General Allegation

136th session (28 April to 2 May 2025)

Pakistan

The Working Group on Enforced or Involuntary Disappearances (hereafter, 'the Working Group') received information from the sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, 'the Declaration') by Pakistan.

1. This general allegation focuses on reported shortcomings in the functioning of the Commission of Inquiry on Enforced Disappearances (hereafter, 'COIED'), whose mandate is regulated pursuant to the Commissions of Inquiry Act, 2017, and on the lack of criminalisation of enforced disappearance as an autonomous offence under the domestic legislation.

2. The Working Group notes that, in September 2023, it submitted a general allegation to Pakistan, which, among others, already raised issues related to the functioning of the COIED. The Working Group regrets that, to date, no reply has been received to the allegations shared on that occasion and calls on the Government of Pakistan to engage in a constructive dialogue and provide a response.

3. The Working Group equally recalls that three communications concerning the lack of criminalisation of enforced disappearance and the pitfalls in the corresponding draft legislation (PAK 7/2021, PAK 11/2021, and PAK 12/2021) were sent to Pakistan respectively on 29 June 2021, 13 October 2021, and 29 November 2021. Regrettably, at the time of writing, none of these letters has received a response either.

Shortcomings of the Commission of Inquiry on Enforced Disappearances

4. The COIED was established in March 2011 for an initial period of six months and its mandate has been repeatedly extended since. As per the terms of reference set out by the Ministry of Interior in 2011, the COIED is mandated to determine the fate and whereabouts of disappeared persons, promote accountability, and ensure that victims obtain compensation and relief for the harm suffered. According to the information submitted to the Working Group, in the face of a constantly growing number of cases of enforced disappearance registered, the COIED would not be effectively delivering in any of the three areas mentioned, thus impairing victims' rights to truth, justice and reparation.

5. The Working Group was informed that, since January 2025, due to the sudden death of the newly appointed chairperson, the COIED has not been operational. This worsens a situation already marked by the scarce effectiveness of the COIED, which reportedly lacks adequate human and technical resources, in particular in the forensic and investigative fields.

6. The Working Group received information on existing concerns related to the alleged lack of transparency in the operations of the COIED, as well as in the process of selection and appointment of commissioners by the Federal Government, without any consultation with stakeholders, including civil society organisations and associations of relatives of forcibly disappeared persons. Overall, the fact that the COIED is structurally and functionally dependent on the Ministry of Interior, bearing in mind the alleged involvement of security

agencies in the perpetration of enforced disappearance, reportedly casts doubts on, and undermines public trust in, the independence, impartiality and credibility of this body. The situation described is further exacerbated by the existence of serious allegations against the former chairperson of the COIED, including of sexual harassment against an individual who was in contact with him on a case of enforced disappearance.

7. With regard to the alleged lack of transparency in the operations of the COIED, the Working Group has been informed that, besides publishing monthly progress reports that track cases of enforced disappearances received and "disposed of" (*sic*), the COIED does not publish comprehensive data and has not published a report containing its findings and detailed recommendations. Notably, even the report of January 2011 of the judicial commission mandated to investigate enforced disappearances which preceded the COIED remains unavailable to the public to date.

8. It has been brought to the attention of the Working Group that the official website of the COIED is not functioning properly and, in particular, the information contained therein is not regularly updated. In the general allegation of September 2023, the Working Group had noted with concern that the names then published in full on the website were not those of the disappeared persons, but rather those of relatives and/or persons who reported the disappearance. The Working Group emphasised how such a choice raised security and privacy concerns, as it could expose these persons to reprisals and harassment, as well as attempts of extortion. Nevertheless, taking down the website, not ensuring its maintenance and not updating regularly information on the work of the COIED, the registered cases and the corresponding progress only exacerbates the anguish of relatives and further tarnishes the transparency of the work of the COIED.

9. The Working Group has been informed that the reported lack of transparency and publicity of the work of the COIED is additionally compounded by the existence of obstacles which undermine the effective participation of relatives of forcibly disappeared persons in search processes and investigations. First, although many relatives do not speak or understand English, all proceedings before the COIED would allegedly take place in English, and this represents an insurmountable barrier for many. Second, instances of victim-blaming remarks, intrusive questions and derogatory statements against relatives of forcibly disappeared persons have been reported. Third, the lack of measures to afford protection to witnesses reportedly discourages families and other persons from testifying due to fear of retaliation.

10. According to the information received by the Working Group, pursuant to its mandate, if the COIED is of the view that law officials have been involved in a case of enforced disappearance, it may order the issuance of a summons to appear, as well as register a criminal case against those allegedly involved. Reportedly, the COIED has not issued any notices, limiting itself to issuing 'production orders' (i.e. orders by which it requests that the relevant detaining authorities produce a person before the COIED or a court of law), whose implementation rate is less than 8%. Accordingly, the COIED would not contribute to holding perpetrators accountable: on the one hand, when the fate and whereabouts of a disappeared person are determined, the COIED loses its competence to lodge first information reports ('FIR'), irrespective of the ongoing obligation of the State to investigate, identify those responsible, prosecute and, where appropriate, sanction them. On the other hand, even in cases

where the fate and whereabouts of the disappeared person remain unknown, no FIR has been registered as a consequence of the COIED's investigations.

