Defence of Human Rights

Submission to the UN Committee on Enforced Disappearances and the UN Working Group on Enforced or Involuntary Disappearances

Enforced Disappearances in the Context of Transnational Repression

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Date: 31st Jan 2026

I. Introduction and Organizational Background

Defence of Human Rights (DHR) Pakistan is a national human rights organization established by families of forcibly disappeared persons. For over two decades, DHR has documented cases of enforced disappearance, provided legal and psychosocial support to affected families, and engaged with domestic, regional, and international mechanisms, including the UN Working Group on Enforced or Involuntary Disappearances (WGEID), UN treaty bodies, and special procedures.

DHR's work demonstrates that enforced disappearance is not only a domestic human rights violation but increasingly manifests through **transnational repression**, where States extend coercive practices beyond their borders through formal and informal cooperation, intelligence sharing, deportation, rendition, and surveillance. These practices place victims, exiles, refugees, journalists, political dissidents, and human rights defenders at heightened risk while undermining international legal safeguards.

This submission addresses enforced disappearances in the context of transnational repression, drawing on Pakistan's legal framework and practice, comparative international jurisprudence, and global human rights standards.

II. Enforced Disappearances in the Context of Transnational Repression and At-Risk Groups

Enforced disappearances in transnational contexts occur when a State, directly or indirectly, participates in the arrest, detention, transfer, or concealment of an individual across borders, followed by denial of the deprivation of liberty or concealment of the person's fate or whereabouts. These acts may be carried out through cooperation with foreign security agencies, informal rendition, misuse of immigration or deportation powers, or intelligence-sharing arrangements that bypass judicial scrutiny.

Individuals most at risk include:

- Political dissidents and opposition figures living in exile
- Human rights defenders and lawyers working on sensitive issues
- Journalists, activists, and academics critical of State policies
- Refugees, asylum seekers, and undocumented migrants
- Members of ethnic, religious, or political minorities

In Pakistan, families and civil society organizations have documented cases where individuals disappeared after cross-border travel, deportation, or intelligence cooperation, with authorities denying responsibility or jurisdiction. Transnational repression enables States to externalize violations while avoiding formal accountability.

Targeting of Family Members of Journalists Abroad as a Form of Transnational Repression

Transnational repression also manifests through reprisals against family members of journalists and critics operating abroad, particularly where digital and online platforms are used to expose State abuses. A prominent example involves **Ahmed Noorani**, a Pakistani investigative journalist who publishes reporting using online and international platforms while residing outside Pakistan. Following the publication of a sensitive investigative article abroad, **two of his brothers were subjected to enforced disappearance inside Pakistan**, reportedly taken by security agencies without warrants or disclosure of their whereabouts. The timing and context of these disappearances strongly indicate a retaliatory motive linked directly to the journalist's work. Rather than engaging lawful remedies or contesting the reporting through legal channels, State authorities appear to have targeted family members as a means of intimidation and coercion. This case demonstrates how States extend repression beyond borders by punishing relatives who remain within reach, thereby attempting to silence journalists in exile. Such practices violate the prohibition of enforced disappearance, the right to freedom of expression, protections against collective punishment, and the prohibition on reprisals against individuals for

engaging in legitimate journalistic and human rights activities, including cooperation with international audiences and mechanisms.

Case of Usman Ghani and Abdul Rehman: Transnational Enforced Disappearance Involving Cross-Border Cooperation

The case of **Usman Ghani and Abdul Rehman**, two Pakistani brothers residing in Saudi Arabia, illustrates the operation of enforced disappearance in a transnational context involving cross-border security coordination and the denial of consular protection. The brothers relocated from Faisalabad to Riyadh in 2016, where they lived with their families, were lawfully employed in the computer dye and CNC machinery industry, and each had three children. In 2021, following the expiry of his passport, Usman Ghani attempted to renew his travel document in Riyadh and was informed that both brothers' passports had been blocked. On 10 January 2022, their father approached the Passport and Immigration Headquarters in Islamabad, where he was told that the passports of both sons had been blocked by Pakistan's Counter Terrorism Department (CTD), without any prior notice, judicial order, or explanation provided to the family.

On 9 January 2022, Saudi authorities conducted a raid in Riyadh during which **Abdul Rehman was taken into custody and disappeared**, with no information provided to the family regarding his legal status or whereabouts. Subsequently, on **21 August 2022**, **Usman Ghani was also arrested and taken away** by Saudi authorities. For an extended period, both brothers were held incommunicado, and their families were denied information, amounting to enforced disappearance. Abdul Rehman remained disappeared for approximately one year and only resurfaced in **February 2023**, when it became known that he was being held in a prison in Riyadh. During this period, Pakistani authorities failed to provide consular assistance or clarification regarding the basis of the brothers' detention. In **May 2022**, the **Islamabad High Court** issued an order in the case of Abdul Rehman, directing the Ministry of Foreign Affairs to address the family's grievance. However, the order was not effectively implemented. The conduct of the Embassy of Pakistan in Riyadh further compounded the violation, as officials reportedly refused to share information with the family regarding the brothers' status or location.

