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### **IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**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.

[31 May 2007]

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

### **Pakistan – Judicial subservience must be ended without further bloodshed**

The judicial system in Pakistan is very weak and can not deliver justice to the people. The weakness of the judiciary can be blamed on the continuous interference by successive governments, in particular by military governments. The judiciary in Pakistan has traditionally always supported those in power, even if they came to power by ousting elected, civilian governments.

Since 1954, when the then-Prime Minister was thrown out of power and the Chief Justice at the time, Mr. Munir, sacrificed the constitutional law for the sake of expediency, Pakistan's judiciary has been forced into the role of being the blind defender of the armed forces rather than the arbiter of justice. However illegal or unconstitutional its actions may be, under the doctrine of necessity, the army can do no wrong. The doctrine of necessity, which came into being at the time in order to protect the new power-brokers, has since been used repeatedly to overthrow elected governments and keep the constitution in abeyance. By subordinating itself to the military, Pakistan's judiciary has become absolutely divorced from any notion of independence.

Pakistan's armed forces have used the higher judiciary to do their bidding, and whenever elements within the judiciary have attempted to assert themselves, such judges have been punished, including by transferring them to Islamic courts, by sending references to Supreme Judicial Council (SJC) to have them punished, by threatening them or their family members, and even by terminating their services. The higher judiciary has never been able to function independently and to deliver justice to people in the country's history. There are currently over 20,000 cases pending before the country's Supreme Court alone. There are more than 3500 other courts in the country, which in total have over one million cases are pending before them. Huge delays and inefficiency are further degrading the judiciary's image and relevance for Pakistan's citizens.

Cases pending before the courts, particularly the lower courts, take at least 5 to 6 years to be decided, and if a case goes into the appeal process, it may take between 15 and 20 to decide, especially if it goes all the way to the highest courts. The executive and judiciary are separated in theory and on paper, for example in the 2002 Ordinance concerning the separation of judiciary from the executive. However, in practice this is not the case. Amendments have meant that Magistrates have been given executive and administrative powers and duties, reducing independence and causing further delays. In some cases, pre-trial detainees accused of minor crimes spend far longer in detention than the maximum sentence for the crime they are accused of having committed.

In addition, Pakistan has a dual judicial system: a traditional, secular system derived from the Indian Act of 1935; and an Islamic or Shariah judicial system, both of which are running in parallel to each other, which is frequently the cause of confusion and injustice. Because of the dual legal system, it is very difficult to achieve justice, especially in an acceptable time-frame. In cases of murder, rape and other serious crimes, interference by Shariah courts is frequent. When Shariah courts take decisions relating to such cases, the judgments by secular court are often superceded, regardless of whether the verdicts are incompatible.

Appointments to the higher judiciary are performed by the President of Pakistan, which means that, given Pakistan political instability, the President is often a member of the Armed Forces or the civil service. It is rare to find a democratically elected person occupying Pakistan's top job. The judges are recommended by the Supreme Judicial Council, but are appointed by the President, and the candidates' identities are never disclosed to the public. These political appointments makes judges very much subject to the control of the executive, which has profoundly negative repercussions on the functioning of the judiciary as a whole, especially when the military are in power.

The country is currently undergoing an extreme political crisis that results directly from tensions between the executive and the judiciary. General Musharraf suspended the Chief Justice, Mr. Iftikhar Choudhary, on March 9, 2007. This action is thought to have resulted from judges using *Suo Motu* actions, in which they took up public interest cases themselves, avoiding the normal court formalities and delays. The suspended Chief Justice has taken some remarkable decisions in cases where the government and military were directly involved, including irregularities in the privatization of Pakistan Steel Mills. The Supreme Court has taken up sensitive cases, for example, the issue of land-grabbing by the military and ruling party in Murree, a hill station near to country's capital, as well as disappearance cases. Concerning the latter, the attention placed on Pakistan's Army's secret agencies have caused tension, reportedly leading to General Musharraf starting a campaign through his lawyers against the Chief Justice.

The suspended Chief Justice actions which have infuriated the military government the most have been the formation of a Human Rights Cell in the Supreme Court, and the continuing issue of forced disappearances. Following the suspension of the Chief Justice, the executive has attempted to force the judiciary as a whole into subservience. It has threatened the Chief Justice and his family, as well as any protesting lawyers and members of the media raising these issues and reporting on the situation.

Chief Justice submitted an affidavit to the Supreme Court on May 29, 2007, concerning events that took place during his summons to the presidential camp office in Rawalpindi, which included attempts to coerce him to resign, forced detention, harassment, and the taking over of his residence by intelligence personnel, amongst other things.

On his first appearance before Supreme Judicial Council (SJC) at the request of General Musharraf, on 13 March 2007, he was physically assaulted by the police and other law enforcement agencies. The same day several supporters and lawyers were beaten by the police. Many people were arrested. During the period of almost three months of crisis since then, the government and its allied political parties have attacked two television stations for reporting independently on the crisis, including being subjected to attacks with firearms (Aaj television on May 12) and government bans (Geo TV). In Lahore, the capital of Punjab province, protests and processions by lawyers and general public, were met with excessive use of violence by the police, with numerous journalist having been injured as a result.

Lawyers representing the Chief Justice have been attacked and threatened. Mr. Muneer Malik, the President of the Supreme Court Bar Association and a lawyer representing the suspended Chief Justice was attacked by unknown persons and bullets were fired at his house in Karachi, Sindh province on May 10. The police reportedly also tried to abduct

another lawyer representing the Chief Justice and Vice-President of the Pakistan Bar Association, Mr. Ali Ahmed Kurd on April 27, from Quetta, a capital city of Balochistan province. A member of the Rawalpindi Bar Association, Mr. Ghulam Mustafa Kundal, was reportedly abducted by secret agency personnel and severely beaten on April 27, 2007.

During the continuous protests and demonstrations outside the Supreme Court several people have been arrested and lay have been subjected to ill-treatment or even torture, including prominent political leaders and members of parliament, who were released after a few days.

The additional registrar, Mr. Hammad Raza, was killed in an attack on his residence on May 14, 2007, after his refusal to support the government against the Chief Justice. The government has claimed to have arrested his murderers on May 30, but his wife and Bar Association colleagues doubt that those arrested are the real culprits.

On May 12, 2007 when the suspended Chief Justice arrived in Karachi, the capital city of Sindh province, to attend golden jubilee ceremonies at the Sindh Bar Association, the provincial government and the ruling MQM political party did not allow him to exit the airport and he was again physically assaulted.

The same day, May 12, 2007, 51 people were shot and killed and over 300 persons were injured during protests relating to the Chief Justice's situation in Karachi. It is thought that militants of the MQM ruling party are responsible for these deaths and injuries.

There is at present a deep crisis in the Pakistan, which is centred on the issue of the independence of the judiciary. The United Nations Human Rights Council is called upon to urge the Pakistani authorities to immediately cease all repressive actions against members of the judiciary and their supporters and ensure that the transition to an independent judiciary and the rule of law is ensured without further delay or bloodshed.

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