



## 人权理事会

### 第二十二届会议

#### 议程项目 3

增进和保护所有人权——公民权利、政治权利、  
经济、社会和文化权利，包括发展权

## 被强迫或非自愿失踪问题工作组关于访问巴基斯坦的报告

增编

### 对巴基斯坦的访问\* \*\*

#### 概要

应巴基斯坦政府邀请，被强迫或非自愿失踪问题工作组于 2012 年 9 月 10 日至 20 日访问了该国。工作组由以下两位成员代表：主席兼报告员奥利维耶·弗鲁维尔和奥斯曼·哈杰。

工作组要感谢巴基斯坦政府邀请其访问该国，并鼓励它近期内邀请其他特别程序任务负责人访问巴基斯坦。

工作组欣慰地注意到，强迫失踪问题目前在巴基斯坦得到公开讨论。各方承认，该国发生过而且仍在发生强迫失踪事件。工作组收到的大多数指控都与可归咎于执法机构及情报机构的强迫失踪案件有关。

\* 本报告的概要以所有正式语文分发。报告全文附在本概要之后，仅以原文分发。

\*\* 迟交。

工作组欢迎设立了两个专门调查委员会来处理强迫失踪问题，并欢迎司法部门在揭示巴基斯坦强迫失踪现象和追查失踪者下落方面发挥的作用。同时，工作组注意到，现有的调查委员会职权有限，法院和调查委员会下达的命令往往不被遵行。工作组未能获取任何国家工作人员因强迫失踪行为被定罪的资料，总的感觉是这种行为未受到惩罚。在此方面，值得关切的是，强迫失踪并非一项独立存在的罪行，对此应加以纠正。

工作组还强调，需要对执法机构及情报机构进行监督和问责，需要采取具体措施协助失踪者亲属尤其是妇女面对失踪后果，还需要解决被强迫失踪受害者的赔偿问题。

## Annex

*[English only]*

**Report of the Working Group on Enforced or Involuntary  
Disappearances on its mission to Pakistan  
(10 – 20 September 2012)**

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## I. Introduction

1. At the invitation of the Government of Pakistan, the Working Group on Enforced or Involuntary Disappearances visited the country from 10 to 20 September 2012. The Working Group was represented by two of its members: its Chairperson-Rapporteur, Olivier de Frouville, and Osman El-Hajjé. During the visit, the Working Group held meetings with high-level authorities, including those in charge of the implementation of international human rights standards in Pakistan, as well as with civil society groups and families of victims of enforced disappearance. It received information on cases of enforced disappearance and studied the measures taken by the State to prevent and eradicate enforced disappearances, including issues relating to truth, justice and reparation for the victims of enforced disappearance.

2. The Working Group wishes to thank the Government of Pakistan for its invitation to visit the country. It acknowledges the efforts made before and during the visit to facilitate the visit. It also wishes to thank the United Nations country team in Pakistan, in particular the United Nations Entity for Gender Equality and the Empowerment of Women, for coordinating the efforts of the United Nations agencies in the field. The Working Group is also grateful for the assistance given in security arrangements. Lastly, it thanks the secretariat of the Office of the United Nations High Commissioner for Human Rights for its invaluable support.

3. During its 10-day visit, the Working Group visited Islamabad, Lahore, Karachi, Quetta and Peshawar. In Islamabad, the Working Group had the honour of meeting with the Minister of Foreign Affairs and the Minister of Interior. The Working Group also met with the Adviser to the Prime Minister on Human Rights, the Governor of Punjab, the Additional Secretary in charge of the United Nations and Economic Coordination at the Ministry of Foreign Affairs and the inspectors general of various provincial police agencies. In Islamabad, the Working Group also held meetings with the Chief Justice and the judges of the High Court of Islamabad, the Chairperson of the Commission of Inquiry on Enforced Disappearances and a number of parliamentarians of the Standing Committee on Human Rights.

4. In Lahore, the Working Group met with the Home Secretary, the Additional Home Secretary and the Prosecution Secretary of Punjab. In Karachi, it met the Chief Minister, the Chief Secretary, the Home Secretary and the Advocate General of Sindh. In Quetta, the Working Group held meetings with the Chief Secretary and the Home Secretary of Balochistan. In Peshawar, it met with the Home Secretary of Khyber Pakhtunkhwa.

5. Regrettably, some of the meetings that the Working Group had requested with a number of important actors at both the federal and provincial levels did not take place, notably with the Minister of Law, Justice and Parliamentary Affairs, the Minister of Defence, the Chief Justice of the Supreme Court, the Directorate for Inter-Services Intelligence, the Inspector General of Frontier Corps in Balochistan and Khyber Pakhtunkhwa provinces and the Chief Justices of the High Courts of Lahore, Karachi, Quetta and Peshawar.

6. The Working Group held a number of meetings with representatives of all sectors of civil society, including non-governmental organizations, activists and lawyers. It also met relatives of disappeared persons in all parts of the country.

7. In addition, the Working Group met with representatives of the diplomatic community and of various United Nations agencies.

8. During the visit, the Working Group requested the transmission of a number of documents, as well as the information and statistical data mentioned during meetings with

official authorities. It regrets that almost none of these documents and information was transmitted, as they could certainly have constituted the basis for a more thorough analysis in the context of the present report.

9. The invitation extended by the Government to the Working Group and other special procedures of the Human Rights Council is a testimony of its will to cooperate and take human rights issues seriously. The Working Group welcomes this opening and encourages the Government to invite other special procedures mandate holders to visit Pakistan in the near future.

10. The Working Group also welcomes the ratification by Pakistan of the International Covenant on Civil and Political Rights and of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It calls on the Government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court, which classifies enforced disappearance as a crime against humanity.

## **II. General context**

### **A. Basic facts**

11. Pakistan is a federation of four provinces: Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh. Governors appointed by the President head the provinces. It also comprises the Federally Administered Tribal Areas (FATA) and the Islamabad Capital Territory, which includes the capital city of Islamabad. These areas and territory are under the jurisdiction of the federal Government. Gilgit-Baltistan (formerly known as the Northern Area) is under Pakistani control, as is the Pakistani-administered portion of the disputed Jammu and Kashmir region known as Azad Kashmir.

