

Training Workshop on Enforced Disappearances – Standards, Mechanism and Remedies

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@ The Office of the National Commission for Human Rights (NCHR),
Karachi



The banner features three logos at the top: RightsNow Pakistan (human rights for all), the National Commission for Human Rights (NCHR), and the Sindh Human Rights Defenders Network. The main text is centered and reads: **Workshop on Enforced Disappearances Standards, Mechanisms, Remedies @ NCHR Office Karachi**. The background is a yellow and orange gradient with a subtle pattern of dots.

Sindh Human Rights Defenders Network (SHRDN) organized a closed workshop for the HRDs working actively on the prevention, reporting, and litigation on the Enforced Disappearances. The workshop was conducted by different resource person including Barrister Ali Tahir, Naghmalqtidar, Suheni Joyo led by Ali Palh coordinator Sindh Human Rights Defenders Network (SHRDN). The workshop was concluded with remarks from the renowned human rights defenders AnisHaroon, Member National Commission for Human Rights (NCHR), activists and former parliamentarian Mangla Sharma, women rights defender, member SHRDN Saima Agha who is serving as commissioner information commission.

Introduction of Participants

All participants introduced themselves and their work on the subject, their organizations and areas they work in.

Session One by Advocate Ali Palh What is Enforced Disappearance?



Mr. Palh first focused on the definition of enforced disappearance and how it is different from the general missing of an individual. He presented that:

An enforced disappearance is considered to be 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. He referred Article 2 of the International Convention on Protection of all Persons from Enforced Disappearance.

Three cumulative elements defined in A/HRC/16/48/Add.3 which is given below:

- Deprivation of liberty against the will of the person;
- Involvement of government officials, at least by acquiescence;
- Refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person.

Mr. Palh shifted to the definition given by the Commission of Inquiries on Enforced Disappearances (CoIED). It is a national commission inquire into the cases of the enforced disappearances constituted by the Ministry of Interior on the Supreme Court's directions. THE PAKISTAN COMMISSIONS OF INQUIRY ACT, 1956 (1ACT NO. VI) OF 1956 governs its mandate and activities.

Its definition on Enforced Disappearance/Missing Person means 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. The persons, who have gone missing in cases of kidnapping for ransom, personal enmity or on their own, do not fall within the ambit of the Enforced Disappearances (ED).

Commission has website where it has forms for individuals and families to fill and provide information of the case of enforced disappearance and get connected with it or write it on the address.

Trainer showed them form of the commission and shared with the participants so case may be reported to the commission by the defenders.

Impact of Enforced Disappearance on Individuals and Families

A disappearance has a doubly paralysing impact on the victim, who is removed from the protection of the law, frequently subjected to torture and in constant fear for their lives.

Following protection of laws disappeared person is removed:

- ☐ No access to Lawyer
- ☐ No access to Family
- ☐ No Protection of Law
- ☐ Production Before the Magistrate
- ☐ No Magistrate Raid
- ☐ Medical Treatment
- ☐ Reporting Torture, Degrading Treatment to the Court
- ☐ No Remand
- ☐ Grant of Bail
- ☐ No Fair Trial

- ❓ Charge Frame
- ❓ No Defence
- ❓ Investigation
- ❓ Prison Manual Protection/Prisoners' Rights

On the families of Disappeared

- They are ignorant of the fate of their loved ones
- Their emotions alternating between hope and despair
- Wondering and waiting, sometimes for years, for news that may never come (Some families waiting for their disappeared loved ones since 9 years.)

Impact on the Society

- Enforced disappearance has frequently been used as a strategy to spread terror within societies.
- The feeling of insecurity generated by this practice is not limited to the close relatives of the disappeared, but also affects their communities and society as a whole.

INTERNATIONAL LEGAL FRAMEWORK

- **Int Convention on Enforced Disappearances (ICED)/International Convention for the Protection of All Persons from Enforced Disappearance(ICPPED)**

An international human rights instrument of the United Nations intended to prevent forced disappearance, which, as defined in international law, is part of crimes against humanity.

