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

Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

**Follow-up report to the recommendations made by the Working
Group***

Missions to Congo and Pakistan

Note by the Secretariat

This document contains information supplied by Governments, civil society and other stakeholders, relating to the follow-up measures to the recommendations made by the Working Group on Enforced or Involuntary Disappearances, following its country visits to Congo in 2011 (A/HRC/19/58/Add.3) and Pakistan in 2012 (A/HRC/22/45/add.2).

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Contents

	<i>Page</i>
I. Introduction	3
II. Congo	4
III. Pakistan	35

I. Introduction

1. This document contains information supplied by Governments, civil society and other stakeholders, relating to the follow-up measures to the recommendations made by the Working Group on Enforced or Involuntary Disappearances, following its country visits. In paragraph 7 a) of its Resolution 7/12, the Human Rights Council requested Governments that have accepted visits “to give all necessary attention to the Working Group’s recommendations” and invited them to inform the Working Group of “any action they take on those recommendations”. The Human Rights Council reiterates this request in paragraph 16 a) of its Resolution 21/4. Resolution 27/1 renews the mandate of the Working Group in conformity with the terms set forth in Human Rights Council resolution 7/12.

2. The Working Group decided in 2010 to adopt the present format to its follow-up reports with the aim of rendering it reader-friendly and of facilitating the identification of concrete steps taken in response to the specific recommendations and to reflect the opinions of the different actors involved in the process. For this reason, follow-up tables have been created. The tables contain the recommendations of the Working Group, a brief description of the situation when the country visit was undertaken, an overview of the steps taken on the basis of the information gathered by the Working Group both from governmental and non-governmental sources, and the observations of the Working Group on the level of implementation of the recommendations.

3. The Working Group continues to offer its assistance to the Governments that have received a visit to comply with the recommendations made and stands ready to assist them in their efforts to prevent and combat the heinous crime of enforced disappearance.

II. Congo

Suivi des recommandations du Groupe de travail sur les disparitions forcées ou involontaires faites dans le rapport suite à sa visite au Congo du 24 septembre au 3 octobre 2011 (A/HRC/19/58/Add.3)

4. Le 15 janvier 2016 puis le 30 mars 2016, le Groupe de travail sur les disparitions forcées ou involontaires a demandé au gouvernement congolais de fournir des informations sur les mesures qui ont été adoptées pour mettre en œuvre les recommandations formulées par le Groupe de travail dans le rapport A/HRC/19/58/Add.3, à la suite de sa visite au Congo du 24 septembre au 3 octobre 2011. Aucune réponse du gouvernement n'a été reçue par le Groupe de travail suite à cette demande. Le 20 juin 2016, le Groupe de travail a adressé au gouvernement congolais les informations contenues dans le tableau ci-dessous, en l'invitant à formuler des observations et / ou à fournir des informations. Aucune information n'a été présentée par le gouvernement. Le Groupe de travail regrette le manque de coopération du gouvernement congolais tout au long de ce processus de suivi.

5. Suite à ses observations, le Groupe de travail note que nombre des recommandations formulées à l'attention des autorités congolaises restent d'actualité et exigent une mise en œuvre effective.

6. Bien que le Groupe de travail se réjouisse de la révision en cours du Code pénal en collaboration avec l'Union Européenne, il rappelle la nécessité d'intégrer une incrimination autonome de la disparition forcée conformément à la définition contenue dans la Déclaration et dans la Convention pour la protection de toutes les personnes contre les disparitions forcées.

7. Le Groupe de travail appelle à nouveau le gouvernement congolais à ratifier sans réserves la Convention des Nations Unies pour la protection de toutes les personnes contre les disparitions forcées ou involontaires, qu'il a signée en 2007.

8. Le Groupe de travail salue également l'initiative du gouvernement congolais ayant permis l'abolition de la peine de mort par l'intermédiaire de l'article 8 de la nouvelle Constitution adoptée suite au référendum du 25 octobre 2015 et promulguée le 6 novembre 2015.

9. Le Groupe de travail note que l'impunité semble perdurer au Congo dans la mesure où aucune disposition ne semble avoir été mise en place pour lutter contre ce phénomène et ouvrir des enquêtes lorsque des disparitions forcées surviennent. Le Groupe de travail réitère sa recommandation sur la nécessité de prendre toutes les mesures utiles afin de prévenir et lutter contre l'impunité à l'égard des responsables d'actes de disparition forcée sans attendre que les proches des disparus prennent l'initiative de déposer une plainte formelle ou d'engager une procédure d'enquête conformément à l'article 13§1 de la Déclaration.

10. Le Groupe de travail se félicite de la libération, en septembre 2012, des trois ressortissants de la République démocratique du Congo qui étaient détenus dans les locaux de la Direction Centrale des renseignements militaires. Néanmoins, le Groupe de travail reste préoccupé par les allégations reçues concernant des cas d'arrestation et de détention arbitraire et de dépassement de délais de garde à vue. Il rappelle au gouvernement que toute personne privée de liberté doit être gardée dans des lieux de détention officiellement reconnus et être déférée à une autorité judiciaire peu après son arrestation. Le Groupe de travail recommande à nouveau au gouvernement congolais d'interdire la détention au secret ou la détention de personnes dans des lieux de détention non officiels et non réguliers conformément à l'article 10 de la Déclaration.

11. Le Groupe de travail constate que les dépassements de délais de garde à vue persistent et sont essentiellement imputables au manque de moyens adéquats mis à la disposition de la police et de la justice. Il s'inquiète également du fait que les visites sur les lieux de détention par le Procureur de la République ne soient pas encore menées de façon systématique. Le Groupe de travail invite le gouvernement congolais à mettre à la disposition de la police et de la justice les moyens nécessaires afin de permettre une meilleure prévention des disparitions forcées.

12. Le Groupe de travail regrette qu'aucune enquête effective n'ait encore été menée par les autorités judiciaires congolaise pour faire la lumière sur le sort des disparus entre 1998 et 1999 et sur ceux recensés depuis les années 2000 dans les départements du Pool, du Niari, de la Lékoumou et de la Bouenza. Il note également qu'aucun organe compétent et indépendant n'a été mis en place pour clarifier leur sort et déplore l'absence de réponse de la part du gouvernement et le manque de coopération dont il a fait preuve avec les Rapporteurs spéciaux des Nations Unies. Le Groupe de travail réitère sa recommandation sur la nécessité pour les autorités congolaises de mener des enquêtes effectives au moyen d'organes compétents et indépendants ayant les capacités d'enquêter sur le sort des personnes victimes de disparitions forcées sur le territoire congolais et de coopérer avec les différents Rapporteurs spéciaux des Nations Unies ainsi qu'avec le Groupe de travail.

13. Le Groupe de travail regrette que le procès tenu à Brazzaville durant l'été 2005 relatif à l'affaire des disparus du Beach de Brazzaville ne respectait nullement les normes du procès équitable et que depuis ce procès aucune enquête ne semble avoir été mise en place pour élucider le sort réservé aux vingt-trois personnes disparues, et ce, en dépit des instructions qui auraient été données par le Procureur de la République du Tribunal de Grande Instance de Brazzaville. Le Groupe de travail recommande à nouveau au gouvernement congolais de poursuivre ces enquêtes en vue d'élucider le sort réservé aux vingt-trois personnes victimes de disparitions forcées dans le contexte des opérations de rapatriement menées à partir d'avril 1999.

14. Le Groupe de travail reste préoccupé par les allégations reçues concernant des cas d'intimidation de la part des autorités congolaises envers les proches des disparus ayant notamment pour conséquence d'entraver les procédures de plainte auprès des instances nationales et internationales. Le Groupe de travail invite à nouveau le gouvernement congolais à mettre en place un programme effectif de protection des victimes et des témoins, permettant à ces derniers de porter plainte ou de témoigner sans crainte de représailles.

15. Le Groupe de travail rappelle au gouvernement congolais la nécessité d'élaborer un programme général et exhaustif d'indemnisation ou de réparation pour les victimes des conflits. Le Groupe de travail observe que, à l'exception d'une indemnisation accordée aux familles des parties civiles au procès de 2005, et en dépit des recommandations formulées suite à sa visite en 2011, le gouvernement congolais n'a pas mis en place de mesures d'assistance psychologique ou sociale aux proches des disparus. Le Groupe de travail invite le gouvernement à accorder aux proches des disparus une réparation de leurs préjudices qui, outre l'octroi d'une indemnisation, devrait être complétée par des mesures d'assistance psychologique et sociale.

16. Le Groupe de travail note qu'aucun véritable programme visant le rétablissement de la vérité et de la réconciliation n'a été mis en place. Le Groupe de travail rappelle qu'une cessation des pratiques de violation des droits individuels et collectifs est le préalable à tout processus de vérité et réconciliation. Il invite également le gouvernement congolais à concrétiser les initiatives qu'il avait évoquées lors de la visite du Groupe de travail en 2011 (dialogue national et réforme de la justice) concernant la mise en place d'un programme visant à rétablir la vérité et la réconciliation en prévoyant la pleine participation des victimes.

17. Par ailleurs, le Groupe de travail recommande que le gouvernement congolais, notamment au regard de l'instabilité et des tensions qui perdurent dans le pays, envisage l'établissement d'une Commission ayant pour objectif la recherche de la paix et de la réconciliation, qui pourrait prendre pour base institutionnelle le Comité de suivi de la Convention pour la paix et la reconstruction du Congo.

18. Le Groupe observe qu'en dépit de ses recommandations d'organiser une cérémonie en hommage aux disparus du Beach de Brazzaville et de recevoir les familles de ces disparus, le Gouvernement semble toujours refuser une telle reconnaissance et l'intervention d'une commémoration en interdisant son organisation par les acteurs de la société civile. Le Groupe de travail invite le gouvernement congolais à reconnaître les disparus du Beach de Brazzaville et commémorer ou autoriser l'organisation d'une commémoration par les acteurs de la société civile.

19. Le Groupe de travail note avec satisfaction que des programmes de formation à l'intention de la police et de l'armée intègrent des éléments de droit international humanitaire et invite le gouvernement à poursuivre ses efforts pour que les programmes de formation à destination des personnels susmentionnés, y compris le personnel de justice, intègrent le droit international des droits de l'homme et en particulier les éléments relatifs aux disparitions forcées.

20. Le Groupe de travail réitère sa recommandation invitant la communauté internationale à apporter au gouvernement congolais l'assistance nécessaire et adéquate en matière de renforcement des capacités techniques pour la promotion et la protection des droits de l'homme.

21. Le Groupe de travail réitère sa disposition à apporter son soutien et son expertise au gouvernement congolais en vue d'élucider le sort de toutes les victimes de la disparition forcée dans le pays et à mettre en place les mesures permettant de garantir la non récurrence de tels actes.

<i>Recommandations</i>	<i>Situation pendant la visite</i>	<i>Observations: mesures prises récemment/situation</i>	<i>Etat d'avancement de la mise en œuvre et observations (GT)</i>
<i>(A/HRC/19/58/Add.3, paragraphes 100-103)</i>	<i>(A/HRC/19/58/Add.3)</i>	<i>Actuelle</i>	
100 (a) Continuer à rechercher la vérité sur le sort réservé à toutes les personnes qui auraient été victimes de disparitions forcées sur le territoire du Congo	34. Le Groupe de travail constate que les seules enquêtes et poursuites menées contre de potentiels auteurs de disparitions l'ont été dans le contexte du procès de 2005 dit « des disparus de Beach de Brazzaville ». Or l'ensemble des accusés lors de ce procès ont été reconnus non coupables des faits qui leur étaient reprochés. Par ailleurs, le Groupe de travail est conscient que le phénomène des disparitions forcées au Congo ne se limite pas aux cas des disparus du Beach. Le Groupe de travail a notamment reçu des allégations selon lesquelles des disparitions forcées auraient été perpétrées non seulement à la même période, dans les autres « couloirs humanitaires » aménagés pour le retour des réfugiés, mais également à d'autres périodes et dans d'autres lieux. Il semble en particulier qu'aucune enquête n'ait jamais été diligentée en lien avec les disparitions forcées qui auraient eu lieu entre 1998 et 1999 dans les départements du Pool, du Niari, de la Lékoumou et de la Bouenza. 63. Le droit individuel de connaître la vérité sur le sort réservé à une personne victime de disparition forcée est un droit absolu. Ce droit comporte des obligations procédurales à la charge de l'Etat, et notamment	FIDH/OCDH : Concernant « l'affaire des disparus du Beach », aucune enquête effective n'aurait été menée après « qu'instruction ait été donnée au Procureur de la République du Tribunal de Grande Instance de Brazzaville d'ouvrir une enquête au sujet de vingt-trois cas de disparitions forcées qui n'ont pas été pris en compte lors du procès de 2005 » comme stipulé par le Groupe de travail. Aucune nouvelle procédure judiciaire n'a été ouverte au Congo depuis le procès d'août 2005 portant sur ces disparitions forcées et au cours duquel la Cour criminelle de Brazzaville avait acquitté les 16 accusés poursuivis pour crimes de génocide, crimes de guerre, crimes contre l'humanité : Norbert Dabira, Blaise Adoua, Jean-François Ndénguet, Guy-Blaise Garcia, Marcel Ntsourou, Jean Aive Allakoua, Jean-Pierre Essouaba, Emmanuel Avoukou, Edouard Ndinga-Oba, Gabriel Ondongo, Rogobert Mobed, Vincent Vital Bakana, Yvon-Dieudonné Sita Bantsiri, Guy Edourad Taty. Cependant, l'instruction judiciaire ouverte en France sur la base de la plainte déposée par la FIDH, l'OCDH et la LDH aux côtés de 80 victimes rescapées ou membres de leurs familles en décembre 2001 demeure ouverte auprès du Pôle judiciaire spécialisé sur les crimes contre l'humanité, crimes et délits de guerre du TGI de Paris. Jusqu'alors, les autorités congolaises ont systématiquement fait obstacle à la justice	Le Groupe de travail constate qu'aucune enquête effective n'a encore été menée par les autorités judiciaires congolaises pour faire la lumière sur le sort des disparus entre 1998 et 1999 dans les départements du Pool, du Niari, de la Lékoumou et de la Bouenza, ni sur le sort des disparus recensés depuis les années 2000. Le Groupe de travail note également qu'aucun organe compétent n'a été mis en place pour clarifier le sort des personnes disparues, en particulier à partir des années 2000. Comme le rappelait le Groupe de travail lors de sa visite au Congo (A/HRC/19/58/Add.3), les familles des personnes disparues ont le droit de connaître la vérité. Pour ce faire, l'État a l'obligation d'enquêter, notamment par l'entremise d'un organe compétent et indépendant, qui ne