12. Pakistan is a multi-ethnic and multilingual country. The main ethnic groups are the Punjabi, the Pashtun or Pathan, the Sindhi, the Sariaki, the Muhajir and the Balochi. The official languages are Urdu and English.

13. The official religion is Islam, with a majority of Sunni. Other religions include Ahmadiyah, Christianity and Hinduism.

### **B. Historical context**

14. Pakistan has been on the road to democracy since its independence. As in all countries worldwide, this road has been difficult and met with many obstacles. Pakistan has endured several periods of military dictatorship throughout its history, which have resulted at times in massive violations of human rights. The perceptions of different groups in society of not being treated on an equal footing with others created frustrations and demands that were often countered by violent means and further inequalities. Article 25 of the Constitution of Pakistan provides that “all citizens are equal before law and are entitled to equal protection of law”. This principle should lead all policies of the State.

15. Since 2008, there has been a new phase of parliamentary democracy. Political and institutional life in Pakistan has been characterized by a multiparty system, a strong independent judiciary, a vibrant civil society and a lively press, discussing all kinds of matters, including the problem of enforced disappearances.

16. In the meantime, Pakistan faces important security challenges. There is a perception widespread among the population that their security is not sufficiently ensured. The State has to deal with multiple threats, coming from terrorist movements or violent groups. The

conflicts in neighbouring countries and territories is an additional factor of insecurity. The Working Group acknowledges these threats and the need for the State to ensure the right to life of its citizens. It also emphasizes, however, that actions taken to deal with security threats, and in particular with terrorism, must at all times respect nationally and internationally recognized human rights. Human rights violations in the name of the fight against terrorism cannot achieve its aim but only, on the contrary, lead to further violations.

## **C. Legal and institutional framework**

### **1. Constitutional framework**

17. The current Constitution came into effect on 14 August 1973. Since then, however, the constitutional order has frequently been disrupted by military coups and 19 amendments have been adopted, many of them substantially affecting the balance of power between the different institutions of the State. The 18th amendment to the Constitution adopted by Parliament on 8 April 2010 deleted the amendments to the Constitution by the country's previous military rulers and devolved many of the federal Government's powers to the provinces. Under this devolution, provinces were to gain greater control of resources and budget allocations concerning education and other key governmental programmes.

18. The Constitution contains a comprehensive chapter on fundamental rights. According to article 8, "any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void". The Constitution specifies, however, that this does not apply to "any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them". The Working Group considers that this specific exclusion applicable to armed forces and other security forces is problematic insofar as it may create a space for them to operate outside the limits imposed by the Constitution.

19. Article 10A results from the 18th amendment and provides for the right to fair trial: "For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process."

20. Article 9 of the Constitution provides that "No person shall be deprived of life or liberty save in accordance with law."

21. Article 10 provides for a series of safeguards in the case of arrest or detention. Clause 1 of article 10 states that "no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice." Clause 2 of article 10 provides for the right of any person arrested and detained in custody "to be produced before a magistrate before a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

22. However, paragraph 3 of the same article 10 provides that clauses 1 and 2 do not apply to "any person who is arrested or detained under any law providing for preventive detention." Clauses 4 to 9 of article 10 describe a system of "preventive detention" applicable to "persons acting in a manner prejudicial to the integrity, security of defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services", under which such persons may be detained for "a period exceeding three months" under the supervision of a review board. It is the opinion of the Working Group that the "preventive detention" regimes should be carefully reviewed in

order to ensure their compatibility with international standards, including with the Declaration on the Protection of All Persons from Enforced Disappearance.

23. Article 245, paragraph 1 of the Constitution states that “the Armed Forces shall, under the direction of the Federal Government, defend Pakistan against external aggression or threat of war, and, subject to law, act in aid of civil power when called upon to do so.”

24. The relations between the federation and the provinces are ruled under part V of the Constitution. Article 148, paragraph 3 of the Constitution states that “it shall be the duty of the Federation to protect every Province against external aggression and internal disturbance and to ensure the Government of every Province is carried on in accordance with the provisions of the Constitution.”

## 2. Legislative and regulatory framework

25. The Criminal Code of Pakistan does not contain the crime of enforced disappearance, be it as a crime against humanity or as an autonomous crime. Articles 359 and those thereafter relate to, inter alia, the crimes of kidnapping and abduction. The crime of kidnapping is of two kinds: kidnapping from Pakistan and kidnapping from lawful guardianship (arts. 359-361). Abduction, regulated by article 362, is defined as “whoever by force compels, or by any deceitful means induces, any person to go from any place.” Article 364 also punishes “kidnapping or abducting in order to murder.” Article 365 targets “whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined”, while article 369 also punishes “whoever knowing that any person has been kidnapped or has been abducted wrongfully conceals or confines such person.”

26. Articles 154 and those thereafter of the Code of Criminal Procedure define procedures under which investigations are to be initiated. Information relating to the commission of offences may be given to a police station, on the basis of which the police will produce a first information report (“FIR”). In cases where the police have reason to suspect the commission of an offence, it shall send a report to a magistrate empowered to take cognizance of such offence upon a police report (art. 157).

27. Specific regulations have been devised to address specific matters or situations. The Anti-Terrorism Act of 1997 provides a legal framework for the prevention and punishment of terrorist activities. Section 4 of the Act makes it lawful for the federal Government to order, or for the provincial Government to request, the presence of military or civil armed forces in any area for the prevention and punishment of terrorist acts. Section 5 allows an officer of the police, armed forces and civil armed forces to arrest, without warrant, any person who has committed an act of terrorism or a scheduled offence, or against whom a reasonable suspicion exists that the person has committed, or is about to commit, any such act or offence.