This convention which Pakistan has not ratified yet states that



No one shall be subjected to enforced disappearance. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

Trainer shared that the Convention place obligation on the parties

- investigate acts of enforced disappearance and bring those responsible to justice;
- ensure that enforced disappearance constitutes an offence under its criminal law;
- establish jurisdiction over the offence of enforced disappearance when the alleged offender is within its territory, even if they are not a citizen or resident;
- cooperate with other states in ensuring that offenders are prosecuted or extradited, and to assist the victims of enforced disappearance or locate and return their remains;
- respect minimum legal standards around the deprivation of liberty, including the right for imprisonment to be challenged before the courts;
- establish a register of those currently imprisoned, and allow it to be inspected by relatives and counsel;
- ensure that victims of enforced disappearance or those directly affected by it have a right to obtain reparation and compensation. (Article 24. 4)
- the right to obtain reparation covers material and dangers and, where appropriate, other forms of reparation such as; a) Restitution. b) Rehabilitation. c) Satisfaction, including restoration of dignity and reparation. d) Guarantee of non-repetition. (Article 24. 5)
- The Convention will be governed by a Committee on Enforced Disappearances elected by its parties. Parties are obliged to report to this committee on the steps they have taken to implement it within two years of becoming subject to it.
- The Convention includes an optional complaints system whereby citizens of parties may appeal to the Committee for assistance in locating a disappeared person.[8] Parties may join this system at any time, but may only opt out of it upon signature.

Violation of UN Convention on Civil & Political Rights (ICPPR)

- Right to life (Art. 6)
- Prohibition of torture or cruel, inhuman or degrading treatment or punishment (Art. 7)
- Right to liberty and security of person and the treatment of persons deprived of liberty (Arts. 9-10) Recognition as a person before the law (Art. 16)
- Right to family life (art. 17)
- Right to special measures of protection for children (art. 24)
- Right to an effective remedy (art. 2 (3))
- Other International Conventions

- **Convention Against Torture (CAT)**

Torture is one element which is part of the enforced disappearances. Pakistan has ratified the convention and its obligation on the Pakistani government to take steps to prevent torture and enforced disappearances which keeps individual out of all legal protection and allow him to be tortured.

- **The Rome Statute (International Criminal Court)**

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law. Pakistan has not ratified the Statute yet. The International Criminal Court is one the world's criminal court which doesn't recognize immunity for office holders even for sitting president of the country.

International Legal Frame Work

▪ UN Working Group on Enforced Disappearances

The Working Group on Enforced or Involuntary Disappearances, which was established in 1980 by resolution 20 (XXXVI) of the UN Commission on Human Rights, is a non-treaty-based mechanism belonging to the United Nations human rights system. The Working Group only handles cases of enforced disappearance that can be attributed, directly or indirectly, to State agents.

The Working Group's mandate is essentially to help the relatives of missing persons to ascertain their loved ones' fate (find out what happened to them and discover their whereabouts) by submitting specific cases to the government concerned. It therefore acts as an intermediary between the families and the government.

The Working Group examines individual cases of missing persons brought to its attention. By virtue of the Declaration on the Protection of All Persons from Enforced Disappearance, it collects and examines communications from the families of missing persons or from human rights organizations acting on their behalf. It acts as a channel between the families and the governments, transmitting individual files to the latter, inviting them to inquire into the enforced disappearances and to keep the Working Group informed of the outcome of those inquiries.

Adv. Ali Palh had also shared a copy of working group's form for a reference to the participants. He also highlighted that we must pressurize the government to criminalize the enforced disappearances and must ratify the UN convention against the Enforced Disappearances.

