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**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF PAKISTAN**

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists 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 since 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.

SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UNIVERSAL PERIODIC REVIEW OF PAKISTAN

Introduction

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Pakistan.
2. In this submission, the ICJ raises concern about the following issues:
 - a. Enforced disappearances;
 - b. The rights of lesbian, gay, bisexual, trans and gender diverse, and intersex (LGBTI) people; and
 - c. International human rights instruments.
3. With respect to each of the above-mentioned concerns, the ICJ calls upon the Working Group on the UPR and the Human Rights Council to make a number of recommendations to the Pakistani authorities.

(a) Enforced disappearances

4. During its third UPR, Pakistan accepted a number of recommendations aimed at ending the practice of enforced disappearances, including committing to criminalizing enforced disappearances, and to bringing perpetrators to justice.¹ At the time of writing, however, Pakistan has failed to implement these recommendations.²
5. Pakistan's current legal framework has proven to be completely ineffective in responding to cases of enforced disappearances. It has failed to reveal the truth, bring perpetrators to account, and to deter the same or similar violations.
6. In March 2011, Pakistan's Federal Government established a Commission of Inquiry on Enforced Disappearances (COIED). The Commission's mandate was, among other things, to "trace the whereabouts of allegedly enforced disappeared persons", and "fix responsibility on individuals or organizations responsible." The COIED's mandate was extended multiple times, most recently in 2020. Its extended mandate is set to expire in September 2023.
7. The ICJ's analysis shows glaring flaws in the legal and normative framework establishing the COIED, which, in turn, have profound implications on its impartiality, competence and overall effectiveness. The ICJ has found that in its current form, the COIED has enabled and entrenched impunity for enforced disappearances instead of providing redress to victims.³
8. Furthermore, the Chairperson of the Commission, Justice (retired) Javed Iqbal, has been embroiled in serious accusations of sexual harassment by families of victims of enforced disappearances.⁴ He has also made a number of public statements that call into question his impartiality and commitment to human rights. In his briefing the National Assembly Standing Committee on Human Rights in 2018, for example, he claimed the issue of enforced disappearance is exaggerated by NGOs who are "working for foreign elements and they get their funding from abroad." He also said that if he had the authority, he would have "placed a ban on the organizations."⁵
9. Enforced disappearance is still not recognized as a distinct, autonomous offence. In 2021, the National Assembly of Pakistan (Lower House of Parliament) passed a bill including "enforced disappearance" as an offence in

the Penal Code, carrying a penalty of up to 10 years' imprisonment. As of July 2022, the Senate (Upper House of Parliament) has not passed the bill. While the bill recognizes enforced disappearance as a crime, it has a number of shortcomings. For example, the bill includes a provision that provides for penalties of up to five years imprisonment and one hundred thousand Pakistani rupees in fines for anyone found guilty of filing a complaint with information "that proves to be false". The UN WGEID said: "if passed, this law would undoubtedly lead to an increased underreporting of the crime, and foster impunity for the perpetrators."⁶

10. As of the time of writing, not a single perpetrator of enforced disappearances has been brought to justice. Efforts to bring perpetrators of enforced disappearances to justice have failed at all levels, even where there is clear evidence of the involvement of security agencies in this practice. The case of Idrees Khattak – a human rights defender who was forcibly disappeared by the Pakistani Military Intelligence in November 2019 – is a graphic illustration of the above-mentioned failures. His whereabouts remained unknown until June 2020, when military authorities informed the Commission of Inquiry on Enforced Disappearances that he was being tried under the Official Secrets Act, 1923. Even though Idrees Khattak had been subjected to an enforced disappearance, the Government took no action to bring the perpetrators to account. Instead, Idrees Khattak's arbitrary detention continued unabated. Eventually, in April 2021, a military court convicted him of espionage in a secret trial, and sentenced him to 14 years' imprisonment.⁷
11. There have been instances where the courts have responded to cases of enforced disappearances by denouncing the practice and calling it a crime against humanity. In a number of cases, courts have directed that family members of individuals allegedly subjected to enforced disappearance be provided compensation as a result of the authorities' "failure to trace the whereabouts of a missing person." The courts have also directed the authorities to "trace" the whereabouts of "missing persons" and produce them before court. In many cases, however, the Government and the security agencies fail to abide by court orders.
12. The Islamabad High Court (IHC) has passed the most significant and far-reaching orders regarding enforced disappearances.⁸ In June 2022, in a case regarding the enforced disappearances of six people, the IHC directed that the Government must convince the Court that enforced disappearance is not "an unannounced policy" of the State, and asked the Prime Minister to appear before the Court in person to "inform the Court regarding actions taken against those public functionaries who have been or continue to be involved in the most inhuman and heinous practice of enforced disappearance."⁹