28. Regulations to provide for Actions in aid of civil power (AACP) in the Federally Administered Tribal Areas (FATA) and in the Provincially Administered Tribal Areas (PATA) are intended to address the “grave and unprecedented threat to the territorial integrity of Pakistan by miscreants and foreign funded elements” (second preambular paragraph). It allows the federal Government to requisite the armed forces in respect of any defined area to carry out actions in aid of civil power (sect. 3). It is difficult to assess whether these regulations were conceived to apply specifically to a zone of conflict. It is clear, however, that the regulations take up some of the principles of international humanitarian law and of human rights law: it imposes the armed forces to take “feasible precautions” (sect. 4) and prohibits the use of torture or inhuman or degrading treatment (sect. 15). At the same time, it allows the Governor of the Province to issue an order of internment on the basis of a mere security threat. Only after 120 days does the “interning Authority” have the obligation to notify the internment to an oversight board comprising

two civilians and two members of the military (sect. 14, para. 1). The board is then to periodically review the conditions of internment centres and recommend suitable action for the consideration of the provincial Government (sect. 14, para. 2). The board is also in charge of protecting the human rights of internees and, in particular, to take notice of any complaint or information with regard to any degrading treatment or torture against an internee, with the possibility of recommending “suitable departmental action against the official concerned”.

29. In the opinion of the Working Group, the compatibility of the Anti-Terrorism Act and of the AACP Regulations with international standards should be carefully examined, given that they would appear to allow forms of arbitrary deprivation of liberty, which may create themselves the conditions for the occurrence of enforced disappearances.

### **3. Judicial system**

30. There are five High Courts in Pakistan, one for each Province and one for the Islamabad Capital Territory, serving as appellate courts on most civil and criminal matters, with the exception of some crimes under sharia law. Under article 199 of the Constitution, High Courts may, upon application by an aggrieved party, order officials of the Federation, the Province or a local authority to refrain from unlawful activities and to annul unlawful administrative acts. They may also rule on habeas corpus appeals and generally enforce fundamental rights. No such order may, however, be made by or in relation to a person who is a member of the armed forces of Pakistan (article 199(3) of the Constitution). A special military court system is in charge of dealing with cases relating to or implicating members of the armed forces, thus shielding them against any order or, more generally, any prosecution directed against them before civil courts. This is a matter of concern for the Working Group. Furthermore, article 245(3) excludes the jurisdiction of the High Courts under article 199 “in relation to any area in which the Armed Forces of Pakistan are, for the time being, acting in aid of civil power in pursuance of Article 245”. It is also of great concern that, according to this provision, as applied by specific regulations (para. 28), the High Courts are thus incapable of directing orders to the armed forces, in particular habeas corpus orders, in situations where the armed forces are acting in aid of civil power.

31. The Supreme Court of Pakistan consists of the Chief Justice and a number of judges determined by Parliament (currently 17). The 18th and 19th amendments to the Constitution, adopted respectively on 8 April and 30 December 2010, have led to the establishment of a judicial commission to nominate judges to fill actual or potential vacancies in the Supreme Court and the High Courts. In addition to its appellate functions, the Supreme Court may exercise *suo motu* powers in matters of “public importance with reference to the enforcement of any of the fundamental rights” conferred by the Constitution (Constitution, art. 184(3)). The Supreme Court has exercised these powers in a number of cases relating to enforced disappearances.

32. The jurisdiction of the superior courts does not extend to the Federally Administered Tribal Areas (FATA), thus denying citizen’s access in the enforcement of fundamental rights guaranteed in the Constitution and by international standards. This is clearly an important impediment to the realization of human rights in these areas. In particular, it prevents the courts from playing the fundamental role that they have played elsewhere in preventing enforced disappearances or helping to locate those who have been abducted.



### III. Enforced disappearances in Pakistan

#### A. Cases pending before the Working Group

33. A number of cases of enforced disappearance filed with the Working Group allegedly occurred between the mid-1980s and the mid-1990s, in the north-western region, in relation to the conflicts in Afghanistan. Allegedly, Afghan armed groups have abducted persons and held them in illegal detention centres on Pakistani soil, with the acquiescence of the authorities. The majority of those persons were believed to be detained in the centre located in Shamshatoo, which was reportedly controlled by Hezb-e Islami (Hikmatyar).<sup>1</sup>

34. A number of other cases were also reported to the Working Group to have taken place in the 1990s and the beginning of the 2000s in relation to the military operations carried out in Karachi and their aftermath (Sindh Province). Most of the cases concerned the alleged disappearance of members of the political party Muhajir Qaomi Movement (MQM), who were allegedly arrested by the police or by other security forces.<sup>2</sup>

35. In 2005, the Working Group began to receive cases of persons who had allegedly disappeared in different contexts. A number of persons had allegedly disappeared in the context of the so-called “war on terror”, in relation to their supposed activities in connection with Islamist armed groups. Some of those persons were transferred to other State’s territories or detention centres. Those cases mostly concerned the provinces of Punjab and Khyber Pakhtunkhwa, between 2003 and 2006. A number of other cases concerned persons who had been abducted in relation to their supposed activities in nationalist movements or dissenting groups. Those cases mostly occurred, allegedly, in the Sindh province or in Balochistan.

36. During the past reporting period, the Working Group sent two communications under its urgent action procedure to the Government for cases that allegedly occurred in November 2011 and June 2012. It also sent, under its standard procedures, six newly reported cases that allegedly occurred between 2007 and 2011.

37. Since its establishment, the Working Group has transmitted 151 cases to the Government; of those, nine cases have been clarified on the basis of information provided by the source, 42 cases have been clarified on the basis of information provided by the Government, one has been deleted, and 99 remain outstanding.

#### B. Allegations received during the visit

38. There is an acknowledgement that enforced disappearances have occurred and still occur in the country. Enforced disappearances reportedly happened in the past, even though not all cases were carefully registered. In particular, the Working Group was informed in Karachi that 28 cases of MQM activists abducted in the 1990s remained unclarified. According to the various official and unofficial sources met during the visit, however, it was in the post 11 September 2001 period that the question of “missing persons” began to raise real attention at the national level, as it reportedly became a widespread phenomenon. When the Working Group undertook its visit, cases continued to be reported to the national

<sup>1</sup> E/CN.4/1992/18, paras. 266-267; E/CN.4/1993/25, para. 381.