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	l'accès à un organe compétent et indépendant, ainsi qu'une obligation d'enquêter jusqu'à ce que la lumière ait été faite sur le sort réservé à la personne disparue. 64. Le droit à la vérité doit être reconnu comme un droit autonome, distinct en particulier du droit à la justice. Le Groupe de travail souligne en particulier que le droit à la vérité peut être réalisé par d'autres moyens que celui d'un processus judiciaire. Dans certaines situations, la réalisation du droit à la vérité peut affecter le droit à la justice, lorsque l'action pénale est considérée comment allant à l'encontre du but de réconciliation poursuivi par l'Etat et les composantes de la société congolaise. Le Groupe de travail rappelle toutefois que le pardon ne devrait être accordé qu'après un processus de paix authentique et des négociations de bonne foi avec les victimes, produisant pour résultat des excuses et l'expression de regrets de la part de l'Etat ou des auteurs des faits et des garanties pour prévenir les disparitions dans l'avenir.	française et la manifestation de la vérité. Ainsi en 2007 lorsque que la Cour de cassation avait cassé la décision de 2004 de la Cour d'appel de Paris d'annuler l'intégralité de la procédure ouverte en France pour "crimes contre l'humanité", permettant finalement à l'instruction de reprendre, les autorités de Brazzaville avaient qualifié ce retournement de situation de "grave affront" à sa souveraineté, susceptible de nuire à la coopération bilatérale. Le Gouvernement congolais n'a également pris aucune mesure concrète depuis la visite du Groupe de travail pour : - mener des investigations supplémentaires sur l'affaire dite « des disparus du Beach de Brazzaville », - mener des investigations supplémentaires sur les autres « couloirs humanitaires » aménagés pour le retour des réfugiés, à la même période mais également à d'autres périodes et dans d'autres lieux notamment entre 1998 et 1999 dans les départements du Pool, du Niari, de la Lékoumou et de la Bouenza. - mener des investigations sur les cas de disparitions forcées signalées depuis les années 2000; - mis en place un organe compétent et indépendant en mesure de mener de telles enquêtes garantissant le droit à la vérité sur le sort réservé à la personne disparue.	semble pas avoir été créé par le gouvernement depuis les recommandations du Groupe de travail. Le Groupe de travail déplore l'absence de réponses de la part du gouvernement et le manque de coopération dont il fait preuve avec les différents Rapporteurs spéciaux des Nations unies ainsi qu'avec le Groupe de travail. Selon les informations recueillies, le gouvernement de la République du Congo n'a pas continué à rechercher la vérité sur le sort réservé à toutes les personnes qui auraient été victimes de disparitions forcées sur le territoire congolais.
100 (b) Ratifier au plus vite la Convention des Nations Unies pour la protection de toutes les	23. Le Groupe de travail se félicite que le Congo ait signé la Convention internationale pour la protection de toutes les personnes	FIDH/OCDH : La République du Congo n'a toujours pas ratifié la Convention internationale contre	Bien que la République du Congo ait signé la Convention internationale contre

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personnes contre les disparitions forcées ou involontaires	contre les disparitions forcées de 2006. Il l'encourage à accélérer le processus de ratification de cette Convention et à accepter la compétence du Comité au regard des articles 31 et 32 de la Convention.	les disparitions forcées et accepté la compétence du Comité.	les disparitions forcées en 2007, le Groupe de travail constate avec regret qu'aujourd'hui le Congo n'a toujours pas ratifié ladite Convention.
100 (c) Intégrer dans le Code pénal une incrimination autonome de disparition forcée	31. Le Code pénal congolais ne contient pas à l'heure actuelle d'incrimination autonome de la disparition forcée, indépendamment de sa qualification de crime contre l'humanité. L'article 4 § 1 de la Déclaration stipule : « Tout acte conduisant à une disparition forcée est un crime passible de peines appropriées, qui tiennent compte de son extrême gravité au regard de la loi pénale. » 32. [...] Le Groupe de travail se réjouit du fait qu'une révision du Code pénal est actuellement à l'étude, en coopération notamment avec l'Union européenne. Il est important, à cette occasion, d'intégrer le crime de disparition forcée comme crime autonome, sans même attendre la ratification de la Convention.	FIDH/OCDH : Il n'existe pas en droit congolais une incrimination autonome de la disparition forcée. Depuis fin 2015, le Gouvernement congolais est en phase de rédaction et de révision de 7 Codes parmi lesquels, le Code pénal avec le soutien de l'Union européenne. Le gouvernement congolais devrait spécifier si l'incrimination autonome du crime de disparition forcée est contenue dans le projet de Code pénale, information à ce jour non confirmée.	Le Groupe de travail se réjouit du fait que la rédaction et la révision du Code pénal soit actuellement en cours, en collaboration avec l'Union européenne. Le Groupe de travail n'a toutefois pas obtenu d'informations explicites au sujet de l'inclusion d'une incrimination autonome du crime de disparition forcée, conformément à la définition contenue au sein de la Déclaration et de la Convention.
100 (d) En intégrant le crime de disparition forcée à la législation nationale, s'inspirer des recommandations formulées par le	30. La loi 8-98 du 31 octobre 1998 a intégré dans le Code pénal les définitions du génocide, des crimes contre l'humanité et des crimes de guerre, telles qu'elles résultent du Statut de Rome	FIDH/OCDH : Le projet de nouvelle Constitution du 25 octobre 2015 prévoit l'abolition de la peine de mort malgré le caractère controversé de son processus d'adoption.	

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Groupe de travail dans son étude relative aux « meilleures pratiques concernant les disparitions forcées faisant l'objet de dispositions dans la législation des Etats » (A/HRC/16/48/Add.3)	portant création de la Cour pénale internationale. Parmi les actes qualifiables de crimes contre l'humanité aux termes de cette définition se trouve la disparition forcée, lorsque celle-ci est commise dans le cadre d'une attaque généralisée ou systématique contre la population civile. Le Groupe de travail se félicite de cette intégration dans le Code pénal de la disparition forcée comme crime contre l'humanité. Le Groupe de travail regrette toutefois que la peine encourue pour ce crime soit la peine de mort. Les autorités ont assuré au Groupe de travail que cette peine était tombée en désuétude et qu'un moratoire de fait s'était installé au Congo. Dans ces conditions, une abolition de jure serait souhaitable. 33. Le Groupe de travail attire par ailleurs l'attention du Congo sur les recommandations formulées dans son étude relative aux « meilleures pratiques concernant les disparitions forcées faisant l'objet de dispositions dans la législation des Etats » (A/HRC/16/48/Add.3).		Le Groupe de travail salue l'initiative du gouvernement congolais qui a décidé d'abolir la peine de mort dans la nouvelle Constitution de novembre 2015.
100 (e) Prendre toutes les mesures nécessaires pour lutter contre l'impunité des	35. L'article 13 § 1 de la Déclaration stipule que « Lorsqu'il existe des raisons de croire qu'une personne a été	FIDH/OCDH : De façon générale, l'impunité est la règle en matière de violation des droits humains au Congo. L'OCDH, organisation membre	Le Groupe de travail constate avec regret que l'impunité semble perdurer au Congo,

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responsables de ce crime, sans attendre que les proches des disparus prennent l'initiative de déposer une plainte formelle ou d'engager une procédure d'enquête	victime d'une disparition forcée, l'Etat défère sans délai l'affaire à ladite autorité pour qu'elle ouvre une enquête, même si aucune plainte n'a été officiellement déposée. » En vertu de la Déclaration, les autorités doivent donc prendre toutes les mesures pour rechercher et punir les responsables et ne sauraient laisser aux proches des disparus l'initiative de déposer une plainte formelle ou d'engager une procédure d'enquête.	de la FIDH en République du Congo, a été saisie d'un cas de disparition forcée en juillet 2014. L'OCDH a saisi les autorités policières pour ce cas. Aucune suite n'a été donnée. Une rencontre avec les autorités judiciaires a eu lieu avec l'OCDH et les parents du disparu. Ces derniers n'ont pas donné suite à la procédure en raison de mesures d'intimidation à leur égard. En l'absence de leur consentement, l'OCDH et la FIDH n'ont pas été en mesure de saisir le Groupe de travail sur ce cas. Ce cas démontre la non effectivité de la saisine des autorités policières et judiciaires notamment pour les cas de disparitions forcées mais également l'absence de pro-activité des autorités administratives et politiques pour adopter des mesures adéquates pour faire cesser les disparitions forcées en République du Congo.	puisque'aucune mesure ne semble avoir été mise en place pour lutter contre ce phénomène, ni pour ouvrir des enquêtes lorsque des disparitions forcées surviennent. Le Groupe de travail a reçu des informations selon lesquelles les proches de disparus seraient victimes d'intimidation de la part des autorités, ce qui a pour conséquences d'entraver les procédures de plaintes auprès des instances internationales.
100 (f) Mettre en place un programme effectif de protection des victimes et des témoins, offrant toutes les garanties de sécurité aux personnes qui souhaiteraient porter plainte ou témoigner	36. En vue toutefois de permettre aux victimes et aux témoins d'apporter effectivement leur concours à la justice, un programme effectif de protection devrait être mis en place, offrant toutes les garanties de sécurité aux personnes qui souhaiteraient porter plainte ou témoigner.	FIDH/OCDH: Aucun programme de protection des victimes et des témoins n'a été mis en place jusqu'à ce jour renforçant les craintes légitimes des conséquences à subir en cas de plainte ou de témoignage d'une disparition forcée.	Le Groupe de travail constate avec regret que le gouvernement congolais n'a toujours pas mis en place de programme de protection des victimes et témoins, ni pris aucune mesure dans ce sens permettant à ces derniers de porter

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<i>(A/HRC/19/58/Add.3, paragraphes 100-103)</i>	<i>(A/HRC/19/58/Add.3)</i>	<i>Actuelle</i>	
			plainte ou de témoigner sans crainte de représailles.
100 (g) Interdire la détention au secret ou la détention de personnes dans des lieux non officiels de détention et poursuivre et punir tout comportement de la part d'un fonctionnaire ou d'une personne agissant avec le consentement, l'acquiescement ou sous le contrôle de l'Etat et contrevenant à cette interdiction;	45. Le Groupe de travail rappelle que l'article 10 § 1 de la Déclaration stipule : « Toute personne privée de liberté doit être gardée dans des lieux de détention officiellement reconnus et être déférée à une autorité judiciaire, conformément à la législation nationale, peu après son arrestation. » 47. Le Groupe de travail recommande au Congo d'interdire la détention au secret ou dans des lieux non officiels de détention, ainsi que de poursuivre et de punir tout comportement de la part d'un fonctionnaire ou d'une personne agissant avec le consentement, l'acquiescement ou sous le contrôle de l'Etat et contrevenant à cette interdiction. Plus généralement, le Groupe de travail invite le Congo à mettre en œuvre l'article 12 de la Déclaration qui dispose : « Tout Etat établit dans sa législation nationale des règles qui permettent de désigner les agents du gouvernement habilités à ordonner des privations de liberté, fixent les conditions dans lesquelles de tels ordres peuvent être donnés et prévoient les peines qu'encourent les agents du gouvernement qui refusent sans	FIDH/OCDH: Des individus continuent à être détenus dans des endroits non officiels. En 2015, l'organisations membre de la FIDH, l'OCDH a recensé au moins 10 cas de personnes détenues en secret dans des lieux non officiels de détention. Malgré la saisine des autorités judiciaires, aucune enquête n'a été ouverte contre les présumés auteurs. Les arrestations et détentions arbitraires sont quotidiennes en République du Congo et constituent une pratique courante des forces de sécurité. Dans certains cas, les détentions incommunicado et en secret peuvent durer plusieurs semaines avant que les parents ou des proches des personnes arrêtées puissent finalement être informés, du lieu de détention et du sort des personnes détenues. C'est le cas par exemple de M. Okala Patrick, gardé en secret pendant un mois au camp des actions spécialisées de la police à Brazzaville en 2015. Le code pénal prévoit en ses article/s 341 et 342 des sanctions de travaux forcés en cas de privation abusive de liberté de la part des agents de l'État mais ces dispositions ne se pas appliquées.	Le Groupe de travail a reçu des informations selon lesquelles des individus seraient détenus secrètement dans des lieux de détention non officiels. Il semblerait que certaines personnes soient détenues pendant plusieurs semaines sans pouvoir avertir leurs proches. Le Groupe de travail constate donc que les arrestations et détentions arbitraires dans des lieux de détention non officiels perdurent en République du Congo, contrevenant ainsi à l'article 10 et à l'article 12 de la Déclaration. C'est notamment le cas en ce qui concerne M. Okala Patrick et M. Fred Bauma Winga tous les deux détenus au secret.