(b) The rights of LGBTI people

13. In its third UPR, Pakistan accepted recommendations to enact legislation to protect the human rights of transgender people.¹⁰ However, Pakistan did not accept a number of recommendations to protect the human rights of lesbian, gay, and bisexual people.
14. In May 2018, Pakistan enacted the Transgender Persons (Protection of Rights) Act (TG Act). The TG Act is an affirmative federal law, among other things, allows for self-identification as the basis of legal gender recognition.¹¹ However, serious challenges towards effective implementation and enforcement of the TG Act still remain.
15. While Section 3 of the TG Act provides "a transgender person shall have a right to be recognized as per his or her self-perceived gender identity" and

have their "self-perceived gender identity registered with all government departments", the rules framed under the law limit the change in gender markers to "X" only.¹² These rules are inconsistent with the TG law as well as international standards.

16. Violence against transgender people is endemic in Pakistan. At least 20 transgender people were killed in Pakistan in 2021 alone. According to data collected by the ICJ, transgender people were also subjected to rape, sexual harassment, abduction, blackmail and other serious crimes.
17. Perpetrators of crimes against transgender people are rarely brought to justice. Often, victims, their families and the members of the community are pressurized into "compromising" with those responsible due to harassment, threats, influence of the perpetrators and lack of resources. With respect to the human rights violations and abuses against transgender people documented by the ICJ and partner organizations, complaints were filed with the police or other relevant authorities in only 34 per cent of the cases. Even where victims and their families pursue cases with the authorities, the police either fail to register complaints or carry out prompt, thorough, competent and effective investigations that could eventually lead to the prosecution and conviction of the perpetrators. In some cases, the police and other authorities are either directly or indirectly complicit in the attacks.¹³
18. One reason for poor enforcement of the TG Act is that the law does not create any new enforcement mechanisms. Instead, it gives existing commissions such as the National Commission for Human Rights and the National Commission for the Status of Women as well as the Federal Ombudsperson an additional mandate to receive complaints under the Act. Research by the ICJ and its partner organizations shows that these redress mechanisms have proven inadequate to ensure compliance with the TG Act.
19. Furthermore, the TG Act creates a new offence, which criminalizes "employing, compelling, or using" a transgender person for begging.¹⁴ Other laws in force in Pakistan also criminalize beggary, such as the Punjab Vagrancy Ordinance, 1958. Criminalization of beggary has raised a number of human rights concerns as for many transgender people in Pakistan, begging remains one of their limited livelihood opportunities. Research conducted by the ICJ and its partner organizations shows laws related to beggary have been significantly misused against the transgender community, allowing for law enforcement agencies to harass, blackmail, imprison and sexually assault transgender people. Furthermore, the police routinely interpret the vague penal clauses on "begging" and "vagrancy" to prohibit and penalize spiritual and celebratory rituals of the khawajasira community (for instance, at weddings and childbirth) that have crucial significance in the community's folk tradition.
20. While the Pakistani Constitution guarantees the right to equal treatment of the law, the specific prohibition related to discrimination is limited to discrimination on the "basis of sex". Furthermore, there is no anti-discrimination legislation to protect people/groups who are at a heightened risk of human rights abuses as a result of discrimination on the grounds of their gender expression, gender identity, race, ethnicity, etc. The TG Act does not provide any definition of what constitutes discrimination. It also provides no penalties, remedies or enforcement mechanisms in case of a violation of the anti-discrimination provisions.
21. The TG Act includes intersex people in the definition of transgender, which means the rights and protections guaranteed by the law are also available to intersex people. However, the Act leaves some of the most serious human rights violations faced by intersex people unaddressed. These include subjecting intersex children and adolescents to medically unnecessary