<sup>2</sup> See E/CN.4/1996/38, paras. 332-333; E/CN.4/1997/34, paras. 261-263; E/CN.4/1999/62, para. 229; E/CN.4/2000/64, para. 79; and E/CN.4/2002/79, para. 247.

authorities, and the situation was said to be of particular concern in Balochistan, where a great number of disappearances had allegedly recently occurred. Despite this broad acknowledgement, there were controversies on both the figures and the nature of the practice of enforced disappearance in Pakistan.

39. The figures communicated to the Working Group ranged from fewer than 100 to thousands of cases of enforced disappearance. In Balochistan alone, some sources alleged that more than 14,000 people are still missing, while the provincial Government recognizes less than 100. To date, the Commission of Inquiry on Enforced Disappearances still has more than 500 cases on its docket concerning the whole country. The number of officially registered allegations, although perhaps not reflective of the reality of the situation, is itself an indication of the existence of the phenomenon.

40. With regard to the nature of the practice, the authorities at the federal and provincial levels with whom the Working Group met often declared that most of the “missing persons” were in fact not victims of enforced disappearance. According to those authorities, some of those persons had been under criminal charges and had chosen to go in hiding, while others had fled to another country to join illegal armed groups. Others, according to the same authorities, had been the victims of abduction by non-State actors for various reasons. Cases of enforced disappearances by State actors, in this context, were very few and were the result of misconduct and ultra vires behaviour by some agents of the State.

41. Non-governmental sources alleged, however, that there was a pattern of enforced disappearances in Pakistan that was imputable to law enforcement agencies in conjunction with intelligence agencies.

42. During the visit, families recounted the Working Group their stories, and each story, while being different, revealed the same pattern. The abduction, often taking place in front of witnesses, is reported to have been perpetrated by law enforcement agencies, such as the police, the Frontier Corps (FC) or the Rangers, jointly with members of intelligence agencies in civilian clothing. Most of the time, intelligence agencies, such as Inter-Services Intelligence (ISI) or Military Intelligence (MI) are alleged to be directing the operations.

43. When asked whether they had filed a complaint for illegal arrest, families generally replied that they had tried to file a first information report (FIR) with the police, but were turned down or discouraged from doing so. Most of them ultimately filed their cases with the provincial High Court or the Supreme Court of Pakistan, so that the Court would issue an order to the police to initiate an investigation. In a large number of cases, families reportedly received threats or were intimidated to deter them from filing such cases.

44. Some families were promised that, if they did not file a case, their loved ones would be released, which did not happen. Other families were threatened that, if they did file a case, their loved ones would be harmed, or another member of their family would also be abducted. According to the families the Working Group heard, witnesses who were called to testify in court were threatened and, in some cases, victimized. In a few cases, the lawyers defending the families were reportedly themselves victims of enforced disappearance.

45. Some of the abducted persons were released, while others were never seen again by their relatives. A number of those who returned testified to having been held in unofficial places of detention. A number of such places in different cities (some mentioned to the Working Group) seem to be known as unofficial or secret places of detention. Many of those who returned from these places were allegedly threatened not to speak about their period of disappearance. Some, however, have chosen to take high risks to give their statements in court or before the Commission of Inquiry.

46. It was reported to the Working Group that in Balochistan, since 2010, a number of persons whose whereabouts were previously unknown were found dead, generally with signs of torture and sometimes decomposed to the point that their relatives were unable to identify them. In some cases the bodies were found far from where they had been abducted, for some in deserted areas. The practice of “delivering” dead bodies (also called “kill and dump operations” by some civil society organizations) allegedly accelerated in 2011 and 2012.

47. In the Province of Khyber Pakhtunkhwa, the Working Group was also told by civil society organizations and victims that some families had been called on to collect dead bodies and ordered to bury them within 30 minutes, with no possibility of formal identification.

48. Most of the families the Working Group met throughout the country, telling their stories, felt abandoned and hopeless. They implored that their loved ones, if accused of a crime, should be presented before a judge and, if recognized guilty, be convicted.

49. It is the responsibility and duty of the State to investigate these serious allegations thoroughly. The State of Pakistan, acknowledging the existence of the problem of enforced disappearances, has already taken positive steps to try to address this issue. The Working Group welcomes the declared will of the Government to tackle this issue and look at the current shortcomings in order to find the truth about the disappeared, and finally eradicate the crime of enforced disappearance in Pakistan. Nevertheless, serious challenges remain in the prevention and eradication of enforced disappearances in Pakistan. The Working Group emphasizes that, under article 3 of the Declaration on the Protection of All Persons from Enforced Disappearance, the State must take effective measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

50. The Working Group also emphasizes that, in order to prevent any act of enforced disappearance, it is of utmost importance that, as enshrined in article 10, paragraph 1 of the Declaration on the Protection of All Persons from Enforced Disappearance, any person deprived of liberty shall be held in an officially recognized place of detention and be brought promptly before a judicial authority.

51. The Working Group is concerned at the reports received according to which some of the persons with whom it met were threatened or intimidated. The Working Group underscores the importance of article 13, paragraphs 3 and 5 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provide that States shall ensure that all involved in the investigation of cases of enforced disappearance, including the complainant, counsel and witnesses, are protected against ill-treatment, intimidation or reprisal; and that steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished. In this respect, the Working Group calls on all relevant State authorities to guarantee the safety of those who met with the delegation of the Working Group and to protect them against any form of reprisal, threat or intimidation. The Working Group would also like to emphasize that the issue of reprisals against those cooperating with the United Nations, its representatives and mechanisms in the field of human rights has come to attention of the Human Rights Council, which, in its resolution 12/2, urged Governments to prevent and refrain from all acts of intimidation or reprisal against, inter alia, those who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them.