11. It has been reported that, in the face of the lack of effectiveness of the COIED, relatives of disappeared persons attempt to turn to regular high courts, including by lodging petitions of *habeas corpus*. However, the Working Group was informed that often courts refuse to register or hear such cases, directing relatives to seize the COIED instead, thus leaving them without an effective remedy.

12. Finally, the Working Group was informed that relatives of disappeared persons whose cases are registered with the COIED are not granted adequate measures of psycho-social support or relief nor integral reparation for harm suffered. Reportedly, only five families have received financial assistance for three months, which has then been abruptly suspended and never resumed, without any explanation. More in general, the COIED does not acknowledge the family members of disappeared persons as victims in their own right, which is at odds with international law and practice.

Lack of criminalisation of enforced disappearance

13. Enforced disappearance is not codified as an autonomous crime under the Pakistani legislation. In 2021, a bill proposing amendments to the criminal code and the code of criminal procedure to penalise enforced disappearance was passed by the National Assembly (i.e. the Criminal Law (Amendment) Bill 2021). However, the said bill never reached the Senate and there seemingly is no new initiative to address the existing legislative gap.

14. With regard to the allegations contained in this document, the Working Group would like to bring to the Government's attention the following provisions of the Declaration:

Article 2

1. No State shall practice, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 13

1. Each State shall ensure 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. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

15. The Working Group wishes to recall that the absolute prohibition of enforced disappearances and the corresponding obligation to investigate them and hold perpetrators accountable have attained the status of *jus cogens*.

16. Moreover, the Working Group wishes to also recall the obligations of the State pursuant to the 2019 Guiding Principles for the Search for Disappeared Persons; the Working Group's General comment on the Right to the Truth in Relation to Enforced Disappearances (A/HRC/16/48, para. 39), which elaborates on the right to the truth as both a collective and an individual right; its report on standards and public policies for an effective investigation of enforced disappearances; as well as the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; and the Revised version of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, the Working Group wishes to refer to the thematic section of its annual report on reparations and enforced disappearance (A/HRC/22/45, paras. 46-68).

17. The Working Group would be grateful for your Excellency's Government's cooperation and observations on the following questions:

    a) Please provide any additional information and any comment you may have on the above-mentioned allegations.

    b) Please provide information on the current status of the COIED's operations and the measures undertaken – or foreseen – to appoint a chairperson with the adequate profile, and to ensure that it receives adequate financial, technical and human resources, especially in the forensic and investigative fields.

c) Please provide information on the process of selection and appointment of members of the COIED, with the required profile, and the existing guarantees to ensure their independence and impartiality. Please provide also information on the consultation of civil society organisations and associations of families of disappeared persons in such a process.

d) Please provide information on the expected date of publication of a comprehensive report with the COIED's findings and recommendations, as well as the publication of the report of January 2011 of the judicial commission mandated to investigate enforced disappearances which preceded the COIED.

e) Please provide information on the measures taken to ensure that relatives of disappeared persons, their representative associations and lawyers are closely associated with, and are enabled to meaningfully participate in, the search process and investigations.

f) Please provide information on the measures taken to ensure that the COIED regularly informs relatives of disappeared persons – in a language of their comprehension –on the progress of the search process and investigations and, where appropriate, on the obstacles encountered.

g) Please provide information on the measures taken to ensure that the COIED website is restored and regularly updated in a way as to provide clear information on the cases registered and the progress of the investigation, without however disclosing any sensitive data that may expose to risks relatives of disappeared persons and their representatives.

h) Please inform on the measures undertaken to ensure that relatives of disappeared persons or witnesses who approach the COIED are treated with full respect for their dignity, not subjected to stigmatization, and are adequately protected from threats, reprisals and harassment.

i) Please provide information on the measures undertaken by the COIED to identify perpetrators of enforced disappearances and to promote their accountability through the registration of criminal cases.

j) Please provide information on the measures undertaken to ensure that those who register a case with the COIED obtain adequate psycho-social support, including interim relief, as well as integral reparation for the harm suffered.

k) Please provide information on the measures undertaken to codify enforced disappearance as an autonomous crime under Pakistani legislation and on whether there is any draft bill in this regard that replaced the Criminal Law (Amendment) Bill 2021.

18. The Working Group requests your Excellency's Government to provide a response to the above questions within 60 days. The text of the general allegation will be published along with the Working Group's post-sessional report and on its website, where also any response received by your Excellency's Government will be made public.