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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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.

[14 February 2011]

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

Pakistan: Council urged to tackle endemic torture and impunity, or become irrelevant

The Asian Legal Resource Centre (ALRC) wishes to again bring the Human Rights Council's attention to the widespread and endemic nature of the use of torture in Pakistan. The ALRC has raised this issue repeatedly with the HRC and the Commission on Human Rights before it, as well as the Special Procedures and the UPR process. International action concerning grave human rights abuses in Pakistan, including torture, forced disappearance and the like, remains elusive.

The recent situation in Egypt, in which violations of human rights perpetrated over prolonged periods have led to a historic popular uprising to overthrow the system of abuse, must bear lessons for the international community. No longer can the members of the Human Rights Council expect to continue with business as usual, trading in the rights of their citizens as expendable commodities to be haggled away for political gain as part of a diplomatic game in Geneva. As the battle to advance the enjoyment of human rights and democracy plays out on the streets of Tunisia, Egypt and elsewhere, will the Human Rights Council find itself increasingly out of touch and isolated from a reality that demands progress and tangible change?

As the 2011 review of the Human Rights Council reaches its culmination, member-States must re-consider their misconstrued approaches that seek to limit the capacity of the international system to fulfil its role in upholding rights on the ground. The HRC must be able to go beyond the ritual expression of concern at flashpoint crises around the globe, which typically remain either too timid or go unheeded, and begin to tackle the fundamental components of the systems of human rights abuses that pervade the world. The fact that members of the HRC, such as Pakistan, can hold membership in the world's apex rights body while endemic torture persists within their borders, shows how much progress is still required.

As such, the ALRC calls on the members of the Human Rights Council to ensure that membership is absolutely conditional on the absence of gross and widespread abuses, and that the practice of regional clean slates in Council elections be outlawed across the board with immediate effect. To put a halt to such grave human rights practices, there needs to be acknowledgement by States of the nature and scale of the problems they face in eradicating such violations. Denial cannot work in the longer term. The systems of abuse and impunity that enable widespread violations must then be understood and effective action, not that designed to save face or cover up and shield perpetrators, must be initiated.

As mentioned above, the ALRC has repeatedly pointed to the widespread use of torture in Pakistan. In written and oral submissions it has pointed to the existence of some 52 secret detention and torture camps run by the military in and since 2008.¹ However, the Council has remained oblivious to these serious allegations, rather than taking the required action to shed light on these and put a halt to this practice.

The lack of action is reinforcing the impunity with which such grave rights violations are being perpetrated. The ALRC has noted that acts of torture are increasingly being perpetrated in public in Pakistan, which indicates how little the perpetrators fear that they will ever be held accountable. Perhaps the most significant illustration of this is the increasing amount of video evidence that is available online in which State agents are seen

¹ Please see further here: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1574/>

beating and torturing persons in public. Examples of the army and police ill-treating and torturing persons can be seen here:

http://www.dailymotion.com/video/xaodvt_video-shows-pakistan-army-abuse_news
<http://www.youtube.com/watch?v=U17gERJR-Aw&feature=related>
<http://www.youtube.com/watch?v=-U8s6C3lhQ0&feature=related>
http://www.youtube.com/watch?v=6MrJu5jL_yQ&feature=related

Torture is accepted as being an important tool for controlling crime in Pakistan. The government of Pakistan, when ratifying the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR), made reservations concerning key articles, depriving these instruments of much of their ability to be effective in countering human rights violations, notably torture. With regard to the CAT, the government of Pakistan's reservations, which include Article 4 of the CAT,² result in it not criminalizing torture under its domestic law. Through its reservations, the government has provided impunity to the perpetrators.

The acts of ratifying the CAT and ICCPR have had no effect in preventing the use of torture, punishing perpetrators or providing avenues for victims seeking redress. After ratifying these mechanisms the ALRC has continued to receive frequent cases of torture that point to a widespread, endemic pattern of abuse.

The indifferent attitude of legislators has meant that no action to criminalize torture has been taken. Pakistan does not have any specific law relating to torture, although Article 14 (2) of the Constitution expressly prohibits the use of torture for extracting evidence. Many jurists and academics however maintain the opinion, that the provisions in Chapter XVI of the Penal Code (particularly Sections 339, 340 and 349) cover the aspect of torture. But, torture, within the meaning attached to the 'act of torture' as prescribed in the Convention against Torture, is not a specific crime in Pakistan.

Domestic jurisprudence concerning the use of torture is underdeveloped in Pakistan. The right to remain free from torture, as envisaged under Article 14 (2) of the Constitution, remains in theory rather than practice. In making complaints concerning torture, the victims have the burden of proof, and there are no independent investigating agencies that are empowered to inquire into a complaint of torture.

