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Human rights situations that require the Council's attention

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

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

[2 February 2018]

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

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PAKISTAN: Impunity and disappearances rise hand in hand

The Asian Legal Resource Centre (ALRC) would like to draw the UN Human Rights Council's attention to the practice of enforced disappearances, ongoing in Pakistan for the last many years. The ALRC is concerned about the increase in disappearance cases in Pakistan. The state has utterly and miserably failed to restrain law enforcement agencies, which are indulging in the practice with impunity.

Enforced disappearance is frequently used as a strategy to spread terror within society. The feeling of insecurity and fear it generates is not limited to the close relatives of the disappeared, but also affects communities and society as a whole.

According to the Commission of Inquiry on Enforced Disappearances in Pakistan, during the last six years, the Commission has received 3,740 complaints from different parts of the country. Of these, 121 cases were reported from the national capital, Islamabad; 752 cases were reported from the country's largest province, Punjab; 1,010 cases were registered from Sindh Province, where the country's largest port city Karachi is located; 276 cases were reported from Baluchistan; and 112 cases from the Federally Administrated Tribal Area (FATA).

Of the total number of complaints received by the Commission, the Commission till July 2017 has stopped from proceeding in 296 cases. This is because the Commission is of the view that these cases were abduction for ransom. According to the Commission's report, the total number of cases processed up to 31 March 2017 is 2,652.

Over 1200 cases of missing persons in Sindh province have been reported since 2010. During 2012-2014, a wave of disappearances targeted numerous Sindhi young men, almost all of whom were political and human rights activists and journalists. In recent months, there has been a resurgence of enforced disappearances throughout Sindh. Since February 2017, more than 160 people have gone missing and their whereabouts remain unknown. Almost all of the eyewitnesses to these disappearances have indicated that the perpetrators seem to be official security personnel – ISI, MI, rangers, and police. The relevant authorities are not ready to register cases against the real culprits. Many of these cases have been registered at the High Court, but the judiciary remains reluctant to make any meaningful progress. Those who raise their voice for the release of missing persons are threatened with dire consequences. An atmosphere of utmost fear and terror has been instigated by the security agencies.

The security agencies' modus-operandi is to abduct, torture, and hold the activists incommunicado for as long as they see fit. Later, the activists are either killed and dumped on the roadsides, or released, but only after they have been brutally tortured and traumatized. Families, friends, and community members are genuinely concerned about the life and welfare of the recently disappeared activists. As the list of missing persons grows, the official security personnel continue to act with impunity. Further, the use of enforced disappearance is in direct contravention of the Declaration on the Protection of all Persons from Enforced Disappearances as well as the Universal Declaration of Human Rights.

At the same time, illegal and arbitrary detention, disappearances, extrajudicial executions, and custodial torture are provided with constitutional protection by the government. This is through the court's and government's application and interpretation of the Pakistan Protection Ordinance (PPO), amendments brought into the Anti-Terrorism Act, 1997, and the formation of military courts for summary trials. The law enforcement agencies have unbridled powers to arrest, detain persons incommunicado, or shoot at sight under these laws. Under the guise of these legislations and powers conferred therein, state agencies routinely detain persons for long periods, even beyond what is provided in these draconian legislations.

The government of Pakistan has so far denied any involvement in the matter. For example, during the third UPR of Pakistan, the government, upon being probed about reported cases of disappearances, categorically denied the existence of any disappearances within Pakistan. This is despite the fact that the Commission of Inquiry on Enforced Disappearances, a State body, has admitted that enforced disappearances are occurring in Pakistan.

The International Commission of Jurists (ICJ) has reported that persons prosecuted by military tribunals are subjected to enforced disappearances, torture, and other ill-treatment. These allegations have not been adequately investigated, giving rise to concerns about convictions based on confessions. The year 2015 saw the execution of 326 people in

Pakistan, many on the basis of such convictions by military courts. According to an ICJ report, military courts have convicted 274 individuals and handed down 161 death sentences.

The government, under strong pressure from the military, is hesitant to criminalize enforced disappearances. At the same time, the armed forces do not allow Pakistan's intelligence agencies to be brought under civilian oversight. They also are not accountable to the parliament. Although the Supreme Court and the Commission of Inquiry on Enforced Disappearances had demanded that there should be a law to regulate the operation of Pakistan's intelligence agencies, successive governments have failed to act on this, due to threats from the armed forces.

In December 2016, the Senate had unanimously adopted half a dozen recommendations, including a draft legislation, to oversee the functioning of intelligence agencies. However, the Senate failed to pursue the matter. The recommendations adopted by the Senate included legislation to criminalize enforced disappearances, bringing state agencies under a law and the ratification of the Convention on Enforced Disappearances.

The European Union has stated that it might review “its economic concessions given to Pakistan over the deteriorating human rights situation, including the wave of abductions (enforced disappearances) of activists reportedly by the security agencies and discriminatory laws against minorities.” The European Union has warned Pakistan that there can be no place for enforced disappearances and secret detention in the country; the government must investigate and criminalize the practice, as well as amend its discriminatory laws against minorities.

It is ironic and a failure of the government that until today, not a single perpetrator of the crime of enforced disappearances have been made accountable due to the absence of a law.

Human rights groups claim that not a single day goes by without illegal arrests. Most arrests culminate in disappearances. On 1 September 2016, Balochistan's provincial minister for interior affairs stated that under the Pakistan Protection Ordinance (PPO) more than 13,500 people have been arrested in Balochistan during one and a half years, through the National Action Plan. State officials are unable to provide details or the whereabouts of the “arrested” people. Even the relatives of the victims are unaware of the fate of their family members. More than 150 dead bodies of missing persons, with torture marks on the bodies, were found by the wayside. The Voice of Baloch Missing Persons claims that it has a documented 4300 cases of disappearances from Balochistan within the past 10 years.

Since the beginning of 2017, the state agencies have begun targeting anyone expressing political dissent, including social media activists and bloggers. For instance, Mr. Salman Haider, Professor at Fatima Jinnah University, Islamabad; Waqas Goraya, Netherlands-based; Asim Saeed, of Lahore; Mr. Ahmed Raza Naseer, of Shekhupura, Punjab; and Samar Abbas, resident of Karachi, were disappeared after their arrests in the first ten days of 2017. Except for Samar Abbas, the other bloggers were released due to pressure from the international community and civil society. A case of blasphemy is now pending in the Courts against them.

Not even political activists of mainstream political parties and intellectuals are spared from the fate of disappearances; early this year, three aides of former president Mr. Asif Ali Zardari were picked up by the state agencies. The disappeared aides included Mr. Ghulam Qadir Marri, Mr. Ashfaq Leghari and Mr. Nawaz Leghari. Although they were released a month later from incommunicado detention, the message was conveyed to the political parties by the intelligence agencies that they dare not cross the line.

In light of the above grave situation, the ALRC requests the UN Human Rights Council to press upon the Pakistani government to release all missing persons and produce them in the court of law if they have any charges. The Council should also consider sending a fact finding mission to Pakistan to assess the situation regarding enforced disappearances.

Furthermore, the ALRC recommends that the government of Pakistan:

- a. Ratify without delay the International Convention for the Protection of all Persons from Enforced Disappearance without any reservation;
- b. Criminalise enforced disappearance under domestic law, in line with international law and standards;

- c.** Ensure full cooperation by the military and intelligence services with the judiciary and the judicial commission into disappearances, and ensure the full implementation of the commissions' recommendations
 - d.** Ensure the immediate closure of all illegal secret detention centres operated by the security forces and intelligence services; and
 - e.** Ensure civilian oversight of the military and intelligence services.
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