## **IV. Steps taken by the State to deal with enforced disappearances**

### **A. Role of the judiciary**

52. The Working Group welcomes the role played by the judiciary to shed light on the phenomenon of enforced disappearances in Pakistan and to trace missing persons. In 2007, the Supreme Court considered a number of petitions submitted by individuals or non-governmental organizations. This was followed by provincial high courts, which also began to take up cases under their jurisdiction to protect human rights. In a number of cases, the Supreme Court also took actions *suo motu*, showing its determination to tackle the problem. Most of these cases are still under consideration. Since the independence of the judiciary was reinstated in 2009, the courts have continued to play a major role in the search for disappeared persons; a number of persons have resurfaced after having been kept in unlawful custody for several months, sometimes for years. The courts have also been instrumental in facilitating the filing of first information reports (FIR) by families following the abduction of their relatives, when they had previously been turned down by the local police. The Supreme Court of Pakistan has set up a human rights cell to address human rights violations specifically, in an expeditious and inexpensive manner.

### **B. Commissions of inquiry**

53. Two special bodies were set up successively on the issue of enforced disappearances. In April 2010, the Ministry of the Interior set up a committee to investigate the fate of disappeared persons. In March 2011, the Supreme Court decided to institute a specific body to deal with cases of enforced disappearance, initially for six months; its mandate was subsequently extended for three years. The two-member Commission of Inquiry on Enforced Disappearances is tasked with following up the work of the committee from the Ministry of the Interior and to deal with cases already received by the Supreme Court, as well as with receiving new cases. The Commission may hear families and witnesses, in general in the presence of representatives of most law enforcement and intelligence agencies. The Commission has held hearings in different parts of the country, including in Balochistan.

54. Once a case is filed with the police by the relatives of a victim of enforced disappearance, the case can be reported to the Commission. The Commission may then order the setting up of a joint investigation team at the provincial level, consisting of police officers and representatives of federal and provincial intelligence agencies, who will be in charge of investigating the matter. The team is required to report to the Commission on the results of the investigation. The Commission has the power to summon any alleged perpetrators, including State officials, with the exception of the President and the Prime Minister. If the Commission is of the view that law enforcement officials have been involved in a case of enforced disappearance, it may order the issuance of a summons to appear, as well as register a criminal case against all those involved on the basis of article 365 of the Criminal Code. Alleged perpetrators of enforced disappearance may face the death penalty. However, no criminal investigation has ever been initiated since the establishment of the Commission – reportedly because the names of alleged perpetrators were never provided by the victims or because there was never enough evidence to trigger such an investigation.

## C. Future National Commission on Human Rights

55. In May 2012, the Statute of the National Commission on Human Rights as a national human rights institution was adopted by the Parliament. The authorities informed the Working Group that the Commission will have, among other mandates, the responsibility of dealing with the issue of enforced disappearances, including the exercise of quasi-judicial powers.

## D. Political commitments

56. Commitments have been made by several official authorities to “solve” the problem of “missing persons” in Pakistan. In particular, with regard to Balochistan, the new Government adopted the Balochistan package in November 2009, a series of initiatives aiming at addressing the problems of the Baloch people. With regard to “constitutional-related matters”, section 12 of the “package” provides for a number of commitments relating to the issue of “missing persons”:

Missing persons: the names of missing persons be identified and following actions be taken immediately, after verification, in any case, if they are found to be in custody; (i) Those persons against whom there are no charges be released; (ii) Those persons against whom there are charges be brought before a court of competent jurisdiction within seven days for trial (effective from the date of promulgation of commission); (iii) Such persons be allowed legal consul of their choice, the government should assist them in this regard in accordance with law; (iv) Family members of such persons be informed accordingly and allowed visiting rights.

## V. Challenges faced by the State in resolving the issue of enforced disappearances

### A. Judicial inquiries

57. Efforts made by the courts have proved to be efficient in a number of cases, where the persons have been effectively traced and found, and finally returned to their families. In the large majority of cases, however, the investigations initiated under the orders of the courts have been inconclusive.

58. Before the Working Group arrived in Pakistan, and during its visit, the Supreme Court held a number of hearings in Quetta on the case of Constitution Petition No. 77 of 2010 (*President Balochistan High Court Bar Association vs. Federation of Pakistan, etc.*) on the situation of Law and Order in Balochistan. As a result of the hearings, the Court adopted an order on 12 October 2012. The Supreme Court expressed its disappointment that its previous orders, as well as its multiple requests directed at law enforcement or intelligence agencies, had not been implemented. In paragraph 14 of its motives, the Court complains about the denial of abductions by law enforcing agencies, including the Frontier Corp:

It may be observed that we have repeatedly demanded from all the law enforcing agencies including FC etc. for the production of missing persons and in this behalf categorical directions were made time and again but the orders of producing them were not carried out by simply denying that missing persons are not in their custody. Contrary to it, there is overwhelming evidence as it has been noted hereinabove, on the basis whereof prima facie involvement of FC cannot be over ruled.

59. Although the courts are generally praised for their efforts, complaints were reported to the Working Group that, in some instances, the courts have avoided using compelling methods to ensure the presence and cooperation of law enforcement and intelligence agencies whose agents have been accused of having perpetrated an enforced disappearance. Some families informed the Working Group that, although they had brought witnesses before the court to substantiate their claims, the court before which the case had been filed was satisfied with an oral declaration by the representative of the said agency, denying the custody of the person. Others told the Working Group that the court had failed to use its power to summon an agent suspected of having participated in an enforced disappearance. The main complaint was that the courts' proceedings failed to result in the prosecution of named perpetrators, even when evidence was, according to their lawyers, sufficient to do so.

## **B. Commission of inquiry**

60. The same criticism was also made of the Commission of Inquiry, which is said to have limited authority on the various law enforcement or intelligence agencies allegedly involved in the cases of enforced disappearance reported to the Commission. As in the case of courts, the Working Group received reports that the Commission was satisfied with the denial of the accused agency that it had the concerned person in custody.