The Working Group on Enforced or Involuntary Disappearances has engaged with regional human rights mechanisms with a view to contribute to the strengthening of regional and national policy and institutional framework to address enforced or involuntary disappearances and enhance support to families and their relatives. In this regard, the Working Group cooperates with the Inter-American Commission and Court on Human Rights; the African Commission on Human and People's

Rights as well as European Regional Human Rights bodies. The Working Group also cooperates with international accountability mechanism such as UN Human Rights Fact Finding Missions, Commissions of Inquiry, and the International Criminal Court. Experts of the Working Group have also engaged directly with national mechanisms investigating cases of enforced disappearances and/or searching for the victims.

- **UN Committee on Enforced Disappearances**

The International Convention for the Protection of all Persons from Enforced Disappearances was adopted in 2006. The Convention creates an obligation for States to make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness. It also affirms that enforced disappearances constitute a crime against humanity when practiced in a widespread or systematic manner as did the Declaration. On 6 February 2007, the historic opening for signature of the Convention took place in Paris, where 57 countries signed it. The International Convention entered into force on 23 December 2010 and with it the Committee on Enforced Disappearances was established.

The Committee on Enforced Disappearances (CED) is the body of independent experts which monitors the implementation of the Convention for the Protection of all Persons against Enforced Disappearance by the States parties.

The Committee and its Secretariat work daily to support victims, civil society organizations, National Human Rights Institutions and States to search for and locate disappeared persons, eradicate, punish and prevent this crime, and repair the damage suffered by the victims.

The Committee on Enforced Disappearances (CED) is the body of independent experts which monitors the implementation of the Convention by the States parties. Specifically, its responsibilities include:

- Examining reports from States parties, and making recommendations on the topic of enforced disappearances in that State (article 29 of the Convention).
- Registering requests for urgent action (article 30 of the Convention).
- Receiving individual complaints from victims of a violation of the Convention by a State party (article 31 of the Convention).
- Receiving communications in which a State party claims that another State party is not fulfilling its obligations under the Convention; so-called inter-state communications (article 32 of the Convention).

UN Declaration on Human Rights Defenders 1998

Mr Palh shared the declaration with the participants which contains a series of principles and rights that provide for the support and protection of human rights defenders in the context of their work. The Declaration recognizes human rights and principles enshrined in human rights legally binding instruments. It was adopted by consensus by the General Assembly and therefore represents a very strong commitment by States to its implementation.

▪ UN Special Rapporteur on Human Rights Defenders (if Human Rights Defenders is Disappeared)

The Human Rights Commission first established the mandate on the situation of human rights defenders in 2000. The mandate was most recently renewed by the Human Rights Council in 2020 with decision 43/115 and resolution. Mr Palh also shared that the UN Special Rapporteur on HRDs Mr. Mitchel Forst also visited Sindh and Pakistan few years ago on SHRDN's invitation and also met with human rights defenders, NHRIs, State Officials including President of Pakistan, Governor Sindh, Chief Minister Sindh. His mandate is

- To Seek, receive, examine and respond to information on the situation of human rights defenders.

- To Integrate a gender perspective throughout the work of the mandate, with particular focus on women human rights defenders.

Human rights defenders (HRDs) are all persons, who individually or in association with others, act to promote or protect human rights peacefully. This mandate was created to:

- Promote the effective implementation of the UN Declaration on Human Rights Defenders in cooperation and dialogue with Governments and other actors;
- Study developments and challenges on the right to promote and protect human rights and seek, receive and respond to information on the situation of human rights defenders;
- Recommend effective strategies to better protect human rights defenders;
- Integrate a gender perspective and pay particular attention to women human rights defenders.

Role of National Human Rights Institutions (NHRI) & Ministry of Human Rights

- Sindh Human Rights Commission (SHRC)
- National Commission for Human Rights (NCHR)
- National Commission on Status of Women (NCSW)
- Provincial Commission on Status of Women
- Federal & Provincial Ministry of Human Rights
- Senates' Standing Committee on Human Rights
- National Assembly's Standing Committee on Human Rights

From our experience, we are of the view that the Sindh Human Rights Commission and National Commission for Human Rights have always responded the needs of the families of the disappeared in a immediate manner. Senate, National Assembly's standing committees have not acted on above matter in normal circumstances. Sindh Commission on status of women (SCSW) has to play important role on the welfare and legal support of the families of the disappeared. Their social exclusion, financial constraints, legalaid support are important area where SCSW may intervene.

