aid of Civil Power) Ordinance gives sweeping powers to members of armed forces, including the power to detain people without charge or trial on a number of vaguely defined grounds where it appears that such “internment” would be expedient for peace.¹⁰ Individuals may be detained for an unspecified period without any right to be brought before a court of law or to challenge the legality of detention before a court. In addition, the Ordinance provides that statements or depositions by members of the armed forces shall on their own be

⁵ For more details, see International Commission of Jurists, “No More Missing Persons: the criminalization of enforced disappearance in South Asia”, August 2017, accessed at: <https://www.icj.org/wp-content/uploads/2017/08/South-Asia-Enforced-Disappearance-Publications-Reports-Thematic-Reports-2017-ENG.pdf>

⁶ Monthly report of the Commission of Inquiry on Enforced Disappearances, August 2019. See also, Reema Omer, *Dawn*, “Short-term disappearances”, 18 December 2017, accessed at: <https://www.dawn.com/news/1377235/short-term-disappearances>

⁷ Pakistan’s follow-up report, supra fn. 2, para 11.

⁸ International Commission of Jurists, Pakistan: “Immediately revoke oppressive Khyber Pakhtunkhwa Actions (In Aid of Civil Power) Ordinance”, 27 September 2019, accessed at: <https://www.icj.org/pakistan-immediately-revoke-oppressive-khyber-pakhtunkhwa-actions-in-aid-of-civil-power-ordinance/>

⁹ Khyber Pakhtunkhwa, Ordinance number V of 2019.

¹⁰ Ibid. Section 9.

sufficient for convicting the accused.¹¹ The Ordinance also provides wide immunity for members of the armed forces for any action done, taken, ordered to be taken, or conferred, assumed or exercised by, before or after the promulgation of the Ordinance.¹²

12. The ICJ has highlighted how the Actions (in Aid of Civil Power) Regulations, which were in force in the Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA) for seven years, were extensively used as a legal cover for arbitrary detention and enforced disappearances.¹³

Recommendation: It should also ensure that all allegations of enforced disappearance and extrajudicial killings are promptly and thoroughly investigated; all perpetrators are prosecuted and punished, with penalties commensurate with the gravity of the crimes; families of disappeared persons and their lawyers and witnesses are protected; and a mechanism is put in place for full and prompt reparation for victims and their families.

13. In its report, Pakistan stated that the Commission of Inquiry on Enforced Disappearances carries out investigations into complaints of enforced disappearance.¹⁴ Pakistan provided no information about the prosecution or trial of perpetrators.

14. Such an omission is not surprising, given that, as of September 2019, not a single perpetrator of enforced disappearance has been brought to justice in Pakistan. The UN Working Group on Enforced and Involuntary Disappearances (WGEID) findings that “there is a climate of impunity in Pakistan with regard to enforced disappearances, and the authorities are not sufficiently dedicated to investigate cases of enforced disappearance and hold the perpetrators accountable”¹⁵ are still as applicable today as they were in 2016, when the WGEID published its report.¹⁶

15. Pakistan has not enacted any laws or formulated any new policies related to the protection of families of disappeared people, nor has a mechanism been put in place for prompt reparation for victims and their families.

Recommendation: It should further strengthen the authority and the capacity (financial and personnel) of the Commission of Inquiry on Enforced Disappearances so that the latter can function effectively

16. In September 2017, the Government extended the tenure of the Commission of Inquiry on Enforced Disappearances for another three years until September 2020. The latest extension makes the Commission, initially established for six months in March 2011, one of the longest serving public inquiry commissions in Pakistan’s history.¹⁷

¹¹ Ibid. Section 19.

¹² Ibid. Section 26.

¹³ See, for example, International Commission of Jurists, “Military Injustice in Pakistan”, January 2019, accessed at: <https://www.icj.org/wp-content/uploads/2019/01/Pakistan-military-courts-Advocacy-Analysis-brief-2018-ENG.pdf>

¹⁴ Pakistan’s follow-up report, supra fn. 2, para 9.

¹⁵ Report of the Working Group on Enforced or Involuntary Disappearances, Addendum, Follow-up report to the recommendations made by the Working Group, 13 September 2016, UN Doc. A/HRC/33/51/Add.7.

¹⁶ See, for example, Reema Omer, *Dawn*, “Crisis of impunity”, 31 January 2017, accessed at: <https://www.dawn.com/news/1311707> and

¹⁷ Reema Omer, *Dawn*, Ineffective Commissions, 3 October 2017, accessed at: <https://www.dawn.com/news/1361358>

17. The notification establishing the Commission gives it a broad mandate, whose key tasks include to “trace the whereabouts of allegedly enforced disappeared persons”, “fix responsibility on individuals or organizations responsible”, and “register or direct the registration of FIRs (first information reports) against named individuals ... who were involved either directly or indirectly in the disappearance of an untraced person”. While the Commission has done well to document cases of enforced disappearances and “trace the whereabouts” of a number of disappeared people, it has completely failed in holding perpetrators accountable. The Commission’s monthly reports show that even when missing persons have eventually been found in internment centers or other detention facilities in the country, the Commission has not “fixed responsibility” on any person or organization, or directed the registration of FIRs against those responsible.

18. The Commission’s terms of reference specify that it may direct the registration of FIRs only with respect to the disappearance of an “untraced” person. This effectively means that once a person subjected to an enforced disappearance is found, the commission no longer has the competency to register FIRs against perpetrators. It also ignores the fact that the crime of enforced disappearance does not depend on whether the disappearance is ongoing or not — States have the obligation to hold perpetrators accountable even after the disappeared person is traced or released.

19. A related issue is the definition of enforced disappearance used by the Commission, which the Commission’s regulations define as “such person as has been picked up/taken into custody by any law enforcing/intelligence agency, working under the civilian or military control, in a manner which is contrary to the provisions of the law.”¹⁸ This definition does not meet the requirements of enforced disappearance under international law. The International Convention for the Protection of All Persons from Enforced Disappearance, for example, defines an enforced disappearance as the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups 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.”

20. The Commission’s definition is problematic for a number of reasons. It does not recognize secret detention, or detention in which the whereabouts of the detainee is not disclosed, as instances of enforced disappearance. It does not recognize that if deprivation of liberty is not acknowledged or the whereabouts of the detainee are not disclosed, even if this is ‘legally’ mandated under domestic law, it may still be qualify as an enforced disappearance under the International Convention for the Protection of All Persons from Enforced Disappearance. And it does not recognize that the “authorization, support or acquiescence of the state” in such detentions may also make them enforced disappearances if other conditions are met.

21. These omissions are particularly relevant because multiple “legal” regimes in Pakistan effectively legitimize enforced disappearances. As discussed above, the Actions (in Aid of Civil Power) Ordinance, 2019, like the Actions (in Aid of Civil Power) Regulations, 2011, gives the Government or “any person” authorized by it sweeping powers of indefinite detention without charge and without judicial supervision. It seems unlikely that the Commission would consider such detentions enforced disappearances — even where families are not informed about the whereabouts of their loved ones — as the Ordinance has the force of law.¹⁹

22. Even if the Commission recommends registration of FIRs against alleged perpetrators, its regulations are silent as to the specific offence with which they would be charged. Significantly, as discussed above, while it has the mandate to hold

¹⁸ Available on the Commission’s website : <http://coioed.pk/about-us/>

¹⁹ See, for example, Reema Omer, *Dawn*, “A distinct crime”, 4 September 2018, accessed at: <https://www.dawn.com/news/1430882>

perpetrators of enforced disappearance responsible, Pakistan's criminal laws do not currently recognize enforced disappearance as a distinct crime.