61. The Commission informed the Working Group that, should its orders not be complied with, it had the power to initiate criminal proceedings against the potential perpetrators. The Working Group did not, however, receive any report of such criminal proceedings.

62. Some families also reported to the Working Group that the Commission, after having reviewed a case, gave verbal assurances to the family that their loved ones would soon return home, which in fact never happened. They were not aware of whether a formal order had been delivered to the authority allegedly having the disappeared person in its custody.

63. The families that the Working Group met had different feelings about the fact that the hearings took place in the presence of representatives of different agencies, including those being accused of having abducted their loved ones; some said they had no fear of confronting them, while others felt intimidated. The Commission told the Working Group that families were given the choice of being heard alone with the two members of the Commission, if they preferred. The Working Group is of the opinion that this choice should be the rule rather than the exception. If families are willing to confront and tell their stories in front of the agencies, they should be given the possibility to do so. In general, however, the families should be heard by the two members of the Commission in a confidential meeting.

64. There is no doubt that the courts and the Commission face enormous difficulties in their tasks relating to cases of enforced disappearance. The fact that they are criticized by some families reflects the frustration, anguish and fear felt by these families. It is also a sign that those institutions ought to be further strengthened. The Working Group is particularly aware of the limits imposed on a two-member commission, notably with regard to the limited capacities in staffing.

## **C. Impunity**

65. The United Nations High Commissioner for Human Rights, during her visit to the country in June 2012, stated that "impunity is dangerously corrosive to the rule of law in Pakistan." Listening to authorities and to victims, the Working Group could feel that

impunity was a concern for the whole of society. According to various sources, criminals, terrorists and militants from armed groups enjoyed great impunity because, even when investigations were initiated against them, they managed to evade prosecution by using threats against the police, judges and witnesses.

66. The Working Group is aware of the difficulties encountered by law enforcement officials in bringing criminals to justice, and acknowledges the security challenges faced by Pakistan in different areas. It emphasizes, however, that these challenges cannot be accepted as a justification to commit such a heinous crime as an enforced disappearance. In this regard, the Working Group draws attention to article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provides that “no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.”

67. Furthermore, according to allegations received by the Working Group, the practice of enforced disappearances was also a tool to target political or human rights activists legitimately exercising their freedoms of expression, association and assembly.

68. Victims complained that, even when clearly identified by witnesses, perpetrators were not only never convicted, but never even subjected to any effective investigation. The Working Group, despite its reiterated requests, received no information relating to the conviction of State agents in relation to acts of enforced disappearance.

69. In its order of 12 October 2012, the Supreme Court expresses its concern about this climate of impunity in the specific context of Balochistan:

There are prima facie, serious allegations of the involvement of FC as it is evident from the report submitted by the Inspector General of Police that in every third case, the FC personnel are being named as accused regarding missing persons. For the last four years, mutilated dead bodies had been recovered from the abandoned places of the Province of Balochistan. Neither the Provincial Government nor the Federal Government succeeded in identifying the culprits involved in the killing of such persons inasmuch as no report was registered by the law enforcing agencies. Same is the position in respect of the missing persons, target killings, abduction for ransom and sectarian killings. This Court, during the pendency/hearing of this case has got registered FIRs but not a single accused has been brought to book. (...) The Provincial Government as well as the Federal Government, despite clear directions of the Court (...) have failed to honour the above commitment, as a result whereof disappointment, despondency and anarchy is increasing day by day among all the citizens.

70. The Working Group was informed by Government officials that families of disappeared persons were not keen to file complaints against named perpetrators and that, in the absence of any complaint, no prosecution could be initiated. The Working Group would, however, like to recall article 13, paragraph 1 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provides that whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to a competent and independent State authority for investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

71. It was also reported to the Working Group that some victims and witnesses received serious threats when reporting their cases to the police, the courts or the Commission of Inquiry. The Working Group was pleased to hear from official authorities of the Sindh and Balochistan, but also at the federal level, that laws and regulations relating to the protection of victims and witnesses were in the process of being adopted. As provided in article 13,

paragraph 3 of the Declaration on the Protection of All Persons from Enforced Disappearance, “steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.” A strong and comprehensive programme for the protection of victims and witnesses should be established, with special attention paid to women as relatives of disappeared persons.

72. The Working Group notes that the Prime Minister promised to the High Commissioner, during her visit, that a “zero tolerance” policy would be applied to such abuses, and hopes that this policy will be implemented with urgency.

73. All investigations and any punishment of perpetrators should be in accordance with the law, with all the guarantees of a fair trial. Perpetrators should be punished with appropriate penalties, with the clear exclusion of the death penalty. Enforced disappearances can also be punished on the basis of other crimes, as defined in the Criminal Code of Pakistan, such as the offence of “kidnapping or abducting with intent secretly and wrongfully to confine person”. The Working Group, however, recommends that a new and autonomous crime of enforced disappearances be drafted, following the definition given in the International Convention for the Protection of All Persons from Enforced Disappearance, and with the legal consequences flowing from this qualification.<sup>3</sup>

74. The Working Group also notes that, in Pakistan, military personnel cannot be submitted to trial before civil courts. This could constitute a factor of impunity for human rights violations and should be changed. Paragraphs 1 and 2 of article 16 of the Declaration on the Protection of All Persons from Enforced Disappearance state that persons alleged to have committed an enforced disappearance shall be suspended from any official duties during the investigation and shall be tried only by the competent ordinary courts, and not by other special tribunal, in particular military courts.

#### **D. Supervision and training of law enforcement and intelligence agencies**

75. During its visit, the Working Group repeatedly received allegations that there was a lack of supervision and accountability of law enforcement and intelligence agencies to the Government.

