[**Enforced disappearances**](https://www.dawn.com/news/1739212/enforced-disappearances)

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EARLIER this month the United Nations Human Rights Council wrapped up the 42nd session of the Universal Periodic Review Working Group, a state-driven process by which UN members review the human rights records of their peers, to identify areas where the states under review have made progress in the realisation of their international legal obligations under the human rights treaty framework, and where further work might be necessary.

This session represents the fourth UPR cycle, with Pakistan’s HR record being reviewed by a ‘troika’ of Argentina, Gambia and Nepal, and concluded with a series of recommendations posed to improve Pakistan’s compliance with its international human rights obligations. Of particular significance in these recommendations was the issue of enforced disappearances, which continues to be a perennial black mark on Pakistan’s human rights record.

The International Convention for the Protection of All Persons from Enforced Disappearance (CED) defines ‘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 authorisation, 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”, and despite the coming into force of the CED over a decade ago, Pakistan has yet to ratify it. Prior to the CED the UN General Assembly had, through resolution 47/133 in December 1992, adopted the Declaration on the Protection of all Persons from Enforced Disappearance. Moreover, the prohibition on enforced disappearances remains a seminal norm under international humanitarian law, constituting a crime against humanity pursuant to the 1998 Rome Statute of the International Criminal Court.

Pakistan is a signatory to the International Covenant on Civil and Political Rights, which grants persons the right to liberty and security of person, and protects them from arbitrary arrest or detention. According to the ICCPR, no person shall be deprived of their liberty save in accordance with the law; these are not novel rights, indeed, the Pakistani Constitution itself enshrines these — and other — rights in its first chapter, and any violations of these rights constitute a breach not only of domestic law but of Pakistan’s international legal obligations as well. Enforced disappearances operate to remove the victim from the protection of the law — whether international or domestic — rendering them exceedingly vulnerable to further oppression such as custodial and forced confessions which are significant issues in the Pakistani context.

Gradual expansion of the security apparatus has contributed to an atmosphere of impunity.

In its submissions to the UPR, Pakistan gave scant mention of its work on the issue of enforced disappearances, claiming instead that it was in the process of promulgating domestic legislation to criminalise such acts, and that it had constituted the Commission of Inquiry on Enforced Disappearances. This commission, according to Pakistan, is “expeditiously and efficiently” dealing with instances of missing persons, and has been able to dispose of a “majority of the cases”. The view from the ground, however, tells a markedly different story; according to a series of appellate court proceedings, the issue of enforced disappearances continues to persist despite the commission being constituted over a decade ago.

In his June 2022 order in a ‘missing persons’ case, Justice Athar Minallah of the Islamabad High Court averred that “[t]he Court … is, prima facie, of the opinion that the Commission has failed in its duty nor can it justify its existence in the circumstances”, further lambasting the commission as a white elephant by stating that “(i)t has become obvious by now that [the commission] has not been able to effectively achieve its object”.

Constituting commissions or promulgating new statutes to ‘criminalise’ enforced disappearances is little more than a fig leaf intended to distract from the fact that the offences of kidnapping and false imprisonment already exist, and that the state itself — the erstwhile guarantor of persons’ constitutional rights — commits these offences. Enforced disappearances are fundamentally an issue of enforcement, where the state lacks either the capacity to effectively investigate, prosecute and penalise such offences, or the appetite to rein in these ostensibly ‘rogue’ elements within itself committing these crimes.

This arbitrary detention — without due process of law and contrary to the explicit provisions of the Constitution — can best be exemplified in light of the ‘Global War on Terror’ post the 9/11 terrorist attacks, which for critics served as a pretext to not only invade foreign sovereign nations either ‘unwilling or unable’ to address violent extremism in their territories, but to also conduct ‘enforced disappearances’ of the latters’ citizens. ‘Black sites’ routinely held individuals for prolonged periods, detaining them without trial and isolating them from any domestic or international legal protections. Pakistan cannot thus prevaricate on the issue, condemning such human rights violations at the global level while simultaneously employing the same methodologies to justify its own offences towards its citizenry.

It is unsurprising that the West’s doctrine of ‘aggressive self-defence’ came to inform domestic approaches to law enforcement, precipitating the rise of enforced disappearances. The gradual expansion of the Pakistani state’s security apparatus, including the progressive — and arguably reckless — amendment of its criminal legal framework, have since increasingly contributed to an atmosphere of impunity. Moreover, the demographics of those ‘disappeared’ is also particularly telling, with the ranks of missing persons comprising a significant number of journalists and human rights activists, as well as members of socio-ethnic minority groups agitating for their collective rights.

It is in this context, therefore that Pakistan’s accession to the CED is critical; where Pakistani authorities are either unaware, unable, or unwilling to adhere to the provisions of its own legal system, or where they routinely ignore the solemn pronouncements of its superior judiciary, having a coherent and binding international legal instrument on the specific issue of enforced disappearances would ensure international scrutiny and — potentially — meaningful change and clarity within this body of law.

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