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<i>(A/HRC/19/58/Add.3, paragraphes 100-103)</i>	<i>(A/HRC/19/58/Add.3)</i>	<i>Actuelle</i>	
	justification légale de fournir des informations sur une privation de liberté. »		
100 (h) Augmenter les moyens mis à la disposition de la police et de la justice, pour permettre une meilleure prévention des disparitions forcées;	38. [...] Des dépassements du délai de garde à vue ont été signalés, qui semblent essentiellement imputables au manque de moyens mis à la disposition de la police et de la justice. 39. [...] Le Groupe de travail a pu remarquer en particulier que les moyens informatiques étaient absents ou, lorsqu'ils existaient, rendus difficilement utilisables du fait des coupures d'électricité. 40. [...] La pratique des descentes sur les lieux de détention par le Procureur de la République ou ses substituts doit être encouragée, de même que celle consistant à maintenir une ligne téléphonique ouverte, permettant aux citoyens de dénoncer certains cas de détention arbitraire. 41. Le Groupe de travail encourage le Congo à améliorer substantiellement les moyens mis à la disposition de la police et de la justice, en coopération avec les organisations internationales. Le Groupe de travail se félicite à cet égard des programmes d'assistance financés par l'Union européenne.	FIDH/OCDH: Le délai légal de garde à vue (72 heures) n'est pas respecté. Des personnes passent des mois en garde à vue et en détention préventive sans qu'un magistrat compétent ne soit informé ou ne statue sur la légalité de leur détention. Les agents de police et de gendarmerie travaillent dans des conditions d'indigence rendant leur travail difficile et le respect des libertés individuelles moins urgent. Les Procureurs de la République effectuent difficilement des rondes au niveau des commissariats et brigades de gendarmerie pour veiller au respect des délais.	Le Groupe de travail constate également que les dépassements des délais de garde à vue persistent. En outre, l'État ne semble pas avoir augmenté les moyens mis à la disposition de la police et de la justice pour permettre une meilleure prévention des disparitions forcées. Le Groupe de travail s'inquiète également du fait que les visites sur les lieux de détention par le Procureur de la République ne soient pas encore menées de façon systématique et appelle le gouvernement à fournir davantage d'efforts dans ce sens.
100 (i) Prendre les	42. Il recommande par ailleurs	FIDH/OCDH:	Le Groupe de travail

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mesures pour faciliter l'association de la Commission nationale des droits de l'Homme (CNDH) et des ONG de défense des droits de l'Homme au contrôle des lieux de détention dans le respect de l'indépendance de ces dernières ;	aux autorités à continuer d'associer étroitement la Commission nationale des droits de l'Homme (CNDH) et les ONG de défense des droits de l'Homme au contrôle des lieux de détention.	La Commission nationale des droits de l'Homme de la République du Congo a cessé en pratique ses activités depuis 2013 : le mandat de ses membres est caduc, le Président de la Commission réside à l'étranger (France); le vice-président n'est plus en bon terme avec le pouvoir en place; la Commission n'a toujours pas de siège fonctionnel. Du temps d'activité de la Commission, le domicile privé du Président faisait office de bureau de la Commission. Les ONG de défense des droits de l'homme ne sont pas associées au travail de surveillance des lieux de privation de liberté. Elles n'ont pas l'autorisation et l'accès aux lieux de détention officiels ou privés. Les ONG qui sont d'ailleurs souvent taxées de servir les « intérêts étrangers », ne peuvent s'informer de la détention d'une personne, de son état et des conditions de détentions que par des biais indirects.	constate que la Commission nationale des droits de l'Homme de la République du Congo aurait cessé ses activités Le Groupe de travail a également reçu des informations selon lesquelles les ONG de défense des droits de l'homme ne seraient pas autorisées à accéder aux lieux de détention.
100 (j) Généraliser les programmes de formation des personnels de la police, de la justice et de l'armée dans le domaine des droits de l'Homme et du droit humanitaire, comprenant en particulier des éléments relatifs aux disparitions forcées ;	43. Le Groupe de travail se félicite également que, selon les autorités, les programmes de formation à l'intention de la police et de l'armée intègre des éléments d'enseignements relatifs aux droits de l'Homme et au droit humanitaire. Il encourage le Gouvernement à généraliser ce type de programmes de formation et à prévoir un enseignement spécifique relatif à la disparition forcée.	FIDH/OCDH: Dans les formations dispensées dans les écoles militaires et policières, seul le droit international humanitaire ou droit de la guerre est enseigné. Les droits de l'homme ne font pas officiellement partie des programmes de formation. En 2015, au cours des formations tout de même dispensées directement par l'OCDH à certaines unités de forces de sécurité (police, gendarmerie et l'armée), ces dernières ont demandé à l'OCDH de faire un plaidoyer afin que les droits de	Le Groupe de travail note que les programmes de formation à l'intention de la police et de l'armée intègrent des éléments de droit international humanitaire ou droit de la guerre. Le droit international relatif aux droits de l'homme ne serait toutefois pas enseigné.

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		l'homme soient inscrits dans les programmes de formation.	Le Groupe de travail se réjouit toutefois des informations reçues selon lesquelles certaines unités de police, gendarmerie ou armée auraient mis en avant leur intérêt à ce que l'Observatoire congolais des droits de l'homme (OCDH) demande à ce que le droit international relatif aux droits de l'homme soit enseigné dans les programmes de formation.
100 (k) Elaborer, avec la pleine participation des victimes, un programme intégré et exhaustif de réparation à raison des préjudices causés aux personnes civiles durant les différents conflits qui ont endeuillé le Congo ;	48. Le Groupe de travail note que des programmes de réinsertion et de réadaptation ont été conçus pour les anciens combattants et en particulier pour les anciens membres des milices. Cependant ces programmes ne touchent pas directement les personnes qui ont, parfois, été les victimes de ces combattants aujourd'hui démobilisés. 49. Plusieurs programmes généraux d'assistance jouent également un rôle positif dans la société congolaise, comme ceux visant à l'assistance à la scolarisation des enfants. Toutefois, ces programmes n'ont pas pour objet la réparation du préjudice subi par certaines personnes du fait de violations graves des droits de l'Homme.		Le Groupe de travail constate que depuis sa dernière visite en République du Congo, aucun programme général et exhaustif d'indemnisation ou de réparation n'a été mis en place par l'État.

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	Elles s'adressent à l'ensemble des citoyens congolais sans distinction.		
	50. Le Groupe de travail note par ailleurs avec satisfaction que deux monuments ont été érigés à Brazzaville, en lien avec les trois guerres civiles qui ont déchiré le Congo. L'un de ces deux monuments, en particulier, est un hommage aux victimes des conflits. Si de tels monuments contribuent à la mémoire d'un passé douloureux et sont un signe fort en faveur de la nécessité de retrouver l'unité nationale, elles ne constituent toutefois pas des mesures de reconnaissance suffisantes pour des victimes individuelles, dont l'histoire particulière ne saurait se fondre dans le destin collectif.	FIDH/OCDH : La FIDH et l'OCDH ne voient pas à quels monuments le Groupe de travail fait référence. A leur connaissance, le seul monument existant au Congo au sujet de la guerre civile est celui d'un char de guerre dont le canon est pointé devant le domicile privé du Président Sassou Nguesso sur lequel est écrit « plus jamais ça ». La FIDH et l'OCDH ne considèrent pas que ce « monument » rende particulièrement hommage aux victimes des conflits.	
	51. Plus généralement, le Groupe de travail a constaté qu'en dépit des efforts importants fait par le Congo pour guérir les blessures de la guerre, il n'existe pas à l'heure actuelle de programme intégré et exhaustif de réparation à raison des préjudices causés aux personnes civiles durant les différents conflits.	Quelques parents des victimes ont été indemnisés après le procès de 2005. Il n'y a jamais existé un programme d'indemnisation général des parents des victimes.	
	52. Un programme général d'indemnisation pourrait tout d'abord être établi sur la base de la reconnaissance de la responsabilité de l'Etat, en		

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	prenant pour base la jurisprudence de la Chambre criminelle de la Cour d'appel de Brazzaville dans l'affaire des « disparus du Beach ». Dans cette affaire, la Chambre criminelle a reconnu la responsabilité de l'Etat pour faute à raison d'un dysfonctionnement des institutions de l'Etat qui ont été incapables d'assurer la sécurité des citoyens. Certes, l'Etat pourrait envisager d'encourager le lancement d'actions similaires devant les tribunaux nationaux par différentes catégories de victimes, y compris par les familles des disparus dont les cas n'ont pas été pris en compte lors du procès de 2005. 53. Toutefois, il semblerait préférable de concevoir un programme global d'indemnisation, fondé sur l'admission de la responsabilité objective de l'Etat en la matière. 54. Au-delà des indemnisations, œuvre de la réparation pécuniaire, l'article 19 de la Déclaration prévoit que la réparation doit comprendre « les moyens d'une réadaptation aussi complète que possible ». Le Groupe de travail recommande par conséquent au Congo de mettre en place un programme exhaustif de réparation, couvrant notamment les soins de santé, la		

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	réhabilitation juridique et sociale, la réintégration dans l'emploi, la restitution des biens, le retour au lieu de résidence et d'autres mesures similaires de remise en état et de réparation susceptibles d'éliminer les conséquences de la disparition forcée. Devraient également être adoptées des mesures de satisfaction appropriées, notamment le rétablissement de la dignité et de la réputation des victimes individuelles. Les victimes devraient participer pleinement à la conception et à la mise en œuvre de ce programme de réparation.		
100 (l) Mettre en œuvre, avec la pleine participation des victimes, un programme visant le rétablissement de la vérité et la réconciliation;	55. Tous les interlocuteurs du Groupe de travail se sont réjouis du retour à la paix, qui constitue la condition essentielle de la promotion et de la protection des droits de l'Homme de la population, sans discrimination d'aucune sorte. 56. Le Groupe de travail se félicite de cet état de paix, résultat de la réconciliation entre les différentes parties militaires et civiles, ainsi que de l'esprit d'union nationale qui anime aujourd'hui les acteurs de la vie politique congolaise. Cet esprit s'est manifesté au plus haut rang de l'Etat et s'est concrétisé par plusieurs mesures visant à l'apaisement et au rétablissement	FIDH/OCDH: Aucun programme visant la pleine participation des victimes n'a été mis en place pour le rétablissement de la vérité et de la réconciliation. Ce qui n'a pas permis aux populations affectées de témoigner et de revendiquer leurs droits légitimes. Plus largement, si la FIDH et l'OCDH saluent l'approche du Groupe de travail sur le recensement des initiatives prises par le Gouvernement congolais pour contribuer à la normalisation de la vie politique et l'exercice effectif de la démocratie et des droits garantis par les textes nationaux, régionaux et internationaux ratifiés par la République du Congo, elles s'inquiètent notamment :	Malgré les efforts observés par le Groupe de travail lors de sa visite en 2011, ce dernier constate toutefois qu'aucun véritable programme visant le rétablissement de la vérité et de la réconciliation, avec la pleine participation des victimes, n'existe. Il semble également que les initiatives qui avaient été évoquées lors de cette visite (dialogue national, réforme de la justice) se font attendre.

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	de la concorde. En janvier 1998, peu après la seconde guerre civile de 1997, s'est tenu un Forum national pour la réconciliation, l'unité, la démocratie et la reconstruction du Congo.	- du manque d'opérationnalisation concrète de ces initiatives par les autorités congolaises (Dialogue national, réformes de la justice, du secteur de la sécurité, etc).	Le Groupe de travail note également que les violations des droits de la personne et la répression perdurent (notamment lors de l'adoption de la nouvelle Constitution).
	57. De même, la fin de la troisième guerre a été suivie par l'organisation, en avril 2001 d'un Dialogue national sans exclusive, réunissant différents acteurs de la société congolaise et ayant abouti à l'adoption d'une Convention pour la paix et la reconstruction du Congo. La promotion de ce texte a été confiée à un Comité de suivi composé de plusieurs commissaires, que le Groupe de travail a pu rencontrer lors de sa visite. Chaque année est organisée une Journée de la Réconciliation nationale à la date anniversaire de l'indépendance du pays, le 10 juin.	- du processus non consensuel d'adoption d'une nouvelle constitution en 2015, ayant pour visée principale la possibilité pour le président en exercice de pouvoir se représenter pour un troisième mandat contrairement aux dispositions de la Constitution en vigueur. Ce processus de révision constitutionnelle a entraîné une forte contestation populaire ayant donné lieu en octobre 2015 à une répression de la part des services de sécurité qui ont provoqué au moins une vingtaine de morts principalement à Brazzaville et à Pointe-Noire, à de nombreux actes d'intimidation et de nombreuses arrestations d'opposants politiques dont M. Paulin Makaya, toujours en détention.	Le Groupe de travail s'inquiète non seulement du fait que l'État ne prenne pas les mesures nécessaires pour engager un véritable dialogue afin de rétablir la vérité et la réconciliation, mais également du fait qu'aucun travail de réconciliation ne pourra aboutir sans que des mesures ne soient prises pour empêcher la répétition des violations des droits de l'homme
	58. Plus généralement, le Groupe de travail a pu percevoir chez les différents acteurs de la société congolaise une nette condamnation des excès du passé, attribués à la « bêtise humaine » et la volonté de se souvenir des erreurs en vue de ne pas les répéter à l'avenir.	- de la persistance de pratiques contraires aux droits fondamentaux des individus et des populations. Ainsi, la FIDH et l'OCDH déplorent que la justice soit toujours inaccessible aux victimes de la torture en République du Congo de même que l'existence persistante de cas de tortures, de persécutions politiques et d'attaques contre les libertés syndicales.	etsans volonté politique de rompre définitivement avec les pratiques de violations des droits individuels et collectifs et de consacrer le principe de non récurrence.
	59. Le Groupe de travail est donc conscient des efforts déployés par le Congo pour rétablir la confiance entre les différentes composantes de la	L'ensemble de ces éléments documentés, laissent apparaître une autre réalité que celle mise en avant par les autorités dans la pratique et l'exercice effectif des droits garantis par les lois nationales et les conventions internationales ratifiées par la	

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	population congolaise. 60. Le Groupe de travail a remarqué toutefois que continuait à prévaloir parmi cette population une certaine crainte à témoigner et à revendiquer ses droits légitimes. Le Groupe de travail encourage par conséquent le Gouvernement à poursuivre dans cette voie du rétablissement de la confiance, en prenant les mesures nécessaires pour que chaque citoyen congolais se sente protégé par la loi, en toute égalité et sans discrimination fondée notamment sur son origine géographique ou ethnique. 61. Le Groupe de travail souligne par ailleurs que les blessures causées à la population civile par les conflits sont loin d'avoir été toutes cicatrisées. En particulier, des familles espèrent encore aujourd'hui connaître la vérité sur ce qu'il est advenu de leurs proches, victimes de disparitions forcées. Si l'histoire politique semble aujourd'hui faire l'objet d'un consensus, cimenté par une volonté de concorde, les histoires individuelles des victimes des conflits sont aujourd'hui menacées par l'oubli. 62. Le droit à la vérité est à la fois un droit collectif et un droit individuel. La vérité doit être dite à l'échelle de la société, en tant que garantie de non répétition des	République du Congo. Ces faits démontrent le manque de volonté des autorités en place pour garantir la non répétition des violations des droits humains constatés par le passé, prévenir des violations futures et garantir un pluralisme politique.	

