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Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Pakistan: Thousands of persons remain missing amid government inaction

1. The Asian Legal Resource Centre (ALRC) welcomes the ongoing work of the Advisory Committee concerning the issue of missing persons. The ALRC has on numerous occasions informed the Human Rights Council (HRC) of the large number of missing persons in Pakistan. The country is beset by grave and widespread human rights violations by various State-agencies and institutions, notably by the notorious Inter Services Intelligence (ISI) and the military. Thousands of persons are missing as the result of forced disappearances committed all across the country, in particular in conflict-affected areas, such as Balochistan province. Furthermore, as Pakistan is firmly lodged at the front lines of international conflicts such as those affecting Afghanistan and security operations under the United States' so-called war on terror, many persons are also missing in relation to these international phenomena, adding further complexity to an already difficult domestic problem.

2. The ALRC welcomes the recent General Comment on the Right to the Truth in Relation to Enforced Disappearances issued by the Working Group on Enforced or Involuntary Disappearances (WGEID).¹ The right to the truth is a key component of all efforts to address human rights violations, and has particular relevance concerning the issues of forced disappearances and missing persons. The scale of the problem of missing persons in Pakistan and the overwhelming lack of information about the fate of these persons, let alone any credible investigations or accountability, means that a key first step that needs to be taken by the Pakistani authorities is to fulfil the right to the truth for missing persons. This comprises the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, the circumstances of the disappearances, and the identity of the perpetrator(s).

3. The Working Group recalls that States have an obligation to investigate cases of enforced disappearance and let any interested person know the concrete steps taken to clarify the fate and whereabouts of the disappeared persons, and has stated that "the right of the relatives to know the truth of *the fate and whereabouts* of the disappeared persons is an absolute right, not subject to any limitation or derogation..." and that "...No legitimate aim, or exceptional circumstances, may be invoked by the State to restrict this right."² In Pakistan's case, while the country ranks amongst the world's worst perpetrators of forced disappearance as a result of domestic and international conflicts, the government is not taking any credible steps to address any facets of this grave problem.

4. The exact number of missing persons and victims of forced disappearance are difficult to independently verify, notably due to difficulties in access and security considerations and many parts of the country. However, different estimates by nationalist groups, fundamentalist religious organizations and different human rights organizations, claim that as many as 8000 cases of missing persons have been reported since the start of the war on terror from different parts of the country. In Balochistan province alone, over 4000 persons are reportedly missing and disappearances continue to be perpetrated, notably by paramilitary forces. In Pakistan-controlled Kashmir, Azad Kashmir, numerous disappearances are also reportedly being committed, notably by the state intelligence agencies, which arrest and disappear persons who refuse to join the "Jihad" against Indian-held Kashmir.

¹ http://www2.ohchr.org/english/issues/disappear/docs/GC-right_to_the_truth.pdf

² http://www2.ohchr.org/english/issues/disappear/docs/PR_GCRTT.doc

5. Since the outset of the war on terror, the Khaiber Pakhtoon Kha province, formally known as North West Frontier Province (NWFP), has been the scene of heightened disappearances, including those conducted in connivance with foreign forces; around 1000 persons belonging to fundamentalist religious groups are missing or dead. In Sindh province, over 100 Sindhi nationalists are thought to have been arrested, and remain disappeared but are believed to be being held in military torture cells. In Punjab, most disappeared persons reportedly belong to religious militant groups. The phenomenon of disappearances and missing persons is multi-faceted, but is accompanied by a lack of effective, credible actions by the authorities and impunity across the board.

6. There are hundreds of complaints concerning missing persons before the higher courts, including the Supreme Court of Pakistan, concerning in particular cases of persons that have allegedly been abducted by state intelligence agencies – notably the ISI and military intelligence agencies - and are thought to be being held in various torture cells for many months, accused of working against Pakistan, with the Indian state intelligence agencies, or involvement in banned militant groups. The intelligence agencies effectively conduct these acts above the law and beyond the jurisdiction of the courts, which are toothless in inquiring about the fate of missing persons or other actions of these agencies. The relatives of missing persons frequently believe that the state intelligence agencies are behind the disappearances of their loved ones, and this is often confirmed by re-surfaced disappeared persons. Many have testified in court that they were tortured in various torture cells run by the state intelligence agencies, but the courts have consistently shown their inability to hold those responsible accountable.

7. The government formed a judicial commission to probe cases of disappearances, which comprises one judge from the Supreme Court as its head and two retired high court judges. It began working in June 2010, with a mandate to operate for three months, but it has only been considering 17 cases of disappearances, despite the large number of cases reported in the country. One reason for this is that the commission requires that the families of the missing persons provide it with a First Information Report (FIR) before it considers the case. However, the police typically refuse to file FIRs concerning human rights violations such as disappearances, even though the Supreme Court has issued a ruling obliging the police to do so. Furthermore, the judicial commission has reportedly never requested explanations from the State intelligence agencies concerning allegations of disappearances, and is therefore ineffectual.