hormonal treatment, surgical and other procedures for the purpose of trying to forcibly make their appearance conform to binary sex stereotypes and societal expectations about female and male bodies. These procedures, which are often irreversible, can cause permanent infertility, pain, loss of sexual sensation and lifelong mental suffering, including depression. UN experts have called on Governments to urged Governments to “prohibit harmful medical practices on intersex children, including unnecessary surgery and treatment without their informed consent, and sterilization.”¹⁵

22. The TG law also fails to provide protection to transgender children and residents of Pakistan who do not have citizenship, including refugees.¹⁶
23. In 2021, Pakistan also amended Section 375 of the Penal Code to make rape a gender-neutral offence in terms of victims and perpetrators, and widen the scope of non-consensual sexual acts that constitute rape. While this is a positive step, it remains to be seen how the law will be implemented in practice for transgender people.
24. While there is at least some legal protection for transgender and intersex people in Pakistan, it still remains one of the most vocal opponents to greater recognition and protection of human rights on the basis of sexual orientation. Section 377 of the Pakistan Penal Code criminalizes “carnal intercourse against the order of nature”, and is used as a tool to persecute LGBT people in a number of ways, including blackmailing and harassment by the police. The law also reinforces discourse that considers LGB people “unnatural” and “perverted”, with the effect of legitimizing violence against them and criminalizing their identities.
25. The ICJ and its partner organizations have also documented a number of human rights violations and abuses against LGB people, including sexual violence, sexual harassment, intimate partner violence, threats/blackmail, hate speech, public shaming, assault, evictions from their homes and bullying. These violations and abuses are rarely reported to the authorities, as a large number of LGB people believe that if they report these violations or abuse, their sexual orientation will be used as a reason to blackmail, threaten, “out” them before their families and media, and further persecute them.

(c) International human rights instruments

26. Pakistan has not signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW); the Optional Protocol to the Convention against Torture (OP-CAT); the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR); and the Rome Statute of the International Criminal Court (ICC). Pakistan has also not accepted the inquiry procedure under Article 20 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
27. In its third UPR, Pakistan “noted” recommendations to ratify these treaties and to extend invitations to special procedures of the Human Rights Council. At the time of writing, requests for country visits from a number of special procedures, including the Special Rapporteur on the freedom of religion or belief, the WG on arbitrary detention, and the Special Rapporteur on torture, among others, are pending.

Recommendations

28. In light of the concerns set out above, the ICJ calls upon the UPR Working Group and the Human Rights Council to recommend the following to Pakistani authorities:

- Make enforced disappearance a distinct, autonomous crime in the Penal Code, consistent with its definition in the ICCPR.
- Disband the COIED and hold real and participative consultations with all relevant stakeholders, including victims' groups and civil society organizations, on whether a new commission of inquiry on enforced disappearances is required.
- Make public the final report of the COIED as well as the report of the Commission that preceded it.
- Conduct a prompt, thorough, effective, independent and impartial inquiry into the allegations of sexual harassment and improper conduct against the Justice (retired) Javed Iqbal, the chairperson of the COIED.
- Set up a programme of reparations for all victims of enforced disappearances, including their family members and other persons directly affected by the enforced disappearance. The programme should include not only compensation, but also full rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition.
- Comply with court orders, in particular orders of the Islamabad High Court, regarding tracing "missing persons" as well as holding perpetrators to account.
- Carry out prompt, thorough, independent and impartial investigations into all allegations of enforced disappearance.
- Enact clear rules and ensure the oversight and accountability of law enforcement and intelligence agencies.
- Give appropriate training to members of law enforcement and intelligence agencies in the field of human rights, with particular focus on enforced disappearances;
- Prohibit any form of incommunicado detention and any secret places of detention and establish an official and generally accessible, up-to-date register of all detainees and of centralized registers of all places of detention.
- Ensure only competent civilian courts have jurisdiction over alleged human rights violations and military courts are barred from exercising jurisdiction over human rights violations allegedly perpetrated by the military.
- Repeal section 17 of the Transgender Persons (Protection of Rights) Act and decriminalize beggary in all other legislation, such as the Punjab Vagrancy Ordinance, 1958.
- Enact legislation to ensure the respect, protection and fulfillment of the rights of intersex people, such as the prohibition of medically unnecessary hormonal treatment, surgical and other procedures, including "sex-assignment surgeries", on intersex children and adolescents, unless and until they are performed with their full, free and informed consent.
- Establish commissions at provincial and federal levels for the protection of the rights of transgender and intersex people.

- Enact robust provincial legislation to respect and protect the rights of transgender and intersex people and ensure the fullest implementation of the law, not solely at the Federal but also at the provincial level.
- Withdraw rules notified under the TG Act and ensure new rules under the law are framed after transparent, meaningful and broad-based consultations with transgender and intersex activists, CSOs, and other stakeholders.
- Ensure rules framed under the law provide for quick, transparent and accessible legal gender recognition procedures in accordance with self-perception.
- Enact a comprehensive anti-discrimination law, following transparent, meaningful and broad-based nationwide consultations with relevant stakeholders, with the aim of prohibiting discrimination on protected grounds including gender identity, gender expression, sexual orientation and sex characteristics, in line with international law and standards.
- Amend the TG Act to include provisions for legal gender recognition for non-citizens, including refugees.
- Remove the absolute age limit of 18 years from the TG Act and allow for legal gender recognition for adolescents based on the best interests of the child and taking into account the opinion of the child.
- Review Pakistan's legal framework to ensure that other laws, including provisions of the Pakistan Penal Code, do not violate the human rights of LGBT people. In particular, repeal section 377 of the PPC.
- Become a party to the ICPPED, the ICRMW, the Rome Statute of the ICC, OP-CAT and the second optional protocol to the ICCPR.
- Issue a standing invitation to Special Procedures mandate holders.

ENDNOTES

¹ See, for example, Recommendation 152.131: "Make enforced disappearance a criminal offence and ensure that all allegations of enforced disappearance and extrajudicial executions are thoroughly investigated and those responsible brought to justice" (Switzerland) and Recommendation 152.132: "Conduct an independent inquiry into all suspected cases of enforced disappearances of human rights defenders and hold accountable those responsible" (Germany)

² In Pakistan, "enforced disappearances" have taken place in many different contexts, ranging from the secret detention and renditions of people accused of terrorism to the abductions of people allegedly involved in nationalist or separatist struggles in Balochistan and Sindh. In recent years, "short-term disappearances" have also proliferated in the country, where victims are placed outside the protection of the law in secret detention before being released weeks or months later, sometimes after having been subjected to torture and without having been brought before a judge or being charged with a criminal offence. Victims include bloggers, activists, journalists, students and others who are critical of the State. Estimates of the overall number of cases of enforced disappearance in Pakistan vary. The COIED has reported 2219 unresolved cases as of June 2022. The UN Working Group on Enforced or Involuntary Disappearances has received a total of 993 cases, out of which 718 remain outstanding as of 2021.