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	violations. Parallèlement, chaque victime a également le droit de connaître la vérité sur les violations qui lui ont causé un préjudice.		
	63. Le droit individuel de connaître la vérité sur le sort réservé à une personne victime de disparition forcée est un droit absolu. Ce droit comporte des obligations procédurales à la charge de l'Etat, et notamment l'accès à un organe compétent et indépendant, ainsi qu'une obligation d'enquêter jusqu'à ce que la lumière ait été faite sur le sort réservé à la personne disparue.		
	64. Le droit à la vérité doit être reconnu comme un droit autonome, distinct en particulier du droit à la justice. Le Groupe de travail souligne en particulier que le droit à la vérité peut être réalisé par d'autres moyens que celui d'un processus judiciaire. Dans certaines situations, la réalisation du droit à la vérité peut affecter le droit à la justice, lorsque l'action pénale est considérée comme allant à l'encontre du but de réconciliation poursuivi par l'Etat et les composantes de la société congolaise. Le Groupe de travail rappelle toutefois que le pardon ne devrait être accordé qu'après un processus de paix authentique et des négociations de bonne foi		

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<i>(A/HRC/19/58/Add.3, paragraphes 100-103)</i>	<i>(A/HRC/19/58/Add.3)</i>	<i>Actuelle</i>	
	avec les victimes, produisant pour résultat des excuses et l'expression de regrets de la part de l'État ou des auteurs des faits et des garanties pour prévenir les disparitions dans l'avenir. 65. Le procès de 2005 a certes constitué un premier pas dans la réalisation du droit à la vérité. Cette démarche nécessite toutefois d'être élargie à travers un programme plus large visant le rétablissement de la vérité et la réconciliation pour donner satisfaction à chaque victime et couvrant l'ensemble des violations graves des droits de l'Homme intervenues sur tout le territoire du Congo. A nouveau, les victimes de violations, et en particulier les familles de disparus, doivent être pleinement et effectivement associés à l'élaboration et à la mise en œuvre de ce programme.		
100 (m) Envisager l'établissement d'une commission pour la paix et la réconciliation, qui pourrait prendre pour base institutionnelle le Comité de suivi de la Convention pour la paix et la reconstruction du Congo ;	Se référer au paragraphe 64 mentionné ci-dessus	FIDH/OCDH: La commission pour la paix et la réconciliation n'est pas effective.	Le Groupe de travail constate qu'aucune commission ayant comme objectif la paix et la réconciliation n'a été mise en place. À cet égard, le Groupe de travail constate que l'instabilité et la tension sont toujours palpables dans le pays.

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100 (n) Le Groupe de travail prie enfin les autorités congolaises de prendre sans délai toutes les mesures nécessaires en vue de remédier à la situation des trois ressortissants de la RDC, détenus depuis presque huit ans, hors de tout contrôle légal, dans les locaux de la Direction Centrale des Renseignements militaires, qui ne constituent pas des locaux officiels de détention.	44. Le Groupe de travail est gravement préoccupé par la détention de trois personnes, originaires de la R.D.C., dans les locaux de la Direction centrale du renseignement militaire à Brazzaville, et cela depuis presque huit ans, hors de tout contrôle légal et sans avoir jamais été présentés à un juge, faisant ainsi peser sur ces personnes le risque d'être soumis à une disparition forcée. Selon les autorités, ces personnes seraient détenues en vue d'assurer leur sécurité en attendant l'aboutissement de leur demande d'asile. 46. Le Groupe de travail prie par conséquent les autorités congolaises de prendre sans délai toutes les mesures nécessaires en vue de remédier à la présente situation et de la rendre conforme à la Déclaration.	FIDH/OCDH: Les trois citoyens de la RDC ont été libérés en septembre 2012	Le Groupe de travail note avec satisfaction la libération, en septembre 2012, des trois ressortissants de la RDC qui étaient détenus dans les locaux de la Direction Centrale des renseignements militaires.
Sur l'affaire des disparus du Beach de Brazzaville (para 101 à 102):			
101 (a) Poursuivre les enquêtes en vue d'aboutir à l'identification et à la punition des	81. En août 2001, le Parlement provisoire chargé d'assurer la transition jusqu'à la mise en place des nouvelles institutions (« Conseil national de	FIDH/OCDH: Les autorités congolaises se sont largement contentées du procès mascarade de 2005, comme l'a démontré une mission d'observation judiciaire du procès et les	Le Groupe de travail constate que la société civile continue de critiquer le procès de 2005 qui n'aurait pas

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responsables des disparitions forcées, ainsi qu'à l'élucidation du sort réservé aux personnes victimes de disparitions forcées dans le contexte des opérations de rapatriement menées à partir d'avril 1999.	transition » ou CNT) a décidé de la création d'une Commission d'enquête parlementaire chargée de faire la lumière sur les disparitions forcées constatées dans la République du Congo depuis 1992. La commission était composée de onze membres. Elle a tenu une conférence de presse en septembre de la même année et annoncé qu'elle auditionnerait des membres de familles et effectuerait des déplacements sur les lieux. La Commission a cependant décidé de surseoir à ses travaux en constatant que la justice congolaise avait été saisie dans le cadre de l'affaire dite des « disparus du Beach ». Par la suite, la Commission a été dissoute le 7 août 2002, en même temps que le CNT. La Commission n'a jamais rédigé de rapport de ses travaux. Après l'inauguration de la nouvelle Assemblée nationale, aucune autre commission d'enquête n'a été créée. 82. Sur demande du Comité des parents, le Ministère de la Justice a reçu une centaine de familles entre novembre et décembre 1999. En juin 2002, le doyen des juges instruction du Tribunal de Grande Instance de Brazzaville est nommé pour ouvrir le dossier et instruire l'affaire. En juin 2005, le dossier est transmis au Procureur général	personnes mises en examen dans la procédure judiciaire en France ont tenté de l'invoquer pour faire annuler la procédure au nom de l'autorité de la chose jugée (non bis in idem). Cependant, la Chambre de l'instruction de la Cour d'appel de Paris a confirmé le 9 octobre 2014 la mise en examen pour crimes contre l'humanité de Norbert Dabira, ancien inspecteur général des armées congolais. Une demande d'annulation avait été introduite par ses avocats à la suite de sa mise en examen en août 2013. La défense invoquait le fait que M. Dabira, avait été acquitté à Brazzaville en août 2005 des faits qui lui sont reprochés en France et qu'il ne pouvait par conséquent être jugé une deuxième fois pour la même affaire. Une requête similaire avait déjà été adressée par la défense de Norbert Dabira à deux reprises, en 2007 devant la Cour de cassation et en 2010 devant la juge d'instruction de Meaux, et avait été rejetée dans les deux cas. Ces décisions de la justice française stipulent explicitement que le procès tenu à Brazzaville à l'été 2005 ne respectait nullement les normes du procès équitable, et est considéré de façon quasi unanime comme étant une véritable mascarade et conforme aux déclarations du chef de l'État Denis Sassou Nguesso en 2004 selon lequel, "il y aura un procès pour démontrer la mascarade de l'OCDH et de la FIDH." Au Congo, les instructions qui auraient été données au Procureur de la République du Tribunal de Grande Instance de	respecté les standards en matière de procès équitable. Le Groupe de travail constate que, depuis ce procès, aucune enquête ne semble avoir été mise en place pour élucider le sort des vingt-trois personnes disparues, et ce, en dépit des instructions qui auraient été données par le Procureur de la République du Tribunal de Grande Instance de Brazzaville.

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	près la Cour d'appel de Brazzaville. Seize officiers de haut rang sont accusés de génocide, crimes contre l'humanité, crimes de guerre, assassinat et arrestation, détention et séquestration arbitraires. Le 11 juillet 2005, la Chambre d'accusation renvoie le dossier devant la Chambre criminelle de la Cour d'appel, tout en notant que « l'information ouverte depuis l'an 2000 n'a pas permis au juge d'instruction de réunir des éléments probants sur l'effectivité des faits reprochés aux inculpés. » 83. Le procès dit des « disparus du Beach de Brazzaville » s'est donc tenu du 21 juillet au 17 août 2005 devant la Chambre criminelle de la Cour d'appel de Brazzaville. L'arrêt a été rendu le 17 août 2005. Les parties ont formé un pourvoi en cassation devant la Cour suprême qui a, à son tour, rendu un arrêt le 5 mai 2007. 84. Le procès devant la Chambre criminelle a été retransmis en direct par la télévision et la radio congolaise. Quatre-vingt-quatre familles ont été autorisées à se porter partie civile, tandis que les demandes d'autres familles ont été rejetées. En particulier, huit dossiers de personnes arrêtées dans des	Brazzaville d'ouvrir une enquête au sujet de vingt-trois cas de disparitions forcées qui n'ont pas été pris en compte lors du procès de 2005 n'ont manifestement pas été mise en œuvre, de sorte que, à notre connaissance, aucune instruction judiciaire n'a été ouverte sur ces cas. De même, aucune enquête effective n'a semble-t-il été ouverte par les autorités congolaises à la suite du procès de 2005.	

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	contextes connexes à celui de l'« affaire du Beach » ont été disjointes : il s'agissait de personnes arrêtées à la même époque dans les autres couloirs humanitaires établis par l'accord tripartite, ou encore d'arrestations effectuées après le retour des rapatriés à leur domicile. Aucun autre procès n'a été ouvert ultérieurement en lien avec ces dossiers. Saisie sur ce point dans le pourvoi formé par les parties civiles, la Cour suprême a considéré que la Chambre criminelle avait à bon droit limité l'objet de l'instance, au motif qu'il aurait été impossible, dans les zones autres que le Beach de Brazzaville, de distinguer entre les civils victimes d'exaction et les combattants morts lors des affrontements armés entre factions. 85. Les accusés comparaissaient libres à l'audience, n'ayant pas fait l'objet d'une ordonnance de prise de corps. Selon diverses sources, le procès s'est déroulé dans une atmosphère de grande tension. Certaines parties civiles, menées par leur avocat, ont contesté l'indépendance de la formation de jugement. Les parties civiles disent avoir été intimidées à de nombreuses reprises par la présence de gens en armes dans la salle d'audience. En amont du		

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	procès, certaines personnes disent avoir renoncé à se constituer parties civiles ou venir apporter leur témoignage à l'audience par peur des représailles. Aucun dispositif n'avait été adopté pour assurer la protection des victimes et des témoins, alors même que les accusés occupaient des responsabilités de haut niveau dans les divers services de sécurité de l'Etat. 86. A l'issue des audiences, les accusés ont été acquittés. Toutefois, statuant au titre de l'action civile, la Chambre criminelle a accordé une indemnisation aux parties civiles. Elle a estimé pour ce faire que l'Etat engageait sa responsabilité sur la base d'une présomption de faute : 87. « [C]es opérations de rapatriement se réalisant dans une période de recrudescence des attaques des milices Ninjas, l'Etat se devait d'organiser scrupuleusement des mesures de sûreté générale justifiées par l'Etat de guerre. » 88. Statuant sur un pourvoi en cassation, la Cour suprême a cassé partiellement l'arrêt de la Chambre criminelle et réévalué à la hausse la plupart des indemnisations accordées aux parties civiles.		

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	89. Selon les divers interlocuteurs du Groupe de travail, le procès de Brazzaville aurait eu un effet pédagogique auprès de la population, en faisant apparaître au grand jour un épisode particulièrement tragique de la guerre civile. Selon certains, la seule vue de hauts officiers dans le box des accusés aurait été à l'origine d'une prise de conscience générale quant à la nécessité d'adopter des mesures effectives de prévention des violations futures. D'autres personnes estiment que le procès n'avait pour autre but que de disculper définitivement les accusés en vue d'empêcher toute poursuite future, créant ainsi une amnistie de fait.		
	90. Le Groupe de travail considère que le procès tenu en 2005 à Brazzaville a permis d'établir d'une part la certitude selon laquelle des personnes ont été victimes de disparitions forcées et d'autre part la responsabilité de l'Etat en la matière.		
	91. Le Groupe de travail regrette cependant que le processus judiciaire n'ait pas pu jusque là aboutir à l'identification et à la punition des responsables des disparitions forcées. Il rappelle que l'article 13 § 6 de la Déclaration stipule : « Une		

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	enquête doit pouvoir être menée (...) tant qu'on ne connaît pas le sort réservé à la victime d'une disparition forcée. » 92. Par ailleurs l'article 7 de la Déclaration dispose qu'« aucune circonstance quelle qu'elle soit, qu'il s'agisse d'une menace de guerre, d'une guerre, d'instabilité politique intérieure ou de toute autre situation d'exception, ne peut être invoquée pour justifier des disparitions forcées. » 93. A cet égard, le Groupe de travail se félicite de ce qu'instruction ait été donnée au Procureur de la République du Tribunal de Grande Instance de Brazzaville d'ouvrir une enquête au sujet de vingt-trois cas de disparitions forcées qui n'ont pas été pris en compte lors du procès de 2005. 94. Le Groupe de travail regrette également que le droit à la vérité des familles quant au sort de leur proche n'ait pas pu être satisfait. En effet, le droit des proches de connaître la vérité sur le sort des personnes disparues et le lieu où elles se trouvent est un droit absolu qui ne peut souffrir d'aucune limitation ou dérogation.		
101(b) Accorder aux proches de disparus une réparation qui aille	95. Quant au droit à réparation, le Groupe de travail relève avec satisfaction l'octroi aux familles	FIDH/OCDH: Aucune mesure d'assistance	Le Groupe de travail observe que, à l'exception de l'octroi

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au-delà des indemnisations et englobe des mesures de réadaptation et de satisfaction, en particulier une assistance psychologique et sociale aux parents.	des parties civiles au procès de 2005 d'une indemnisation au titre de la responsabilité pour faute de l'Etat. Le Groupe de travail estime cependant que cette indemnisation devrait être complétée par d'autres formes de réparation, incluant une assistance psychologique et sociale aux parents, souvent plongés dans de grandes difficultés en raison de la disparition de leurs proches.	psychologique et sociale n'a été engagée par les autorités congolaises. Cela traduit le mépris ou une façon de minimiser la gravité des infractions commises.	d'une indemnisation aux familles des parties civiles au procès de 2005, et en dépit des recommandations formulées suite à sa visite, l'État n'a pas mis en place de mesure d'assistance psychologique ou sociale aux parents de proches disparus.
101 (c) Accéder en particulier au souhait des familles de disparus d'être reçues par le Président de la République et de pouvoir commémorer, chaque 5 mai, les disparus du Beach de Brazzaville	96. Les familles des disparus ont par ailleurs exprimé le souhait d'être reçues par le Président de la République en signe de reconnaissance de leur douleur. Elles ont également demandé à être autorisées à organiser une cérémonie en hommage aux disparus au Beach de Brazzaville, le 5 mai de chaque année. [...]	FIDH/OCDH: Le Gouvernement congolais a toujours refusé la commémoration des disparus du Beach. Ainsi en novembre 2007, à l'occasion de la tenue de la session de la Commission africaine des droits de l'Homme et des Peuples (CADHP) à Brazzaville, la FIDH et l'OCDH ont tenté d'organiser une commémoration des disparitions au Beach de Brazzaville le 13 novembre 2007 qui a été interdite par les autorités congolaises, arguant le risque de trouble à l'ordre public.	Le Groupe de travail observe avec regret qu'en dépit de ses recommandations selon lesquelles il était souhaitable d'organiser une cérémonie en hommage aux disparus du Beach de Brazzaville et de recevoir les familles des disparus, le Gouvernement semble toujours refuser une telle reconnaissance et l'intervention d'une commémoration. Le Groupe de travail a également reçu des informations selon lesquelles des organisations de la société civile auraient

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			organisé une telle commémoration, mais que cette dernière aurait été interdite par les autorités.
102 (a) Etablir un rapport public établissant les conditions dans lesquelles l'UNHCR a été amené à participer au rapatriement des réfugiés du Congo à Brazzaville, entre avril et décembre 1999 ;	76. Entre avril et la mi-mai 1999, le rôle du UNHCR – qui agissait en vertu de l'accord tripartite mentionné plus haut – a consisté à enregistrer et à accompagner les « rapatriés » jusqu'aux bateaux qui, depuis le port de Kinshasa, devaient les conduire de l'autre côté du fleuve Congo. L'UNHCR s'assurait du consentement au retour des réfugiés en faisant signer aux chefs de familles ou aux chefs de groupes une « déclaration de bonne foi ». Par la suite, chaque personne présente sur les listes des rapatriés devait signer un « manifeste » à l'embarquement. L'UNHCR a pu constater que certaines des personnes ayant signé lors de leur embarquement n'étaient jamais arrivées à destination, corroborant ainsi les allégations de certaines familles de disparus, selon lesquelles leurs proches avaient été retenus par les autorités à leur arrivée au Beach. 77. Le 21 mai 1999, le UNHCR a écrit une lettre au ministère congolais des affaires étrangères, en adressant copie de cette lettre au Ministre de	FIDH/OCDH: Ce rapport sur l'implication de l'UNHCR n'a jamais pu être établi. UNHCR: Les principaux éléments sont déjà indiqués aux paragraphes 76 à 80 du rapport A/HRC/19/58/Add3 du 20 Janvier2012.	Le Groupe de travail constate qu'aucun rapport public n'a été adopté établissant les conditions dans lesquelles l'UNHCR a été amené à participer au rapatriement des réfugiés du Congo à Brazzaville entre avril et décembre 1999.