Mr Ali Palh advocate said Pakistani civil society must gather and demand from the Government and the state of Pakistan for ratification of the convention on enforced disappearances. Civil society can also be part of the coalition or get support of the coalition in this regard. The International Coalition against Enforced Disappearances is located in Geneva.

- **The Commission on Inquiry on Enforced Disappearances(COIOED)**

This commission is a national commission established in 2011 by the Government of Pakistan. The Commission reports that it has received 7,000 cases of enforced disappearance since its inception and it has resolved around 5,000 of those cases. According to the families of the disappeared, there is need to ease the access before this commission. Mostly families of the disappeared are not satisfied with the procedure adopted by the commission not with their dealing. Human rights defenders and civil society should be part of the commission. According to recent figures released by COIOED in July 2022, a total of 8,696 cases of missing persons have been reported. While 6,513 of these cases have been solved, 2,219 are still pending.

Families of the disappeared families do not agree with the way cases are considered solved. Before them, proper search and return of the loved ones is the real solution of the case.

- **Provisions in Penal Code against Enforced Disappearances**

Mr.Palh said in his presentation that currently Pakistan has no national law on enforced disappearances, penal law of Pakistan consist of few sections of including PPC 365

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

359. Kidnapping is of two kinds: Kidnapping from Pakistan and kidnapping from lawful guardianship. When ransom is involved it is called Kidnaping Mr.Palh added.

While speaking on national law against enforced disappearances, Mr. Palh shared that efforts were being made by the Federal and Law Ministry of Pakistan, bill was drafted but it could not become law due to unwillingness of some organs of Pakistani state.

Session Two Legal Tools and Remedies by Barrister Ali Tahir

- Application to Station House Officer (SHO) Police and SSP regarding the incident or harassment
- Registration of FIR under section 154 CrPC at Police Station by the Police
- Getting Directions from the Court for Registration of FIR of the disappearance at Police Station, if Police doesnot do, under Section 22 A & B CrPC
- Writ Petition Under Article 199 of the Constitution of Pakistan
- Writ Petition under Article 184 (3) of the Constitution of Pakistan
- Application against illegal detention by the police/LEA under section 491 Crpc
- Application to Human Rights Cell, Chief Justice High Court, Chief Justice Supreme Court



Session Three Families of Enforced Disappeared Individuals and Defenders

By Suheni Joyo, Women Rights Defender

Suheni Joyo, woman rights defender and office bearer of Voice of Missing Persons (Vo MPs) shared her painful experience of how her house was raided at late night and her husband was forcibly picked by law enforcement agencies/police. Her husband was beaten in front of her children who were crying to save their father and get him release from the clutches of police/LAE. The Struggle to find his whereabouts, charges against him, and filing petition in the court, reporting to police, commission, all the process is difficult and expensive.



We had fear of his death and sometimes hope of his return. Bad thoughts were coming in the mind. Family gets stigmatised when their family member is forcibly picked up/disappeared. People start maintaining distance. Civil society media and other actors always support and stood by with us.

Family and children face exclusion, financial stress, and fear of next attack, police harassment, calls from unknown phones and comments of neighbours and other members of the society. Sometimes some journalists also ask difficult questions.

Session Four

- **Harrasment, Illegal Detention and Working with Families of Disappeared**
By Naghma Iqtidar , Woman Rights Defender

The third session was conducted by Naghma Iqtidar, WHRD and member Steering Committee Sindh Human Rights Defenders Network. She shared her own experience of illegal detention and also threats. She shared that the role of



women in movement against enforced disappearances is praiseworthy. Women are on the frontline in the movement against the Enforced Disappearances in the world and also in Pakistan. These women rights defenders should be supported by all of us. Comments were invited from the participants and they were of the view that women hrds have special protection needs and special attention should be given to them. Secondly commission formed for uplifting the status of women and their protection should also devise strategy towards women's and families this issue. All women who are suffering by this issue should be reached by the NHRIs, civil society and their protection needs should be addressed.