This case demonstrates how enforced disappearance can occur through **coordination between domestic security agencies and foreign authorities**, where administrative measures such as passport blocking, followed by arrest abroad and prolonged incommunicado detention, are used to circumvent judicial safeguards. The lack of transparency, denial of consular protection, and failure to implement domestic court orders underscore the structural gaps that enable transnational enforced disappearances and leave affected families without effective remedies or access to justice.

Another case highlighting the transnational reach of repression concerns **Abdullah Abbas**, a human rights defender from **Balochistan** who has sought asylum abroad due to threats linked to his activism and ethnic identity. While Abdullah Abbas is currently outside Pakistan, his

family members remaining in the country have been subjected to harassment, surveillance, and intimidation by State authorities. These actions appear aimed at coercing, silencing, or punishing him through pressure on his relatives, a well-documented tactic of transnational repression. Such practices extend the impact of enforced disappearance–related violations beyond the disappeared individual to their family members and communities, creating a climate of fear and collective punishment. This case underscores that transnational repression does not end at borders and often targets families as proxies, violating protections against collective punishment, arbitrary interference with family life, and the right to be free from intimidation and reprisals for engaging with human rights mechanisms.

III. National, Regional, and International Legal Frameworks: Enablers and Barriers (Q2)

A. National Legal Framework: Pakistan

At the national level, Pakistan's legal framework does not adequately prevent enforced disappearances in a transnational context. Enforced disappearance is **not criminalized as a distinct offence** under domestic law, and Pakistan has **not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)**.

While constitutional protections under Articles 9, 10, 10A, and 14 guarantee liberty, due process, and dignity, these protections operate primarily within territorial limits and are inconsistently enforced in practice. Pakistan is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT), both of which prohibit arbitrary detention, torture, and ill-treatment and implicitly prohibit enforced disappearance. However, these obligations have not been fully incorporated into domestic criminal law.

Ordinary criminal provisions on kidnapping or wrongful confinement fail to capture:

- The continuous nature of enforced disappearance
- The involvement or acquiescence of State agents
- Command responsibility and institutional accountability

Extradition, mutual legal assistance, and intelligence cooperation are governed by the Extradition Act, 1972, bilateral treaties, and executive practices. These frameworks lack explicit human rights safeguards, judicial oversight, and non-refoulement protections. Immigration and deportation powers under the Foreigners Act, 1946 operate without statutory guarantees

against transfer to a risk of enforced disappearance. Pakistan also lacks a regional human rights system that could provide additional oversight.

Taken together, these gaps enable cross-border cooperation to facilitate enforced disappearances rather than prevent them.

B. Judicial Practice in Pakistan

Despite legislative gaps, Pakistan's judiciary has acknowledged enforced disappearance as a grave human rights violation. In **PLD 2014 Supreme Court 305**, the Supreme Court examined the secret removal and continued detention of individuals by military authorities. The Court held that these practices amounted to illegal detention and enforced disappearance, violated constitutional guarantees, and constituted crimes against humanity.

Notably, the Court relied on the UN Declaration on the Protection of All Persons from Enforced Disappearances (1992) and the ICPPED despite Pakistan not having ratified the Convention. The judgment emphasized that no security agency may detain individuals outside a clear legal framework and affirmed the State's obligation to recover disappeared persons, ensure accountability, and adopt preventive legislation.

However, the absence of criminalization and enforcement mechanisms has limited the long-term impact of judicial pronouncements, particularly in cases with cross-border elements.

C. Comparative National Frameworks

Other jurisdictions provide instructive examples. In the United States, civil remedies under the Torture Victim Protection Act and the Alien Tort Statute have functioned as indirect deterrents against enforced disappearance by allowing civil liability for foreign officials. In **Xuncax v. Gramajo (1995)**, a U.S. court held a former Guatemalan defense minister civilly liable for enforced disappearance committed abroad, affirming that disappearance violates universally recognized norms of international law.

In Argentina, Law No. 26.679 (2011) amended the Penal Code to criminalize enforced disappearance in conformity with international standards and recognize its continuing nature. Judicial practice, including the **Simón case (2005)**, affirmed that enforced disappearance constitutes a crime against humanity and is not subject to statutes of limitation, reinforcing principles of universal jurisdiction and accountability.

D. Regional Human Rights Frameworks

Regional systems have significantly shaped standards relevant to transnational repression. The Inter-American Court of Human Rights in **Velásquez Rodríguez v. Honduras (1988)**

established that enforced disappearance violates multiple non-derogable rights and that States have a duty to prevent, investigate, and punish disappearances, including where indirect involvement or cross-border cooperation exists.