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	l'intérieur, au Ministre de la Santé ainsi qu'au représentant résident par intérim du PNUD à Brazzaville. Dans cette lettre, l'UNHCR protestait contre le traitement infligé aux rapatriés et citait plusieurs allégations de violations commises à l'encontre de ces personnes dans les couloirs humanitaires établis en vertu de l'accord tripartite. Les opérations de facilitations menées par l'UNHCR furent suspendues jusqu'à ce que des assurances soient données par le gouvernement du Congo, en vertu desquelles le UNHCR se voyait garantir l'accès aux rapatriés afin de superviser les conditions de leur retour.		
	78. Sur la base de ces assurances, à partir de la fin mai 1999, l'UNHCR a pris des mesures pour tenter d'assurer la sécurité des rapatriés à leur arrivée à Brazzaville. Les rapatriés étaient conduits vers des centres de regroupement, en particulier au Centre sportif de Makélékélé, où ils étaient à nouveau enregistrés avant d'être redirigés vers leurs domiciles.		
	79. Malgré ces mesures, de nombreuses allégations concordantes font état de la poursuite des disparitions forcées à l'encontre des rapatriés. Plusieurs allégations font état		

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	d'arrestations dans le centre sportif de Makélékélé qui, comme le Groupe de travail a pu le constater, constitue un espace très vaste, entouré de murs facilement franchissables. D'autres allégations font état d'arrestations lors du retour des rapatriés vers leur domicile après leur passage par le Centre, ou bien même à leur domicile peu après leur arrivée.		
102 (b) Formuler publiquement les leçons qui peuvent être tirées de tels événements, pour ce qui concerne les modalités de rapatriement des réfugiés dans des zones de conflit.	80. Le Groupe de travail s'est enquis auprès de l'UNHCR au sujet des mesures qui avaient été prises pour enquêter sur ces faits et en tirer les conclusions nécessaires pour des opérations futures (lessons learnt). Selon l'UNHCR, la responsabilité d'enquêter sur les disparitions relève des autorités nationales. Dans ses opérations de rapatriement, l'agence se réfère aux procédures définies dans un certain nombre de documents officiels adoptés à cette fin, comme le « manuel pour les activités de rapatriement et de réintégration ».	UNCHR: Le UNHCR a des politiques, des procédures et des directives bien établies : Celles-ci sont disponibles dans le domaine public sur l'ensemble du cycle du rapatriement des réfugiés, y compris concernant les situations qui peuvent moins optimales pour autant que la sécurité et la dignité de retour est concernée. Parmi celles-ci: le manuel du UNHCR sur le Rapatriement Volontaire et le manuel pour les Activités de Rapatriement et de Réintégration. Le manuel de rapatriement volontaire est en cours de mise à jour et intégrera l'expérience acquise lors du rapatriement en République du Congo, ainsi que d'autres situations.	Le Groupe de travail souligne l'effort de l'UNHCR d'intégrer l'expérience acquise lors du rapatriement de 1999 dans son manuel de rapatriement volontaire.
103. Le Groupe de travail recommande à la Communauté internationale d'apporter au Congo l'assistance appropriée			Réitère sa disposition à apporter son soutien et son expertise à la République du Congo en vue d'élucider le sort de toutes les

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en matière de renforcement des capacités techniques pour la promotion et la protection des droits de l'homme.			victimes de la disparition forcée dans le pays et à mettre en place les mesures de non récurrence".

III. Pakistan

Follow-up to the recommendations made by the Working Group on Enforced or Involuntary Disappearances in the report of its visit to Pakistan from 10 to 20 September 2012 (A/HRC/22/45/Add.2)

22. On 18 December 2015, the Working Group on Enforced or Involuntary Disappearances requested the Government of Pakistan to provide information on measures taken to implement the recommendations that were made in the report A/HRC/22/45/add.2 (paras. 87-100), after its visit to the country in September 2012. On 4 February 2016, the Government of Pakistan provided the requested information. On 29 June 2016, the Working Group sent the below table for comments to the Government of Pakistan, which provided additional information on 19 August 2016.

23. The Working Group thanks the Government of Pakistan for the cooperation throughout the process of the follow-up report, but regrets that most of the recommendations contained in its country visit report have not been implemented.

24. The Working Group is still gravely concerned about the reported widespread practice of enforced disappearances in Pakistan and the very high number of cases received recently, especially in relation to Sindh.

25. The Working Group observes that there is a climate of impunity in Pakistan with regard to enforced disappearances, and the authorities are not sufficiently dedicated to investigate cases of enforced disappearance and hold the perpetrators accountable. The Working Group believes that stronger commitment from the Government is needed to end the enforced disappearances and the climate of impunity surrounding them. The Working Group would also appreciate receiving information on concrete cases where perpetrators of enforced disappearances have been held accountable in Pakistan.

26. The Working Group remains concerned about reported cases of threats, reprisals and harassment against families of disappeared persons and human rights defenders including lawyers who work on issues related to enforced disappearance. The Working Group stresses that relevant authorities in Pakistan should intensify their actions to prevent and address all cases of harassment and take proactive measures to guarantee the safety of the family members of the disappeared and the human rights defenders.

27. The Working Group is concerned at the information that there are persons who are detained in unofficial detention centers with no contact with their families and lawyers. The Working Group stresses that, in accordance with article 10 of the Declaration, any person deprived of liberty shall be held in an officially recognized place of detention and be brought promptly before a judicial authority.

28. The Working Group reiterates that the current constitutional, legal and regulatory framework does not provide sufficient procedural safeguards to all persons deprived of liberty. In particular, it urges Pakistan to make necessary amendments to its domestic legislation including the provisions in the legislation related to “preventive detention” and “arrest without warrant”. With reference to the Protection of Pakistan Act, 2014 - on which the Working Group has previously expressed concern for not being in conformity with internationally recognized human rights standards - the Working Group notes the information provided by the Government that this was a temporary measure that lapsed in July 2016. The Working Group continues to acknowledge the serious security challenges faced by Pakistan while at the same time emphasizing that it shall ensure that human rights

and fundamental freedoms are always respected while taking actions combating terrorism, in accordance with article 7 of the Declaration.

29. The Working Group regrets the information provided by the Government according to which the provisions currently existing in domestic legislation would be adequate to cover the crime of enforced disappearances, despite a previous commitment to specifically criminalize enforced disappearance made as an outcome of the 2012 Universal Periodic Review. The Working Group urges Pakistan to swiftly criminalize enforced disappearance.

30. The Working Group notes with concern that Pakistan has not ratified yet the International Convention for the Protection of All Persons from Enforced Disappearance. The Working Group reiterates its call on the Government to ratify the Convention 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. The Working Group also urges the Government of Pakistan to take steps to implement the recommendation on the ratification of the Rome Statute of the International Criminal Court.

31. While appreciating the establishment of the “Commission of Inquiry on Enforced Disappearances”, the Working Group continues to be concerned about the efficiency and proper method of work of the Commission. The Working Group welcomes the appointment of a new member of the Commission of Inquiry and the information that the Commission arranges for parallel hearing of cases in Islamabad, Lahore and Karachi. However, given the increased workload, the Commission still remains understaffed and must be reinforced. The Working Group recommends that, as a rule, relatives of disappeared persons should be heard in confidential meetings before the Commission.

32. The Working Group welcomes the Prime Minister’s announcement, on Nov 8, 2015, to establish a Federally Administered Tribal Areas (FATA) Reforms Committee. The Working Group urges the Government to take immediate action to bring about actual changes. The Working Group also encourages the Government of Pakistan to share any information on the outcome of the work of the Committee on the reforms.

33. The Working Group believes that improvements should be made for the effective roles of the Courts and the Commission of Inquiry. Although the Government asserts that there is no limitation with regards to the competence of the High Courts in the exercise of their powers, the Working Group remains concerned that article 199(3) of the Constitution still legally bars the High Courts from hearing cases related to the armed forces. Such a limitation on the powers of High Court should be removed. The Working Group is encouraged by the fact that the Supreme Court formulated a series of questions to be considered regarding the trial of army personnel in civilian courts and that it submitted a request to the Supreme Court Chief Justice for a larger bench consisting of 5 Supreme Court judges to be constituted. The Working Group would like to receive information on the decision of the larger bench thereupon.

34. In spite of the Government’s indication that they always are, the orders issued by the Commission of Inquiry are reportedly not being respected, notably by the security or intelligence agencies. The Government should take all necessary measures to ensure that all enforcement or intelligence agencies comply with the orders of the Commission of Inquiry and of the Courts. The Working Group is also concerned that the newly constituted National Commission for Human Rights has been explicitly barred under its establishing statute from inquiring into the practices of intelligence agencies. The Working Group reiterates the recommendation contained in its 2012 visit report that clear rules and dedicated institutions should be created to ensure the oversight and accountability of law enforcement and intelligence agencies.

35. The Working Group regrets that no action has been taken to address the legal uncertainty created by the absence of the disappeared person. The Working Group reiterates

its recommendation to introduce a system of declaration of absence as a result of enforced disappearance to minimize the negative impact on the rights and freedoms of families of disappeared persons.

36. The Working Group is concerned that no comprehensive mechanism for full and prompt reparation, including social and medical assistance to relatives of disappeared persons, has been established and regrets the information that family pensions are granted to wives of disappeared persons only if the disappeared person was a government servant. The Working Group believes that a special fund should be arranged to support the relatives of disappeared persons, which should not be limited to financial compensation, and that social allowances or other assistance should be made available to victims, including families, of enforced disappearances. The Working Group welcomes the information that the Federal Government is considering the formulation of a comprehensive policy in this regard and reiterates that a comprehensive program of reparation should be set up for full rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition.

37. The Working Group appreciates the Government's willingness to engage with Special Procedures, but notes that after the visit of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism from 11 to 13 March 2013, there have been no invitations made by the Government. The Working Group encourages the Government of Pakistan to invite, among others, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, all of whose invitation requests are pending.

38. The Working Group stands ready to assist the Government of Pakistan in the implementation of these recommendations. In this regard, it encourages the Government of Pakistan to consider inviting the Working Group for a follow-up visit to the country.

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
87. Concerning 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.	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.	Government: In Pakistan all citizens are free to express their opinion and views. No case of reprisal, harassment or intimidation (concerning families of allegedly disappeared persons or human rights defenders or lawyers) has been reported to the Police, any Court, to the Commission of Inquiry on Enforced Disappearances (CoIoED), or any state authority by any individual or civil society organization. The Government remains committed to take action on any case brought before a competent authority of the state. Other: [...] has not come across information as to whether any particular steps were taken by the Government of Pakistan to secure the safety of those who met with the delegation. ICJ and HRCP: Human rights groups who work on enforced disappearances in Pakistan continue to report that families of disappeared persons are frequently threatened and harassed by members of security agencies, making it very difficult for them to report and pursue cases of their disappeared family members. In particular, the Chairperson of the Voice for Baloch Missing Persons (VBMP), Mr. Nasrullah Baloch, has reported multiple incidents of such threats. The harassment and intimidation is not	The Working Group is concerned about the reported cases of reprisal and harassment against families of disappeared persons and human rights defenders and lawyers who work on issues related to enforced disappearance. The Working Group takes note of the Government's commitment to take action in such cases and emphasizes that all cases of harassment and reprisals should be adequately addressed by the relevant authorities and that proactive measures should be taken to guarantee the safety of the family members of the disappeared and the human rights defenders.

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	restricted to those directly pursuing cases against perpetrators of enforced disappearances – human rights defenders and activists highlighting the practice and drawing public attention to the State’s practice of disappearances and corresponding impunity are also targeted. During the 2013-2014 “long march” of families of disappeared persons and activists, the protestors reported constant harassment and threats. In March 2015, three of the marchers, including Mama Qadeer and Farzana Majeed, were stopped from flying to the United States to attend a conference and were told their names had been placed on the Exit Control List because of alleged “anti-state” activities. These recent cases come against the background of a longer history of harassment and intimidation, mentioned in the Working Group’s report on the visit. Journalists covering the issue of enforced disappearances are also targeted. Hamid Mir, a prominent Pakistani journalist and television anchorperson who reported on the “long march” for the recovery of Baloch “missing persons” was shot in Karachi on 19 April 2014, shortly after the “long march” ended. In April 2015, peace activist Sabeen Mehmud was subjected to a targeted attack by “unknown assailants” in Karachi after a discussion she had arranged on the human rights situation in Balochistan, including the incidence of enforced disappearances. She was killed while driving towards her home after the event, and her mother was	

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	injured. Prior to the event, Sabeen had received warnings from persons purporting to represent Pakistan's intelligence agencies, asking her to cancel the event. Committee for Missing Persons: Threats against concerned families, persons and groups who work on enforced disappearances continuously occur. For instance, Ms. Sabeen Mahmood was murdered on 24 April 2015 in Karachi; Mama Qadeer, chairman of Voice for Baloch Missing Persons was stopped at the Jinnah International Airport when he was going to visit the USA in 2014; and illegal arrest and torture of Mr. Syed Babar Anis on 12 September 2014. (See para 95, A/HRC/WGIED/104/1) Voice for Baloch Missing Persons Series of intimidation and threats against families of victims are ongoing. Other: The persons who were threatened during the visit of the Working Group were not bothered again. Though usual practice of intimidations, harassments and threats to families of victims are rampant in general. There have been threats to Human Rights defenders working with [...] in the past which culminated in the disappearance of one member. His name is Rizwan Akram Niazi for which an urgent appeal has been sent to Working Group.	