Address by Ms. Anis Haroon, the Chair of National Commission for Human Rights (NCHR)

Anis Haroon has two profiles: one she is elder of the civil society and second member of the National Human Rights body for Sindh province.

She called enforced disappearance a serious violation of human rights and ensures that NCHR will keep playing its role according to its mandate. She emphasized the needs of the families and women of the disappeared families. She

agreed to host a capacity building session of human rights defenders work on enforced disappearances and meeting with all affected families with the assistance and active support of Sindh Human Rights Defenders Network (SHRDN).

Pakistan Government and State must enact law against this menace and the courts of country may devise any mechanism of dealing with cases of disappearances which are dispensing expeditious justice.

On recommendation from SHRDN that a monthly dialogue by the SHRDN and NCHR at NCHR office for gathering civil society will be useful. SHRDN will do follow up on this with the NCHR team.



RECOMMENDATIONS:

- Enforced Disappearance in Pakistan should be criminalized by the State by passing a law from the parliament without any delay.
- Those who are reported disappeared their registration and follow up of those deprived of their liberty should be done and maintain contact between these and their families are key protective measures.
- Those state actors who are involved in this practice should be held accountable by the state and the courts.
- Search of the Disappeared should be done as per UN Guidelines on search of disappeared persons.
- Civil Society NHRI Media Bar Associations should join hands against the menace.
- Before passage law on enforced disappearance should be discussed with the civil society and human rights defenders.
- Efforts should be made to pass the national law on enforced disappearances.
- All defenders working on shia missing persons, missing persons of nationalist parties, missing person of political parties, disappeared human rights defenders, should work on this human rights issue jointly and collectively.
- Police should register the FIR of disappeared without delay and without court orders. Deputy Inspector General of Police and the Home Department should work together on the issue and JITs are formed without delay and JITs should consist of officers who are sensitized to human rights and possess skills and character.
- State should consider to establish fund to support families of disappeared who are facing seriously financial challenges for survival.
- Returnees or recovered citizens should be provided medical treatment which includes mental health assistance.
- Pakistan must ratify International Convention on Enforced Disappearances and pass a national law on the subject.
- Current Prime Minister should back promises of former prime minister on enforced disappearances with accountability.

- The criminal justice system, have long failed to demonstrate the political will to end enforced disappearances, should be reformed.
- Members of the civil society and human rights defenders should be added as member to the national commission on the inquiry of the enforced disappearances.
- The discrepancies in number of disappeared should be removed. Mechanisms should be designed to reconcile data given by the human rights defenders and the cases reported by the commission.
- UN Working Group on Enforced Disapearences should pay visit to Pakistan, meet the State officials, civil society and families of the disappeared and assist the government of Pakistan to resolve the issue.
- National Commission for Human Rights should appoint focal person for human rights defenders and also implement the guidelines for protection of human rights defenders.
- State should provide support to civil society organizations, human rights defenders in terms of legalaid to families of disappeared and district legalaid committees should also consider legalaid to disappeared families.
- Dates in cases of disappearances should be not more than a week by the higher courts.
- A judicial commission led by a sitting judge of the Supreme Court of Pakistan is formed to inquire into this issue, investigate the whole issue and hold the responsible individual and departments accountable.



Sindh Human Rights Defenders



RightsNow Pakistan
human rights for all



**NATIONAL COMMISSION
FOR HUMAN RIGHTS**

Certificate of Participation ALUMNI # _____

This is to certify that

Mr. / Miss. _____

Participated in the workshop on

"How To Report Enforced Disappearances"



#JusticeHeroes

ALI PALH ADVOCATE
RightsNow Foundation/SHRDN

ANIS HAROON
Member NCHR Sindh