76. The accountability and full oversight of law enforcement and intelligence agencies is all the more essential in a situation where the State has to face multiple threats, such as terrorism or political violence. In these circumstances, there is a risk that intelligence agencies acquire new powers to interrogate, arrest and detain individuals, to the detriment of the law enforcement agencies. This shift can ultimately jeopardize the rule of law, as the line between the collection of intelligence and the collection of evidence on criminal acts becomes increasingly blurred. Furthermore, agents in charge of intelligence may be tempted to abuse the usually legitimate secrecy of intelligence operations and commit violations of human rights under the cover of this secrecy.

77. Principle 36 (c) of the updated set of principles for the protection and promotion of human rights through action to combat impunity<sup>4</sup> states that:

<sup>3</sup> See also the report of the Working Group on best practices on enforced disappearances in domestic criminal legislation (A/ HRC/16/48/Add.3).

<sup>4</sup> E/CN.4/2005/102/Add.1.



Civilian control of military and security forces as well as of intelligence agencies must be ensured and, where necessary, established or restored. To this end, States should establish effective institutions of civilian oversight over military and security forces and intelligence agencies, including legislative oversight bodies.

78. The Parliament also has a role to play in this regard, as it has the duty to hold the executive branch and its agents accountable to the general public, including through hearings or special investigations.

79. Appropriate training should be given to members of law enforcement and intelligence agencies in the field of human rights, with particular focus on enforced disappearances. It should be made clear to all, in particular, that, as stated in article 6, paragraph 1 of the Declaration on the Protection of All Persons from Enforced Disappearance that “no order or instruction of any public authority, civilian, military or other may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.”

## **E. Assistance to families and reparation**

80. Victims of enforced disappearance are not only those who have been disappeared, but also their families. Relatives endure pain and anguish as a consequence of the continuous uncertainty about the fate or the whereabouts of their loved ones. In the immense majority of cases, the disappeared persons are men, and it is the women who are left alone. The gendered dimension of the phenomenon of enforced disappearances should be duly taken into consideration.

81. Family members are also prevented from exercising their rights and obligations owing to the legal uncertainty created by the absence of the disappeared person. This uncertainty has many legal consequences on, inter alia, the status of marriage, the guardianship of under-age children, the right to social allowances of members of the families and the management of the property of the disappeared person. When asked, officials informed the Working Group that there were no specific legal institutions designed to deal with these complex issues. To address this issue, the State of Pakistan should enable the issuance of a ‘declaration of absence by reason of enforced disappearance.’

82. During some meetings held with officials, the Working Group heard that relatives of disappeared persons are often taken care of by the extended family and that, in any case, they can file a civil claim in court in order to obtain compensation. The issue of “compensation” should, however, be clearly distinguished from the aid that should be provided to the families to cope with the dire consequences of the absence of the main breadwinner.

83. The Working Group recommends the establishment of mechanisms providing for social allowances or appropriate social and medical measures for relatives of disappeared persons in relation to the physical, mental and economic consequences of the absence of the disappeared. In this respect, the Working Group welcomes the information provided by the Adviser on Human Rights to the Prime Minister that there is a fund dedicated to women that could be used for this purpose.

84. In accordance with article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, in no case should the acceptance of financial support for members of the families be regarded as a waiver of the right to integral reparation for the damage caused by the crime of enforced disappearance.

85. In addition to the punishment of perpetrators and the right to monetary compensation, the right to obtain reparation for acts of enforced disappearance under article

19 of the Declaration also includes the means for as complete rehabilitation as possible. This obligation refers to medical and psychological care and rehabilitation for any form of physical or mental damage, as well as to legal and social rehabilitation, guarantees of non-repetition, the restoration of personal liberty, family life, citizenship, employment or property, the return to one's place of residence and similar forms of restitution, satisfaction and reparation that may address the consequences of the enforced disappearance.

## **VI. Conclusions and recommendations**

86. **The Working Group wishes to thank the Government of Pakistan for its invitation to visit the country and for its cooperation in the preparation of and during the visit.**

87. **The Working Group is concerned at the reports received according to which some of the persons with whom the delegation met had been threatened or intimidated.**

**(a) The Working Group calls on all relevant State authorities to guarantee the safety of those who met with the delegation and to protect them against any form of reprisal, threat or intimidation. In this respect, it recalls paragraphs 3 and 5 of article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provide that States shall ensure that all persons involved in the investigation of cases of enforced disappearance, including the complainant, counsel and witnesses, are protected against ill-treatment, intimidation or reprisal; and that steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.**

88. **The invitation extended by the Government to the Working Group and to other special procedures of the Human Rights Council is testimony to its will to cooperate and to take human rights issues seriously.**

**(a) The Working Group welcomes this opening and encourages the Government to invite other special procedures mandate holders in the near future to visit Pakistan.**

**(b) If requested by the Government of Pakistan, the United Nations and other international organizations should stand ready to provide technical assistance and consultative services in order to implement the recommendations made by the Working Group.**

89. **The Working Group welcomes the ratification by Pakistan of the International Covenant on Civil and Political Rights and of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

**(a) The Working Group calls on the Government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and to recognize the competence of the Committee on Enforced Disappearances to consider individual and inter-State complaints, pursuant to articles 31 and 32 of the Convention.**

**(b) The Working Group also recommends the ratification of the Rome Statute of the International Criminal Court, which includes enforced disappearances as a crime against humanity.**

90. **The Working Group acknowledges that Pakistan is facing important security challenges, including attacks by terrorist movements and violent groups. It nonetheless emphasizes that actions taken to deal with security threats, and in**

particular with terrorism, must at all times respect nationally and internationally recognized human rights. It recalls that article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance states that “no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.”

91. In that regard, it is important that the constitutional, legal and regulatory framework, in particular in relation to the issue of the deprivation of liberty, be in full conformity with international standards in order to ensure that it does not give licence to secretly detain or disappear anyone, or that it does not lead in practice to circumstances where enforced disappearances could be perpetrated. This would be essential both as a preventive measure and to avoid provisions that may permit or facilitate the occurrence of enforced disappearances.

(a) The constitutional, legislative and regulatory provisions, in particular “preventive detention” regimes and rules allowing for arrest without warrant of suspects, should be carefully scrutinized, in order to ensure their compatibility with international standards and, if necessary, their repeal.