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Other:

a) Syed Babar Anis – the brother of Syed Gohar Anis who disappeared in 1996 – met the Working Group during its visit to Pakistan. When Syed Babar Anis was invited to attend a meeting in Geneva in 2014, officials of intelligence agencies kept him in detention for 2 weeks to prevent him from attending the meeting. Intimidation against those who met the Working Group thus continued.

b) Mr Nasrullah Baloch, the Chairperson of Voice of Baloch Missing Persons (VBMP) was subjected to death threats and intimidation by State security forces, following his appearance at the Supreme Court hearing regarding cases of missing persons. He has come to prominence for his work on cases of missing persons and extrajudicial killings. The human rights defender is also assisting the Supreme Court in the context of an investigation into mass graves in Balochistan.

Other:

The situation remains the same, lawyers and workers from non-governmental organizations are abducted by para-military forces for denouncing enforced disappearances. One example is Syed Baber Anis from the Committee for Missing Persons, who was brutally tortured by the Para-military rangers.

Government:

The Working Group

88. (a) The Working

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
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Group encourages the Government to invite other special procedures mandate holders in the near future to visit Pakistan.		Government continues to engage with Special Procedures. At the invitation of the Government, former High Commissioner for Human Rights visited Pakistan from 4 to 8 June 2012. Three Special Procedures, i.e., Special Rapporteur on Independence of Judges and Lawyers (19 – 29 May 2012) and Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism also visited Pakistan from 11 to 13 March 2013. The Government has extended an invitation to the UN High Commissioner for Human Rights to visit the country. Invitations/visits of some additional Special Procedures are under active consideration. Besides, we continue to engage with UN human rights mechanisms, inter alia, through responding to their communications. ICJ and HRCP: The Government of Pakistan has not extended any new invitations to special procedures. Among others, invitation requests are pending from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment since 2011; Special Rapporteur on extrajudicial, summary or arbitrary executions since 2012; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association since 2013. UNPO:	appreciates the Government's efforts to engage with Special Procedures including the visits of the Special Rapporteur on Independence of Judges and Lawyers (19 – 29 May 2012) and the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (from 11 to 13 March 2013). The Working Group encourages the Government of Pakistan to invite, among others, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association,

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	Pakistan has not received visits from any other UN special procedures mandate holders since the 2012 visit by the WGEID. There are various pending visit requests from different Special Rapporteurs. There is no sign that the Pakistani government have encouraged UN bodies and special rapporteurs to visit the country, nor to indicate further cooperation with international organization in the field of human rights. Other: The Working Group's visit to Pakistan was the last visit undertaken by special procedures mandate holders. Other: Since the visit of the Working Group none of the holders of special procedures has visited Pakistan. Other: The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, conducted a three-day visit to Islamabad, Pakistan between 11 and 13 March 2013. This visit took place in connection with the Special Rapporteur's ongoing inquiry into the civilian impact of the use of drones and other forms of targeted killing in the context of counter-terrorism operations.	whose invitation requests are pending.
89. (a) The Working Group calls on the		Government:	The Working Group notes with great

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
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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.		Pakistan is party to seven core human rights treaties. The Government is focused on implementation of its obligations which arise from these treaties which it has ratified during the last decade. The Government of Pakistan remains committed to addressing the issue of enforced disappearances as an obligation to its people. The decision to ratify the Convention on Enforced Disappearances remains under consideration. Other: Pakistan has failed to ratify the International Convention for the Protection of All Persons from Enforced Disappearance despite its commitments to do so since 2008, nor have any steps been taken in this direction. No steps have been taken to allow individual and inter-state complaints to be heard by the Committee either. There is no law in Pakistan that makes enforced disappearance criminal under national law. ICJ and HRCP: Pakistan has taken no steps 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. UNPO: Despite calls from local and international human rights organizations, Pakistan has not shown any move towards the ratification of the International Convention	concern that Pakistan has not committed to ratify the International Convention for the Protection of All Persons from Enforced Disappearance. Considering the largely increased number of cases of enforced disappearances brought to the attention of the Working Group since its visit, the Working Group urges Government of Pakistan to confirm its willingness to address this issue. The Working Group reiterates its call on the Government to ratify the Convention and to recognize the competence of the Committee on Enforced Disappearances to consider individual and inter-State complaints, pursuant to articles 31 and 32

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	for the Protection of All Persons from of the Convention. Enforced Disappearance. Other: Although [...] and other CSOs have been calling upon the Government to ratify the Convention but Government has not shown any interest in this regard. Other: Pakistan has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance. Government: We take note of the recommendation. Other: Pakistan has not ratified the Rome Statute of the International Criminal Court and no commitment to this effect has been made either. Enforced disappearance is not considered a crime under national law. ICJ and HRCP: The Government of Pakistan has taken no steps to ratify the Rome Statute of the International Criminal Court. Committee for Missing Persons: In Pakistan, the Joint Investigation Team (JIT) has concluded that most missing persons cases are enforced disappearances but they have never held anyone	The Working Group is concerned that the Government of Pakistan has not taken any step to implement the recommendation on the ratification of the Rome Statute of the International Criminal Court. The Working Group reiterates its recommendation in this regard.
89. (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.			

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	responsible for it.	
		UNPO: Pakistan has not shown any move towards the ratification of the Rome Statute of the International Criminal Court.	
		Other: Pakistan has not ratified the Rome Statute of the International Criminal Court.	
		Other: The Rome Statue has not been ratified either. In fact there is little awareness about ICC in Pakistan.	
		Other: Pakistan has not ratified the Rome Statute on the basis of several objections, including the fact that the Statute does not provide for reservations upon ratification or accession, the inclusion of provisional arrest, and the lack of immunity for heads of State.	
90. The Working Group emphasizes that actions taken to deal with security threats, and in particular with terrorism, must at all times respect nationally and internationally recognized	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	Government: Pakistan's counterterrorism efforts are in full compliance with its national and international human rights obligations. Pakistan had been confronted with the challenge of terrorism. Terrorists have killed thousands of innocent civilians thus depriving them of their fundamental right	The Working Group stresses that Pakistan should ensure that human rights and fundamental freedoms are protected while taking actions combating terrorism.

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
human rights.	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	to life. The Government is committed to combating terrorism in accordance with the National Action Plan to combat terrorism. Due to the efforts of the Government terrorists incidents have declined considerably in 2015. Implementation of NAP would further help to safeguard rights of all citizens. It is reiterated that even in the face of extraordinary circumstances, the counter terrorism efforts of the Government of Pakistan are in full compliance with its national and international human rights obligations. The provisions enumerated in Anti-Terrorism Act 1997 are in compliance with human rights obligations and sufficient safeguards have been provided to ensure protection of human rights. It may be underlined that Pakistan Protection ACT 2014 was a temporary measure (for two years) with a sunset clause and has already lapsed in July 2016. The fact that only 30 individuals have been tried under PPA demonstrates that it had been only used in extraordinary circumstances against terrorists who have committed serious crimes and carried out terrorist activities. Other: Actions taken by Pakistan’s security forces and criminal justice system to deal with security threats and terrorism are a clear violation of Pakistan’s obligations under international human rights law. On January 7, 2015, the Government enacted a constitutional amendment	The Working Group is concerned that Pakistan's counterterrorism campaign is not compatible with human rights standards in Pakistan and is in violation of international human rights law. In particular, several provisions in the Anti-Terrorism Act 1997 and the Protection of Pakistan Act 2014 are in violation of internationally recognized human rights standards. It takes note that the Pakistan Protection Act was a temporary measure that lapsed in July 2016.

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
	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-	permitting military courts to prosecute terrorism suspects after Tehreek-e-Taliban Pakistan gunmen attacked Army Public School in Peshawar on December 16 2014. The law allows the state to arbitrarily detain suspects and increases the risk that they will be subjected to enforced disappearance. It also allows prosecution of suspected terrorists in secret military courts as part of a wider new ‘National Action Plan’. These military courts deny the due process of law by operating with complete lack of transparency. The process through which cases are continuing to be selected and referred to the military courts is not made available, and no independent monitoring of the cases has been allowed, raising serious fair trial concerns. In disregard of the recommendations, Pakistan has passed the Protection of Pakistan Act 2014. Under this law, the law enforcement agencies have the powers to shoot on sight any terror suspect by seeking approval of only a 15 grade official and also the power to detain a suspect for 90 days without presenting him or her before any court of law. In some cases the burden of proving innocence also shifts on the accused. The Act also applies retrospectively and provides immunity for security officers acting in “good faith”. Suspects do not have access to lawyers, despite what it is provided for in Article 14(3) (b) of the ICCPR, to which Pakistan is a state party. The Rangers have been given extensive powers by virtue of the Anti-Terrorism Act to use force, conduct raids and arrest	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
	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.	suspects for the prevention of ‘terrorism’ in Karachi. As a result of this, arbitrary detention, harassment, intimidation of human rights defenders, journalists, and political activists has been regularly reported. There have also been reports of enforced disappearances and extrajudicial killings in Karachi and other parts of Pakistan. ICJ and HRCP: Pakistan’s response to security threats has become increasingly incompatible with national and international human rights, particularly since the attack on a school in Peshawar in December 2014. Pakistan lifted the informal moratorium on the death penalty in December 2014 for terrorism cases, followed by the resumption of executions in all cases in March 2015. According to HRCP’s documentation, since then at least 344 people have been executed in the country. In January 2015, the Pakistan Parliament amended the Constitution to allow military courts to try civilians suspected of involvement in terrorism-related offences. The Supreme Court upheld the validity of the new law in August 2015. Since the amendments, the Pakistan Government has constituted 11 military courts to hear terrorism-related cases. Military courts have concluded the trials of 64 people, finding the defendants guilty in 40 cases. 36 people have been sentenced to death and four have been given life	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	sentences. Nearly a hundred cases are still pending before the various military courts in the country. Eight civilians convicted by military courts in secret trials for their involvement in “terrorist activities” have been hanged. Proceedings before Pakistani military courts fall well short of national and international standards requiring fair trials before independent and impartial courts: • Judges are part of the executive branch of the State and continue to be subjected to military command; • The right to appeal to civilian courts is not available; • The right to a public hearing is not guaranteed and not respected in practice; • A duly reasoned, written judgment, including the essential findings, evidence and legal reasoning, is denied; • The procedures of military courts, the selection of cases to be referred to them, the location and timing of trial, and details about the alleged offences are kept secret; and • The death penalty is implemented after unfair trials. In addition to these concerns, the ICJ has also received reports that suspects being tried by military courts had previously been subjected to enforced disappearance. In at least five cases, families of persons	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	convicted by military courts claim the whereabouts of their loved ones had been unknown for many years till they read about their sons and fathers being convicted by military courts. In some cases, there are also reports that military courts are trying juvenile offenders, a practice that is incompatible with international human rights standards. Before the 21st Amendment, the Parliament passed the Protection of Pakistan Act in July 2014 to purportedly to strengthen Pakistan's efforts to fight insurgencies, "terrorism" and other unspecified threats faced by the country. Section 8 of the PPA authorizes the government to establish Special Courts to try Scheduled Offences. It empowers the government, in consultation with the chief justice of the relevant high court, to appoint serving or former judges of Sessions Courts or Advocates of the High Court with at least 10 years experience to serve as judges of the Special Court. The implementation of the Protection of Pakistan Act, particularly trial by special courts constituted under the Act, remains slow and uneven throughout the country. Five special courts have so far been constituted under the Act: three special courts, one each in Quetta, Lahore and Peshawar, were constituted in January 2015; one special court in Karachi was constituted in May 2015; and one special court in Islamabad was constituted in September 2015. According to media	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	reports that quote a senior official of NACTA (National Counter-Terrorism Authority), the Ministry of Interior has cleared “hundreds of cases of peace disrupting elements” for trial before the special courts. As of 1 January 2015, proceedings have not commenced before any of the five special courts constituted under the PPA. Reasons for the delay include failure of the Government to provide judges of special courts facilities such as security, court staff, residences and official vehicles. Provisions of the PPA have been used to keep people in custody for long periods of time, including in preventive detention. The Muttahida Qaumi Movement (MQM) has alleged that the PPA is being used for political victimization in Karachi, and has been used to arrest dozens of MQM activists. The Pakistan People’s Party (PPP) has also made similar claims, especially after the Federal Investigation Agency (FIA) was given powers of detention and interrogation under the PPA to “eradicate militancy” and “combat financial terrorism”. Since all Scheduled Offences under the PPA are non-bailable, those arrested under the Act remain in detention arbitrarily and indefinitely, as special courts under the law remain non-functional. There are also concerns that the long periods of preventive and secret detention authorized under the Act will be invoked to facilitate or seek to justify enforced disappearances.	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	Committee for Missing Persons: The Anti-Terrorism Act (ATA) of 1997 provides the legal framework for the Government to prevent and punish terrorism activities. Article 11 of the ATA is being used against the Mohajir Quami Movement (presently Muttahida Quami Movement) and its workers and supporters who belong to Muhajir Community in Pakistan. UNPO: Following the terrorist attack in Peshawar in 2014, the Government of Pakistan launched its National Action Plan, comprising different measures to combat terrorism, such as the end of the moratorium on executions and the establishment of speedy trial military courts for terrorism-related offences. In 2014, the Senate passed the Protection of Pakistan Act (PPA) after many discussions and some small changes from its first proposal. The act is in force until 2017, unless the Parliament decides to extend it to 3 more years. It is the most important piece of legislation in Pakistan on security matters. Generally, the PPA contains many provisions contrary to human rights standards. It expands the power of law enforcement and intelligence agencies, while hampering legal safeguards and judicial remedies. It allows arrests without warrant, violation and seizing of property, preventive detentions, undisclosed places of	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	detention and room for impunity of law enforcement agents. Also alarmingly, it places the burden of proof on the accused (art. 15) and states a material retroactivity of law (art. 6(5)). Therefore, the Protection of Pakistan Act is not in conformity with internationally recognized human rights standards, and it exemplifies Pakistan's violation of its commitments under ratified human rights treaties. Also alarming, the PPA allows forms of arbitrary deprivation of liberty and, together with other provisions, creates the conditions for the recurrence of enforced disappearances. Other: a) In July 2014, the Government passed the Protection of Pakistan Act (PPA), a counter terrorism legislation that goes against international human rights standards and legalizes abuses by the security forces. The PPA grants security forces the power of arbitrary arrest and preventive detention. (World Report 2015: Pakistan, HRW). Internationally recognized human rights thus continue to be violated under the pretext of counter terrorism. b) Pakistan has violated its international commitment to non-refoulement by repeatedly pushing for the repatriation of Afghan refugees within its borders by creating harsh conditions for their survival. Afghan refugees have been targets of random search, warrantless arrests and	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	indefinite preventive detention by law enforcement agencies forcing them to return to Afghanistan. c) On 5 August 2015, Pakistan's Supreme Court ruled that special Anti-terrorism courts are legal and can pass death sentences on civilians. This may be viewed as particularly significant since the country's courts have been viewed as the most effective bulwark of civil liberties, repeatedly instructing the military authorities to register and report those being held in custody, to ensure humane treatment and to allow access to family and legal representation. Other: The so called 'war on terror' has taken new dimensions in Pakistan. Since the visit of the Working Group a number of amendments in Anti-Terrorism Act of 1997, Army Act, Constitution of Pakistan and promulgation of Protection of Pakistan Act (PPA) have been introduced. All these legislative measures provide for complete impunity for enforced disappearance. Rather, these steps have legalised enforced disappearance as an integral tool for investigations. The safeguards provided in AACP are not acted upon. Oversight boards have been created but their work is completely hidden from civil society. [...] has met a few civilian members of oversight boards; they have declared on condition of anonymity that they are powerless to influence the	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	management of Internment centres created under AACP and controlled by Army. Although no official report of conduct of oversight boards is available but ground reality tells a number of facts about the conditions of Internment centres. [...] has recorded a number of cases where dead bodies of formerly disappeared persons were handed over to the families. In almost all cases, the families reported that dead bodies contained signs of torture and severe loss of weight due to starvation. No post-mortem report is provided to the families. In at least one post mortem report, conducted by the family later on, it was revealed that the death took place due to starvation. Apart from known deaths in internment centres there are a few witness accounts from the released persons who reported prevalence of torture in internment centres. None of the released person ever recounted visit of internment centre by civilian official or any activity of the oversight board as written in the AACP. Our observation is that all the provisions of AACP to safeguards rights of the interned persons are not implemented in reality. Voice for Baloch Missing Persons: Anti-Terrorism Act 1997 allows deployment of federal forces in any part of the country and allows arrest by law enforcement agencies without producing any warrant. It has been observed that this Act is mostly being applied in Balochistan.	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	In Balochistan, the provincial Government admitted arrest of more than 9000 persons. The families of these victims are not informed about the fate or whereabouts of their loved ones. Many dead bodies of victims of enforced disappeared are found in various parts of Balochistan with signs of torture, which entail violations of human rights. Other: Pakistan has arrested more than 500 people for their alleged links with different extremist and militant groups. Police records indicate that most of the arrests were conducted in the province of Punjab, where more than 300 people were arrested. About 100 people were apprehended in Karachi. The authorities also arrested 150 people from Balochistan and Khyber-Pakhtunkhwa provinces. An official of interior ministry said that those arrested will be prosecuted under the recently passed Protection of Pakistan Act under which police can hold an accused for 60 days without trial. However, no authentic figures are available. Anti-Terrorism Act does not meet the Action in Aid of Civil Power (AACP) Regulations. Provisions under this Act may deprive men of his fundamental rights. It may create conditions for torture, enforced disappearance and other violations of human rights. The ATA is misused by the Government against political opponents and ordinary citizens. There are reported incidents where excessive amounts of	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	bribes are paid by innocent people when threatened to be prosecuted under this law. It violates all of Pakistan's international law obligations and judicial independence is denied. There is urgent need to interpret laws in a manner that balances Pakistan's national security and foreign policy imperatives against civil liberties and fundamental rights of its citizens. Section 10 of Pakistan Protection Act 2104 allows for exclusion of the public from hearings on the ground of 'public safety'. Section 15 (5), which reverses the burden of proof which is inconsistent with the presumption of innocence enjoyed by the accused persons; Section 20, which confers blanket immunity from the prosecution for actions done in good faith; Section 6, which infringes upon the right to liberty by allowing preventive administrative detention without adequate safeguards and retrospectively authorises otherwise arbitrary or unauthorised arrests or detentions publicly carried out; Section 3(2), which allows arbitrary inference with the right to privacy; Section 3(2)(C), which establishes special courts and set outs procedures for the operation of special courts that do not meet the condition of trial by a competent, independent and tribunal. Many of the offences scheduled under the Pakistan Protection Act are already	