The apathy of the President of Pakistan concerning this is a serious disappointment, notably given that he was tortured in 1999 when in police custody. High-ranking police officials reportedly tortured him by cutting his tongue, but the perpetrators continue to enjoy impunity despite criminal cases having been lodged against them. The courts have been delaying the cases for eleven years and even released the perpetrators.

In cases of torture, the close nexus between the police and presiding officials of the lower courts, works to ensure impunity. In criminal case, the courts place accused persons with the police for four to 15 days of physical remand. This period enables torture to be carried out with ease. The military also run torture camps in most cities, as mentioned above. Members of the military's notorious Inter Services Intelligence (ISI) agency are serial torturers. In one case, they even severely tortured a soldier over a period of five years on suspicion of his being a spy for India. Mr. Mohammad Iqbal Awan, 39, son of Mohammad Yaqoob Awan, a resident of Salakan village, Tehseel Athmuqam, Neelam district, Baiyan, Azad Kashmir, Pakistan, was arrested by the ISI and then disappeared for five years, during

² Article 4 of the CAT reads: 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

which period he was repeatedly tortured. He lost teeth, his spine was fractured, his legs were burnt and he has a large injury mark on the head. He cannot walk without help. The victim was later exonerated from all charges by a court martial at the Kharian cantonment, Punjab province.³

A torture cell was located at a private house adjacent to the Air Headquarters of Pakistan Air Force in Islamabad, where officers would torture civilian staff, notably low paid employees. The torture cell was brought to light when the case of a poor Christian girl and her brother, who were tortured there for almost 18 days, was made public.⁴

Journalists are also not spared by the intelligence agencies. Mr. Umer Cheema, a senior journalist from the daily newspaper, The News International, was abducted, severely tortured and detained incommunicado to intimidate him. Reports suggest that persons from the intelligence agencies carried out the act. The government has still not been able to arrest the persons responsible for the abduction and torture.⁵

In these cases, no action has been taken against military personnel, as the military dominates all civilian, democratic institutions in the country, placing members of the armed forces above the law as concerns human rights violations. Even the higher courts turned down the cases against members of the armed forces before they can be heard.

In many cases, torture victims who have been forcibly disappeared are dumped by the roadside. Some courageous victims have testified in court that they were kept in illegal army torture camps, but the courts have ignored their complaints. In such a case, Mr. Murad Khan Marri was missing for eight months before the Frontier Corp (FC) announced that he had been arrested in March 2010, while crossing the Afghan border into Pakistan. He was produced before the chief justice of the High Court of Balochistan province on May 25, 2010. Mr. Marri told the court that he had been kept in different places of detention and severely tortured since his actual arrest on June 27, 2009. The judge did not even ask him why he was tortured and kept incommunicado.⁶

The torture in custody by no means is treated as the criminal offence on the part of the law enforcement agencies. The impunity provided to law enforcement agencies by virtue of the absence of any law criminalizing torture is continuing to fuel its use, even in private houses. Every police station in Pakistan has a torture cell inside the police station compound walls. Victims have also claimed that they have been detained in private homes and tortured there by State-agents.

Torture in custody is a serious problem affecting the rule of law in Pakistan. It is used as the most common means to obtain confessional statements. Furthermore, there are no effective mechanisms to ensure the protection of witnesses. This discourages victims from making complaints and prosecutions from succeeding. While international jurisprudence on the issue of torture has evolved to high standards, the situation in Pakistan resembles the stone ages.

In conclusion, the practice of torture in Pakistan can only be addressed if the following urgent measures are taken. The failure by the Human Rights Council to take action with regard to grave, endemic and chronic human rights challenges of this nature, will lead to its being out of touch with the cultural, political, social and democratic advances currently being witnessed around the world, and consign it to the annals of history reserved for gross failures:

³ <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-137-2010>

⁴ <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-074-2010>

⁵ <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-132-2010>

⁶ <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-085-2010>

1. The Human Rights Council must take all necessary steps to ensure that the government of Pakistan withdraw all reservations made concerning the Convention Against Torture and the International Covenant on Civil and Political Rights, ensuring that these key instruments can be implemented in full.

2. The Government of Pakistan must produce a domestic law against torture, criminalizing the act and providing for: an independent and timely investigation system to receive complaints of torture; the effective prosecution of those found to be responsible; and adequate reparation for victims, in line with international law and standards.

3. The Pakistan government must ensure immediate inquiries into torture cells being run by the armed forces and in private houses by the law-enforcement agencies, ensuring that these are closed immediately and that all those found responsible are held accountable by trials in civilian courts, in line with international law and standards concerning torture.

4. Witness protection must become a priority, with the view that it is the state's responsibility to protect persons willing to tell the truth.

5. Law enforcement agencies must be given adequate training and equipment to function without resorting to torture.