In Europe, the European Court of Human Rights has recognized enforced disappearance as a continuing violation. In **Varnava and Others v. Turkey (2009)**, the Court affirmed that the duty to investigate persists regardless of time and that failure to inform families constitutes inhuman treatment. This jurisprudence limits States' ability to evade responsibility through territorial or temporal arguments.

E. International Legal Framework

At the international level, enforced disappearance is prohibited under treaty law and customary international law. The ICPPED provides the most comprehensive framework, requiring criminalization, investigation, prosecution, extraterritorial jurisdiction, mutual legal assistance, cooperation, and non-refoulement protections. The ICCPR reinforces these obligations, recognizing the continuing nature of disappearance and extraterritorial State responsibility.

Enforced disappearance is also recognized as a crime against humanity under the Rome Statute of the International Criminal Court when committed as part of a widespread or systematic attack against civilians.

Despite these frameworks, bilateral security agreements, informal rendition practices, and intelligence-sharing arrangements lacking human rights safeguards continue to enable transnational enforced disappearances.

IV. Investigation, Prosecution, and Mutual Legal Assistance (Q3)

Formal mechanisms for international cooperation exist through Mutual Legal Assistance Treaties (MLATs), extradition agreements, and international police cooperation bodies. The ICPPED establishes obligations to cooperate in investigations, exercise jurisdiction, prosecute perpetrators, and provide mutual judicial assistance.

In Pakistan, extradition and mutual legal assistance are governed by the Extradition Act, 1972, bilateral treaties, and executive arrangements. Superior courts may exercise habeas corpus jurisdiction under Article 199 of the Constitution. The Commission of Inquiry on Enforced Disappearances (COIED) provides a domestic forum to trace missing persons.

However, these mechanisms suffer from structural weaknesses:

- Enforced disappearance is not criminalized
- Extraterritorial jurisdiction is not clearly established
- Human rights safeguards are absent from cooperation frameworks
- Intelligence cooperation lacks judicial oversight
- COIED lacks prosecutorial authority and enforcement powers

Internationally, coordination between criminal justice systems and human rights mechanisms remains weak. Information provided to WGEID or the CED rarely translates into criminal investigations or prosecutions. Extradition and deportation frameworks continue to be misused in ways that facilitate disappearance.

As a result, accountability for transnational enforced disappearances remains rare, and victims are left without effective remedies.

V. Measures to Ensure Protection, Truth, Justice, and Reparation (Q4)

States must adopt comprehensive measures to prevent enforced disappearance and address its consequences, particularly in transnational contexts.

A. Criminalization and Jurisdiction

States should criminalize enforced disappearance as an autonomous offence, reflecting its continuous nature, State involvement, and command responsibility. Jurisdiction should extend to acts committed abroad by nationals or in cooperation with foreign authorities.

B. Independent Investigations and Judicial Oversight

Investigative bodies must be independent, adequately resourced, and empowered to act ex officio. Judicial oversight should cover arrests, detention, extradition, deportation, and intelligence cooperation. Courts must have access to relevant information, including classified material, subject to strict safeguards.

C. Victim and Witness Protection

Comprehensive protection programs should safeguard victims, families, lawyers, and defenders from retaliation, including in cross-border investigations. Protection should include relocation, confidentiality, psychosocial support, and legal assistance.

D. Right to Truth and Documentation

States should ensure systematic documentation, preservation of archives, public reporting, and access to information on disappeared persons. Truth-seeking mechanisms should address patterns of disappearance, including transnational cooperation.

E. Reparations

Victims and families must receive full reparations, including compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Reparations should not be conditioned on declaring the disappeared person deceased or waiving legal claims.

VI. Safeguards Against Misuse of International Cooperation Mechanisms (Q5)

International organizations such as INTERPOL must strengthen safeguards to prevent misuse for transnational repression. Measures should include:

- Enhanced human rights review of notices and diffusions
- Transparency and access to effective remedies
- Cooperation with UN human rights mechanisms
- Protection for refugees, asylum seekers, and political dissidents

States must ensure that cooperation with INTERPOL and other bodies complies with international human rights obligations and does not facilitate enforced disappearance.

VII. Positive Practices and Cooperation (Q6)

Positive examples include jurisdictions that have criminalized enforced disappearance, exercised universal jurisdiction, and integrated human rights safeguards into extradition and cooperation frameworks. Regional human rights courts and UN mechanisms have played a critical role in developing standards and preventing impunity.

VIII. Conclusion

Enforced disappearance in the context of transnational repression represents a serious and evolving threat to human rights and the international legal order. Legal gaps, security-driven cooperation, and weak accountability mechanisms enable States to extend repression beyond their borders with near total impunity.

Defence of Human Rights Pakistan urges States to criminalize enforced disappearance, ratify and implement the ICPPED, strengthen safeguards in international cooperation mechanisms, and ensure effective protection, truth, justice, and reparation for victims and their families. Without decisive action, transnational enforced disappearances will continue to undermine human rights, the rule of law, and international cooperation itself.