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91. 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. (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.	21. Article 10 (of the Constitution) 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	criminalised in Pakistan. Government: The provision enumerated in Anti-Terrorism Act 1997 and Actions (in Aid of Civil Powers) Regulation 2011 are in compliance with human rights obligations. A comprehensive mechanism has been provided by way of appeal and review to the aggrieved persons and judicial forums are available for the redressal of the genuine grievances for cases where there is a possibility of arbitrary deprivation of liberty. Article 10 of the Constitution outlines safeguards for persons deprived of their liberty and ensures adequate judicial guarantees for a person’s right to fair trial when faced with detention. Article 199 (1)(b)(i) and Article 184(3) of the Constitution empower the High Courts and the Supreme Court to issue writs of habeas corpus to bring a prisoner or other detainee before the court to determine if the person’s imprisonment or detention is lawful. Through strict judicial oversight, it has been ensured that rules related to preventive detention are in line with international standards. As stated, promulgation of Protection of Pakistan Act 2014 (PPA) was a temporary measure with a sunset clause. It did not give extra-ordinary powers to the law enforcement agencies rather it aimed at providing speedy justice to families of victims of terrorism. It also provided protection to judges and witnesses.	The Working Group has on many occasions, including in a general allegation letter transmitted to the Government of Pakistan in November 2015, raised its concern that article 10 of the Constitution is not providing sufficient procedural safeguards to all persons deprived of liberty. In addition, the Protection of Pakistan Act 2014 and the Anti-terrorism Act contain provisions that are not in line with international human rights standards. Particularly, the Working Group is concerned that despite strong criticism from civil society organizations and the Working Group, provisions in these legislation related to “preventive

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	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.	Other: No Constitutional Amendment has been made to make Article 10(3) ineffective. Neither has any review of preventive detention measures been conducted thus far. As mentioned in the situation analysis, the Constitution provides for certain safeguards against detention. One of those safeguards (Art 10, clause 2) relates to the duration of detention. However, the Protection of Pakistan Act (POPA) and Article 11EEEE of the Anti-terrorism Act provide wider powers to the agencies to keep people in detention beyond the limit prescribed in the Constitution. Additionally, the Action in Aid of Civil Powers Regulation 2011 (AACPR) allows a judicial oversight board to decide that individuals can be detained for longer periods, in contravention to Constitutional safeguards. POPA further facilitates enforced disappearances by legitimizing past detentions at undisclosed locations and providing immunity to law enforcement agencies acting “in good faith.” ICJ and HRCP: Pakistani legislation continues to suffer from the defects discussed by the WG in 2012. In its report, the Working Group noted concerns about the 2011 Actions (in Aid of Civil Power) Regulations (as well as the Anti-Terrorism Act), and had said that their compatibility with international standards should be carefully examined	detention” and “arrest without warrant” for example, have not been amended. The Working Group urges Pakistan to ensure the protection of human rights persons deprived of liberty and make necessary amendments to its domestic legislation.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	(paras 28-29). The Regulations, applicable to FATA and the provincially administered tribal areas (PATA), authorize the Government to establish internment centers in undisclosed locations and gave law enforcement agencies broad powers to preventively detain suspects. The regulation has retrospective effect, thereby extending legitimacy to the security forces' actions in abducting citizens. The Regulations were challenged in the Supreme Court by relatives of affected individuals in September 2012. The progress in the case has not inspired confidence among the affected families and there has been no decision after several hearings. Meanwhile, human rights organizations have expressed concern over both a very high fatality rate among the young detainees at the internment centers and also a complete lack of judicial inquiry. Not only has Pakistan failed to amend these laws, in July 2014 the Parliament enacted the Protection of Pakistan Act to enhance the Government's preventive detention powers. Section 6(1) of the PPA permits the Government to authorize preventive detention for up to ninety days for persons it has "reasonable grounds to believe" is acting in a manner "prejudicial to the integrity, security, defense of Pakistan or any part thereof or external affairs of Pakistan or public order or maintenance of supplies and services". This combines an extremely low standard of proof with an extremely vague definition of the scope of conduct potentially giving rise to detention.	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	The scope of individuals potentially subject to detention is widened even further by a provision that any person “connected or reasonably believed to be connected” with the commission of a Scheduled Offence under the law may be preventively detained. The detention of a person under section 6(1) of the PPA does not require any court order or require the authorities to ensure that everyone detained under section 6(1) is promptly brought before a judicial authority. Even though detentions under section 6(1) remain subject to Article 10 of the Constitution of Pakistan, which provides for some safeguards including judicial supervision of preventive detention, Article 10 itself falls short of the requirements of ICCPR article 9 and other international standards. The right to be represented by counsel and to have prompt access to counsel is not guaranteed to any individuals preventively detained, and Article 10 expressly excludes “Enemy Aliens” from the prescribed safeguards. UNPO: Arbitrary deprivation of liberty remains an issue of concern in Pakistan. The Constitution of Pakistan continues to allow systems of “preventive detention” when prescribed by law. Among them, the Protection of Pakistan Act (PPA) contains the most worrying clauses on preventive detention. Article 3(2)(b) establishes that law	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	enforcement agents “may arrest, without a warrant, any person who has committed [...] or against whom a reasonable suspicion or credible information exists that he has committed, or is about to commit any such act or offence”. In other words, it legalizes detentions without warrant. Including this article, many provisions in the PPA hamper the transparency of law enforcement operations which is frequently behind cases of enforced disappearances. Moreover, article 6 of the PPA prescribes preventive detention for a period not exceeding 90 days, when the Government believes someone could be “prejudicial to the integrity, security, defense of Pakistan or any part thereof or external affairs of Pakistan or public order [...]”. Preventive detention, particularly under such conditions, should be understood as violating human rights. They are also often behind cases of enforced disappearances, when individuals are deprived of their liberty while their whereabouts remain undisclosed to family and friends. The PPA risks making preventive detention the general rule, not the exception. The PPA permits that individuals are detained without access to family or lawyer and at undisclosed locations, creating a perfect environment for torture, ill-treatment and enforced disappearance. In Balochistan and Sindh, under the pretext of maintaining national security, preventive detention has been used by the Government to suppress and to intimidate critics and	

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voices of dissent.

Voice for Baloch Missing Persons:

In Balochistan, the Constitution is not being complied with by State forces. There are thousands of cases where people were arrested and disappeared. But there has never been any prosecution before any court or judicial body.

There is a big discrepancy between the figures provided by non-governmental organizations and the Government. The Government seems to be intended to conceal the crimes perpetrated by State forces and it is harassing people not to pursue cases or provide information to international organizations regarding human rights violations.

The falsification by the Government is demonstrated in its statement in which it confirms that during the period between 2010 and 2015 more than 1000 mutilated bodies were found. Relatives of the victims appeared before the courts and media asking for safe release of their beloved ones and they repeatedly accuse State forces responsible for the abduction of their family members.

The Supreme Court of Pakistan stated that State forces were involved in enforced disappearances. The Inspector General of Police investigated thoroughly into the First Information Reports filed by families of disappeared persons and concluded that State forces involved in cases of enforced

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	disappearances in Balochistan. The ground realities also testify the involvement of State forces in killing and dumping of Baloch political workers. In Balochistan, operations of State forces are common and during which dead bodies of disappeared persons' are being thrown. It is also been observed that political workers and students are arrested by State forces in broad daylight in the presence of the public. In several cases, people were unloaded from vehicles in front of police stations. Arrests of political workers were conducted by State forces in uniform. Intelligence agencies and State forces are involved in enforced disappearances in Balochistan and they enjoy complete impunity. No one has been prosecuted or convicted yet which demonstrates the lack of capacity to hold accountable perpetrators of enforced disappearance in Pakistan. Other: In 2013, the Supreme Court demanded justice for victims of enforced disappearances. According to the 2015 HRW Report on Pakistan, the Government has failed to comply with international law and the constitution in preventing enforced disappearances. The security forces continue to enjoy impunity in cases of missing persons. In March 2015 for instance, the Frontier Corps abducted Zahid Baloch, who remains missing. Pursuant to article 10, the parliament has passed extraordinarily repressive laws such as the recently enacted Protection of	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	Pakistan Act, 2014, which allows for individuals to be detained at undisclosed locations, without access to family or lawyers, putting them at risk of enforced disappearance, torture and ill-treatment. Under article 3 (b) and (c) of this act, the armed forces may arrest and/or search without warrant against a person against whom there exists credible information of planning to commit a scheduled offense. In February 2015, Saad Iqbal Madni, was illegally detained at Police Station Defence B, Lahore, without charge or trial. Mr. Madni has never been charged with any offence, does not have any prior criminal record and is an upstanding citizen of Pakistan. He was being detained on the basis of a notification for preventive detention issued by the District Coordination Officer. However, both Mr. Madni and his legal counsel were repeatedly denied a copy of the notification. Mr. Madni is a former Guantanamo Bay detainee, who was repatriated to Pakistan in 2008, without charge or trial. By 2013, Mr. Madni's name was still notified in Schedule IV of the ATA, for five consecutive years by that time, despite several requests to have his name removed. Consequently, a writ petition was filed on behalf of Mr. Madni before the Lahore High Court, Lahore, on the established legal principle that no person can be listed under Schedule IV for an unspecified and excessive period, particularly where there is no incriminating material to establish that the individual was acting in a manner prejudicial to the	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	security or defense of Pakistan or public order. The superior courts have held that any such inclusion of an individual's name under Schedule IV would amount to curtailing the liberty of a citizen unlawfully and is in violation of his fundamental rights. Other: Since the visit of the Working Group many constitutional and legislative changes have taken place. By a constitutional amendment named the Constitution (Twenty-first Amendment) Act, 2015 the application of article 10 has been narrowed down to be negligible. The stated amendment exclude all persons accused of terrorism from the judicial review of civilian courts and authorize the military courts to try them in secret. Other: Under Section 61 of the "Code of Criminal Procedure 1898 as amended by Act 2 of 1997" a person arrested cannot be detained more than twenty four hours. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.	