92. The Working Group welcomes the fact that the issue of enforced disappearances is now publicly discussed in Pakistan. There is an acknowledgement that enforced disappearances have occurred and still occur in the country. The Working Group is concerned by the allegations it received during the visit that there is a pattern of enforced disappearances in Pakistan that is imputable to law enforcement agencies in conjunction with intelligence agencies. The Working Group is concerned in particular by reports relating to the ongoing situation in Balochistan, the gravity of which was recently recognized in the order of the Supreme Court of 12 October 2012 concerning the situation of law and order in Balochistan.

(a) In accordance with article 3 of the Declaration on the Protection of All Persons from Enforced Disappearance, Pakistan must take effective measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

(b) As a preventive measure against enforced disappearance, any person deprived of liberty shall be held in an officially recognized place of detention and be brought promptly before a judicial authority, in accordance with article 10, paragraph 1, of the Declaration.

(c) Particular attention should be dedicated to the ongoing situation in Balochistan. As mentioned in the section of the 2009 “Balochistan package” relating to missing persons, those who are in custody of State authorities should always be either charged with a crime and be brought before a court of law or released.

93. The Working Group welcomes the very positive role played by the Supreme Court and provincial high courts in Pakistan in addressing the issue of enforced disappearances. It acknowledges the efforts and the progresses made, but also the limitations the courts are facing. On the legal side, it is of particular concern that the jurisdiction of Pakistan’s superior courts do not extend to the Federally Administered Tribal Areas (FATA). The Working Group is similarly concerned that no habeas corpus order may be directed in relation to a person who is a member of the armed forces of Pakistan, and that the high courts are unable to exercise their jurisdiction under article 199 of the Constitution in situations where the armed forces are acting in aid of civil power (Constitution article 245, paragraph 3, and AACP Regulations).

(a) The jurisdiction of Pakistan's superior courts should be extended to the Federally Administered Tribal Areas (FATA), allowing proper legal protection for persons living in these areas.

(b) The limitations to the competence of the high courts in the exercise of their powers under article 199 of the Constitution should be removed.

94. The Working Group also welcomes the work done by the Commission of Inquiry in tracing disappeared persons, but is at the same time concerned by its limited capacities and the difficulties it faces in fulfilling its task effectively.

(a) As a rule, relatives of disappeared persons should be heard in confidential meetings before the Commission, and should be offered the possibility of confronting the agencies and individuals they suspect of having abducted their loved ones.

(b) The Commission of Inquiry should be strengthened. Its membership should be extended to allow parallel hearings. Its staff and resources should also be strengthened.

95. The Working Group is concerned that the orders delivered by the courts and the Commission of Inquiry are often not complied with.

(a) The courts and the Commission of Inquiry should use all powers they have to ensure compliance with their orders, including the request of sworn affidavits and writs of contempt of courts.

(b) The Government should take all necessary measures to ensure that the orders of the Commission of Inquiry and of the Courts are complied with by all enforcement or intelligence agencies.

96. As the Working Group has constantly emphasized, fighting the impunity of perpetrators is a key factor in terminating the practice of enforced disappearances. The Working Group is concerned that, despite its reiterated requests, it received no information on the conviction of any State agent in relation to acts of enforced disappearance. A number of measures should be urgently adopted in this regard:

(a) A new and autonomous crime of enforced disappearances should be included in the Criminal Code following the definition given by the International Convention for the Protection of All Persons from Enforced Disappearance and with all the legal consequences flowing from this qualification;

(b) Investigation against and punishment of perpetrators should be in accordance with the law and with all the guarantees of a fair trial. Perpetrators should be punished with appropriate penalties, with the clear exclusion of the death penalty;

(c) Investigations should be initiated whenever there are reasonable grounds to believe that an enforced disappearance has been committed, even if there has been no formal complaint;

(d) Measures should be taken to ensure that, in the event of human rights violations, suspected perpetrators, including army personnel, are suspended from official duties during the investigation and are tried only by competent ordinary courts, and not by other special tribunal, in particular military courts;

(e) A comprehensive programme for the protection of victims and witnesses should be set up, with special attention to women as relatives of disappeared persons.

97. The Working Group is concerned at the repeated allegations that intelligence agencies are not sufficiently supervised by and accountable to civil authorities. It is often alleged that such intelligence agencies as Inter-Services Intelligence (ISI) or Military Intelligence (MI) are masterminding the operations leading to enforced disappearances.

(a) Clear rules and dedicated institutions should be created to ensure the oversight and accountability of law enforcement and intelligence agencies.

(b) Appropriate training should be given to members of law enforcement and intelligence agencies in the field of human rights, with particular focus on enforced disappearances.

98. The Working Group is concerned that no specific measures are contemplated to assist relatives of disappeared persons, in particular women, in coping with the consequences of the disappearance.

(a) A system of declaration of absence as a result of enforced disappearance should be issued to address the legal uncertainties created by the absence of the disappeared person.

(b) Mechanisms should be established to provide for social allowances or appropriate social and medical measures for relatives of disappeared persons in relation to the physical, mental, economic and other consequences of the absence of the disappeared.

99. No specific measures have been taken until now to address the issue of reparation of victims of enforced disappearances. The issue cannot be dealt with by classic court proceedings alone, which are too cumbersome for individual victims and do not address the whole range of measures of reparation.

(a) A program of integral reparation should be set up for all victims of enforced disappearances; the programme should include not only compensation but also full rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition.

100. A mother of a disappeared person asked the Working Group to convey a message to all persons in charge of public affairs in Pakistan. She asked, "If your child disappeared, what would you do?" This question summarizes the ordeal that families endure. As far as the Working Group is concerned, its only – yet unsatisfactory – response to such torment is to recall that the relatives of the disappeared persons have the right to the truth, the right to justice and the right to reparation, and it is the duty of the State of Pakistan to take all necessary measures to make those rights effective.

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