³ For detailed analysis of the COIED's performance, see International Commission of Jurists, Pakistan: Commission of Inquiry on Enforced Disappearances has failed in providing justice to victims, September 2020, accessed at: <https://www.icj.org/pakistan-commission-of-inquiry-on-enforced-disappearances-has-failed-in-providing-justice-to-victims/>

⁴ For more details, see Human Rights Commission of Pakistan, COIED chairperson must be removed if allegations proved", 8 July 2022, <https://hrcp-web.org/hrcpweb/coied-chairperson-must-be-removed-if-allegations-proved/>

⁵ "4,000 Pakistanis handed over to foreigners for dollars", *The News*, 17 April 2018, accessed at: <https://www.thenews.com.pk/amp/305463-4-000-pakistanis-handed-over-to-foreigners-for-dollars>

⁶ "Pakistan: Victims of enforced disappearance should not be discouraged from lodging complaints," 10 December 2021, accessed at: <https://www.ohchr.org/en/press-releases/2022/01/pakistan-victims-enforced-disappearance-should-not-be-discouraged-lodging>

⁷ For more information, see "Idrees Khattak's conviction by a military court is a gross miscarriage of justice", International Commission of Jurists, 12 April 2021, accessed at: <https://www.icj.org/idrees-khattaks-conviction-by-a-military-court-is-a-gross-miscarriage-of-justice/>

⁸ In *Mahera Sajid v. Station House Officer, Police Station Shalimar & 6 others*, W. P. No.2974/2016, the Court made a number of directions to the State regarding enforced disappearances, including: any complaint that alleged or disclosed characteristics in the nature as that of an enforced disappearance shall be treated by the State as a heinous act and thus dealt with accordingly; public functionaries will have the onus to dispel any impression regarding the involvement of the State or its instrumentalities in an alleged abduction, which they shall discharge by establishing prompt, responsive and effective investigations; if it is established that the criminal justice system failed in responding promptly, followed by conducting effective investigations into a complaint of a citizen alleging enforced disappearance of a loved one, then the State depending on the facts and circumstances in each case shall become liable to compensate the person if it can be shown that the latter's fundamental rights were infringed; and that the Special Branch, Intelligence Bureau, the Inter Services Intelligence and the Military Intelligence have the duty to collect information and promptly report to the concerned functionaries regarding any incident of abduction of a citizen having the characteristics of an enforced disappearance and to take effective measures in tracing the whereabouts of the victim.

⁹ Rana Muhammad Akram v. Federation of Pakistan etc. W.P. No. 696/2021.

¹⁰ 152.91 Rapidly adopt and implement the two draft bills recently tabled in the National Assembly to ensure the rights of transgender persons (Spain); 152.92 Ensure that the 2017 law, which is presently being reviewed, on the recognition of the rights of intersex and transgender persons pays the necessary attention to both transgender women and men (Albania);

¹¹ This is a crucial progressive improvement in the legal status of transgender people in Pakistan since the legislation recognizes the autonomy, agency and freedom of any person to determine their own gender identity and gender expression in line with international standards. Based on this provision, transgender people have the right to have all their official documents changed and reissued in line with their self-identified gender. The law also prohibits discrimination against transgender people, and imposes an obligation on the Government to take steps to sensitize government departments about the human rights of transgender people. It affirms the rights of transgender individuals to education, health, inheritance, employment, vote, assembly, to access to public spaces and the right to hold public office, among other human rights.

¹² Section 4 of the rules notified under the TG Act.

¹³ See *International Commission of Jurists*, International Transgender Day of Visibility: End impunity for attacks against transgender people, 31 March 2022, accessed at: <https://www.icj.org/international-transgender-day-of-visibility-end-impunity-for-attacks-against-transgender-people/>

¹⁴ Section 17 of the Act states: "Whoever employs, compels or uses any transgender person for begging shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both."

¹⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>.

¹⁶ For a detailed analysis, see International Commission of Jurists, Briefing Paper on Pakistan's Transgender Persons (Protection of Rights) Act, 2018, March 2021, accessed at: <https://www.icj.org/the-icj-releases-briefing-paper-on-pakistans-transgender-persons-protection-of-rights-act-2018/>