8. The ALRC has documented a range of cases and situations concerning missing persons, brief descriptions of some of which are presented below in order to illustrate this multi-faceted problem:

9. Disappearances in Pakistani-held Kashmir: Reports indicate that dozens of people are missing after their arrest by the intelligence agencies operating in Pakistani-held Kashmir - Azad Kashmir. Persons are arrested and disappeared if they refuse to join or try to leave the forces engaged in the “Jihad” inside Indian-held Kashmir or don’t provide information to the intelligence agencies about the movements of people across the border control line. A significant number of cases point to the ISI’s involvement in these disappearances:

a. For example, family members of Altaf, Qadeer, Qasim and Mushtaq, residents of a refugee camp at Solna area, Kotli, who were disappeared in late 2009 after their arrest by Pakistan’s security forces, were reportedly told by the local ISI office that they were being held by the ISI and would be released soon. They remain missing to date.

b. Jehangir, son of Sabir and a resident of Charhoi, Kotli sub district, was arrested by intelligence officers in March 2009, and remains missing.

c. Amjad, son of Mohammad Khan, resident of Leepa tehsil, Muzafarabad district, was a soldier in the Pakistan army but was arrested in September 2009 by the ISI and remains missing. It is alleged that he was working in favour of families of disappeared persons.

d. Mohammad Aslam, son of Jan Mohammad, resident of Cherhoi, Kotli sub district, was arrested in July 2009, allegedly by the ISI, and has been missing since then.

e. Akram, son of Abdullah, resident of Khoi Ratta, Kotli district, who previously provided information from Indian-occupied Kashmir to the Pakistani security forces, has been missing for seven months after he stopped volunteering information.

f. Masood, resident of Khoi Ratta, Kotli district, who had previously fought as a Mujahid, has been missing since May 2009 after his arrest by plain-clothed ISI personnel.

g. Mr. Kabir Hasan Shah, resident of Sandok, Neelum district, was disappeared in October 2009, allegedly by the ISI, and subjected to torture for three months by the ISI for using their telephone lines, before being released in the second week of January 2010.

h. Mr. Naveed Ahmed Khan was arrested and disappeared in November 2009, allegedly by the ISI, having been accused of taking photos of Jihadi training camps in Pallandi, Sudhanti district. He was held and interrogated by the ISI for over two months before being released on January 19, 2010 for lack of evidence.³

i. A Pakistani soldier, Mr. Mohammad Iqbal Awan, was arrested and disappeared for five years and repeatedly subjected to torture by the ISI on false charges of working for the Indian intelligence agencies' Research and Analysis Wing (RAW) in Pakistani-held Kashmir. He lost his teeth, his spine was fractured, his legs were burnt, his head was seriously injured and he now can't walk without assistance. He was cleared of all charges in a court martial at the Kharian cantonment, Punjab province.⁴

10. Disappearances in Balochistan province: As previously mentioned, thousands of disappearances are alleged to have been carried out in Balochistan province, within the context of the internal conflict between governmental armed forces and Balochi nationalist armed forces.

a. Of particular note is the disappearance of over **168 children** and 148 women, according to NGO Voice for Baloch Missing Persons (VBMP). They are reportedly been disappeared by the Pakistani intelligence agencies for interrogation over alleged links to Balochi separatists and militant groups. The Provincial Interior Ministry of Balochistan issued a list of 992 missing persons on December 10, 2009, as part of reconciliation efforts by the federal government. The Chief Minister of Balochistan province, Sardar Aslam Raisani, said on January 13, 2010, that there were 999 people officially missing in Balochistan missing, only four of whom have been recovered to date.

b. Mr. Zakir Majeed, a student leader, was allegedly abducted by state intelligence agents on June 8, 2009 from Mastung, near Quetta. Majeed is the senior vice chairperson of the Baloch Student Organization, Azad. Allegedly as the result of international intervention, the National Crisis Management Cell (NCMC) claimed to have released him. The government of Balochistan claims he was released on January 22, 2010, but his family claims he still has not returned home.⁵

³ <http://www.ahrchk.net/statements/mainfile.php/2010statements/2380/>

⁴ <http://www.ahrchk.net/statements/mainfile.php/2010statements/2668/>

⁵ <http://www.ahrchk.net/ua/mainfile.php/2009/3175/>

c. Mr. Murad Khan Marri was re-surfaced after having been disappeared for eight months by the Pakistan Frontier Corp (FC). The FC claim they only arrested Mr. Marri on March 27, 2010, although it is believed he was in fact disappeared in June 2009. They have allegedly re-surfaced him in order to claim the Rs. 3 Million (USD 36,585) reward for his arrest. The government of Balochistan has however, refused to pay the reward and a wrangle has ensued between the two.⁶

11. The government is failing to take appropriate actions concerning the many cases of disappearance across the country, even concerning the disappearance of high-profile persons, such as Dr. Lutfullal Kakakhel, a well-known scientist and university vice chancellor, who were abducted on November 6, 2009 and who remains missing.⁷

12. The Asian Legal Resource Centre urges the government of Pakistan to begin taking all necessary measures to guarantee the right to the truth for the relatives and representatives concerning the fate of all missing persons. Beyond this, the government, judiciary and judicial commission on disappearances need to ensure that justice is served concerning these cases of grave violations of human rights, by ensuring effective, impartial investigations and prosecutions of cases; appropriate punishment of those responsible; and adequate reparation for the victims and/or their families. The government of Pakistan can provide a clear signal of its intention to take necessary action concerning this widespread problem by ratifying the International Convention for the Protection of All Persons from Enforced Disappearance criminalize disappearance in its domestic legislation and implement the law to the full. The government of Pakistan is also urged to cooperate fully with the Human Rights Council and its expert mechanisms, notably by issuing a standing invitation to the Working Group on Enforced or Involuntary Disappearances to conduct a country visit.

⁶ <http://www.ahrchk.net/statements/mainfile.php/2010statements/2504/>,
<http://www.ahrchk.net/ua/mainfile.php/2010/3407/>

⁷ <http://www.ahrchk.net/ua/mainfile.php/2009/3323/>