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		Under Section 167 of the “Code of Criminal Procedure 1898 as amended by Act 2 of 1997”, procedure when investigation cannot be completed in twenty-four hours. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the [nearest Magistrate] a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.	
92. (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.	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	Government: In order to take effective measures to deal with the issue of enforced disappearances, in April 2010, the Federal Government set up a “Commission of Inquiry on Enforced Disappearances” under the Pakistan Commission of Inquiry Act 1956. The CoIoED has actively investigated cases of enforced disappearances. As a result of this initiative, a number of cases have been disposed off. The Commission has been vested with broad powers, including the power to register an FIR against whom evidence of involvement in the disappearance of a person is found. The Commission receives cases from Human Rights Cell of the Supreme Court of	The Working Group is alarmed by the reportedly continuing widespread practice of enforced disappearances in Pakistan, and by the fact that the number of cases of enforced disappearance has increased, especially in Sindh. The Working Group appreciates the establishment of the “Commission of Inquiry on Enforced

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	Islami (Hikmatyar).1 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.2 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	Pakistan, civil society organizations, National Crisis Management Cell of the Ministry of Interior and directly from the families of the disappeared persons. On the direction of the Supreme Court of Pakistan or on its own, the Commission can file a First Incident Report in the concerned Police Station in cases of missing persons. The Home Secretary of the respective Province is directed to constitute Joint Investigation Teams (JIT) having representatives from the Law Enforcement agencies as well as Intelligence agencies. The hearings in each case are held by the Commission at Islamabad, Lahore, Karachi and Quetta with the view to facilitate the families of alleged disappeared persons. This procedure is being practiced scrupulously and the update on traced persons is regularly conveyed to the WGEID. It has been brought to the notice of the WGEID on many occasions that many of the cases brought before it relate to a political party which exercises a degree of influence in Karachi (Sindh) and are politically motivated. Most of the complaints of alleged disappearances have been sent to WGEID by it without exhausting domestic remedies. It may also be noted that the allegations of increase in number of cases of enforced disappearances in Balochistan is not based on facts. The CoIoED has received only a few cases of alleged enforced disappearances in the recent past from the province of Balochistan.	Disappearances”. However the Working Group is concerned about the efficiency of the work of the Commission of Inquiry. In addition, in order to prevent and terminate acts of enforced disappearance, the Working Group recommends that Pakistan should take legislative measures to criminalize enforced disappearance and any other act which would lead to enforced disappearance as well as to fight against the culture of impunity. The WGEID emphasizes that, in light of its humanitarian mandate, domestic remedies may not have been exhausted to present cases to the WGEID.

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	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. 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	Other: The government of Pakistan has not taken any substantial steps to prevent enforced disappearances or disclose the fate or whereabouts of the disappeared persons; in fact, the crime is widely committed by state agents. AI has been receiving regular reports about ongoing cases of enforced disappearances, particularly in Karachi, following the Rangers' operation. One of the many cases that have been brought to the attention of AI is that of Rizwan Akram Niazi, the Faisalabad Coordinator of Defence for Human Rights Pakistan. According to reports received by his colleagues and lawyer, he was arrested by members of the Elite Force on 11 November 2015 at his home in Faisalabad and has been missing since. A few of the steps generally taken, but without any real results are as follows: The Supreme Court passed a judgment (2014 PLD 305 SC) ordering the Government to enquire about missing persons and provide detail about these cases. In 2011 it also directed the government to create an Inquiry Commission which was required to complete its findings within one year; more than five years have passed since, and the proceedings are yet to be finalized. In 2013 a 19-member Federal Task Force on missing persons was constituted. This	

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	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 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	task force submitted its 25 page long report in December 2013.¹ The contents of the report have not been made public. In 2014, the Interior Ministry stated that the national policy on missing persons will be announced soon and the report of the task force will be presented in the Parliament.² ICJ and HRCP: The practice of enforced disappearances continues in Pakistan. The exact number of cases reported since the WGEID’s country visit are disputed. From September 2013 to December 2015, HRCP has documented 370 cases of enforced disappearances from 48 districts in six conflict areas in the country, which include FATA, Khyber Pakhtunkhwa, Gilgit Baltistan, South Punjab, interior Sindh and Balochistan. The Muttahida Qaumi Movement also alleged an increase in enforced disappearance and extrajudicial killings of its workers, which it attributed to a series of targeted operations in Karachi by the Rangers, a paramilitary force. HRCP also added 24 new cases of enforced disappearance to a pending petition before the Supreme Court of Pakistan. Several disappeared persons who were later traced recorded statements in the Supreme Court stating the security forces abducted them. A	

¹ <http://www.dawn.com/news/1061816>

² <http://www.baaghi.tv/national-policy-on-missing-persons-to-be-announced-soon/>

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	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.	few were recovered from the custody of the security forces after they had initially denied having any knowledge about their whereabouts. In some cases, people reported as “disappeared” in the past, and in respect of whom security agencies had previously denied any knowledge of their whereabouts in the past, have suddenly been revealed to be in the custody of authorities when their conviction by a military court is announced. In other cases, even after security agencies acknowledge the detention of persons forcibly disappeared in the past, they continue to keep them in detention without giving them a fair trial. The seven remaining men in the Adiala 11 case, for example, still remain in arbitrary detention after their arrest over five years ago. The Supreme Court too has refused to intervene for lack of jurisdiction, among other reasons. Committee for Missing Persons: The case concerning 25 MQM workers remains pending. No fruitful conclusion has been reached. Most of these 25 persons are from Karachi. The Commission on Inquiry on Enforced Disappearances (CoIoED) may decide to transfer these cases to the Task Force for Compensation which may be injustice for these families. Enforced disappearances continue in Karachi, Pakistan.	

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	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	Since 2013 till date, there have been operations against Muhajir Community and their representative party Muhajir Quami Movement (presently Muttahida Quami Movement) by the paramilitary forces, Sindh Rangers and other law enforcement agencies in Karachi. Most cases were reported to the High Court of Sindh, CoIoED and the WGIED. It is also noted that most of these cases FIR(s) in certain Police Stations were lodged following orders of High Court of Sindh and CoIoED. UNPO: Since the visit of the WGEID, the Pakistani Government has not done enough to prevent, investigate and end the occurrence of enforced disappearances. However, never has the topic been so high on the agenda of politicians, activists, media and the Government itself. Unfortunately, the lack of political will remains the main drawback, despite some progress from the judicial power and part of the Senate. It is important to take into account that local human rights organizations have remained motivated to report and denounce cases of enforced disappearances. The development of the main governmental bodies dealing with enforced disappearance in Pakistan are analysed below: The Commission of Inquiry on Enforced Disappearance (CIED) has increased its workload, but remains understaffed and so far unable to effectively tackle the amount	

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	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.	of cases of enforced disappearances. Information from early 2015 shows that the CIED had located over 980 persons since 2011, with 1273 cases pending. However, human rights organizations believe the number is five times higher. Many of those missing persons successfully tracked by the CIED were found in internment centres. Most of them had not received any charges, despite spending years in detention. Therefore, enforced disappearances are linked to unlawful and preventive detentions. The lack of transparency of law enforcement operations is also an underlying factor in the continuation of enforced disappearances in Pakistan. In many cases, the CIED had enough information to hold law enforcement agencies responsible for cases of enforced disappearances, but no further investigation on the roles of such agencies was put into place. The judiciary has been responsible for some improvement in the investigation of enforced disappearances. However, and also due to its limited mandate, the impact of its decisions has been received with criticism by most human rights organizations. Following unwillingness on part of the police to receive complaints on cases of missing persons, the five Pakistani High Courts have been active in receiving such complaints and starting investigations.	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	While the High Courts have been able to trace some of the missing persons, their role does not equate to that of a specialized body. Furthermore, High Courts, due to their location and procedures, are not the most accessible platform to receive complaints. The amount of cases received by High Courts is only a fraction of the episodes of enforced disappearances in Pakistan. While it is important to be aware of the limitations and deficiencies of the High Courts in tackling cases of enforced disappearances, certain developments should also be commended. For instance, in January 2016, the Sindh High Court condemned police officers for not reporting and making enough efforts to investigate and punish the involvement of ranges on cases of enforced disappearances. Earlier, in July 2015, the Islamabad High Court summoned the Defence Secretary of Pakistan in a case involving the disappearance of a prominent lawyer. He was believed to be taken by members of an intelligence agency. The Court criticized the agency's inability to trace the lawyer, and demanded that further investigation be carried out by the Defence Secretary. Similar decisions have not been complied with by law enforcement and intelligence agencies. In July 2013, the Supreme Court demanded the Pakistani Government to establish and inform on measures aimed at ending enforced disappearances in the country. It	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	affirmed that “it is the duty of the state to look into [...] and formulate policies ensuring that persons are recovered as early as possible to help reduce the miseries and plight of family members of the victims, including womenfolk, children and their parents”. However, until now, the Government has failed to comply with the Supreme Court’s decision. Moreover, the Voice for Baloch Missing Persons has recently criticized the Supreme Court for discharging almost 200 cases of missing persons, allegedly following political instructions. No concrete initiative has been taken by the Pakistani Government, despite calls from the judiciary, the Senate, the media and human rights organizations. The Government has systematically used anti-terrorist rhetoric to justify the violation of human rights, particularly in Balochistan. It has also argued that some of the missing persons were actually criminals on the run. The Government has overall neglected calls from the judiciary, attaching little importance to the continuation of enforced disappearances throughout the country. Other: In a report published by the Commission of Enquiry on Enforced Disappearance, there have been 1273 cases of enforced disappearance in the past 4 years. Of these	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	1273 cases, 632 are from Khyber Pukhtun Khawah, 198 from Punjab, 186 from Sindh, 122 from Balochistan, 43 from FATA, 11 from Azad Jammu Kashmir and 30 from Islamabad Capital Territory. Defense of Human Rights (DHR) – an NGO that traces missing persons – has reported 5149 missing persons up (from 2011-2014) contrary to the report published by the Commission. (Enforced Disappearances: Up to 982 missing persons traced in the past four years by Hasnaat Malik. Express Tribune. Feb 2015.) According to this report, 982 people have also been located by the Commission. Moreover, Pakistan's former Attorney General Munir A Malik prioritized the issue of missing persons and formed a missing persons cell in the Advocate General of Pakistan. However these cells were closed under Salman Aslam Butt. The top court asked the federal and provincial Governments to do coordinated efforts for recovery of missing persons. Salman Aslam Butt said he would talk with the relevant authorities for coordinated efforts. (Enforced Disappearances: Up to 982 missing persons traced in the past four years by Hasnaat Malik. Express Tribune. Feb 2015.) According to the Asian Human Rights Commission, relatives of victims of enforced disappearances have been physically injured, threatened or killed. The conditions outlined in point 44 thus remain prevalent. (Human Rights defenders in Pakistan in need of defense, Asian Human	

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		Other: There has absolutely been no measure taken to prevent acts of enforced disappearances in accordance with the Declaration. Instead many measures have been taken to enhance impunity for the perpetrators of enforced disappearance. There is another operation going on in Karachi since 2014 conducted by so called civilian paramilitary force named Rangers but actually controlled by Military. [...] is receiving complaints of disappearances since the start of the latest operation. [...] agrees with the Working Group about the confusion surrounding exact number of missing persons. [...] however has recorded till the time of filling of this questionnaire 2262 cases of disappearances from all over Pakistan. [...] can confidently claim that the actual number is much higher as many victim families approach [...] for consultation but in the end decide not to submit a complaint. The observations of the Working Group regarding threats or false reassurances to families of victims remain relevant. There have been threats to Human Rights defenders working with [...] in the past which culminated in the disappearance of one member. His name is Rizwan Akram Niazi for which an urgent appeal has been sent to the Working Group. Other:	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	No specific record is found. However, there are many cases of enforced disappearance at present. Thousands of Baloch claimed to have been disappeared. Even in Karachi there are many cases of missing persons. Workers of MQM have been taken away from their homes and their whereabouts are not known. In 1990, Operation clean up was designed to eradicate from Pakistan the extremist elements. Benazir Bhutto, the then Prime Minister, in 1993 was removed from office by the President due to the number of deaths caused by way of judicial killings of Mohajirs. Zohra Yousuf, Chairperson of HRCP stated that previously the majority of missing persons used to return home but now only mutilated bodies of victims of enforced disappearance turn up on roadsides and desolate places. A large number of bodies are of university students. The epidemic of enforced disappearances is used as a brutal instrument of immense suppression against groups of people, ethnicity and against political dissidents, especially the Baloch and MQM. As the International Community has been taking a back-seat approach and has compromised its international obligations, these human rights violations will continue to affect lives of thousands of families belonging to marginalized groups such as Baloch and Mohajirs. In the 1990s, over 15000 cases of judicial killings and disappearances took place. Since 2013, over 8000 arbitrary detentions	

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92. (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.	45. [...] 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	have taken place, with 250 persons still missing, 54 extra judicially killed, all of whom belong to the MQM. Government: The Constitution and laws relating to detention provide for necessary safeguards. All detainees are kept at officially recognized places of detention. Due to security reasons, details of where exactly terrorists have been detained may not be made publically available at all times. But this does not imply that terrorists would not be kept in “officially recognized places of detention”. Such security measure was deemed necessary after a couple of incidents of “prison break” occurred in the country. For instance, 400 prisoners were assisted in their escape from Banu prison in 2012. Many of these inmates were convicted dangerous terrorists. Similarly, other safeguards such as “to be brought promptly before a judicial authority” and “grounds for detention” are also provided for in the Constitution. These safeguards are further supplemented by the right of any individual to file a writ petition for breach of his fundamental rights under Articles 184 and 199 of the Constitution of Pakistan. Other: [...] continues to receive reports about persons detained in unofficial detention centres with no contact with their families and lawyers throughout Pakistan. We have recently released an Urgent Action relating	The Working Group has received information about persons detained in unofficial detention centers with no contact with their families and lawyers. The Working Group is also concerned that article 9(3) of the Protection of Pakistan Act permits to confine individuals deprived of liberty “at any place in Pakistan.” The Working Group reiterates that 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.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	to the case of Saeed Baloch, General Secretary of the Pakistan Fisherfolk Forum. According to his family, colleagues, and lawyer, he was detained by the Rangers on 16 January 2016 in Karachi, and it wasn't until 26 January that he was presented in an Anti-Terrorism Court after intense pressure from civil society groups. The Rangers claimed he had only been arrested a day before – on 25 January – from a local police station in the city. This does not account for the days from 16 January when they had held him at an undisclosed location. Even though the Rangers have now made it known that they have him, at the time of writing his current place of detention is still not known. ICJ and HRCP: Not only did the Government fail to review and amend this and other elements of Pakistan's existing legislative framework to bring it in conformity with its national and international human rights obligations, it actually enacted new legislation that will facilitate the perpetration of enforced disappearance, including by explicitly legalizing forms of secret, unacknowledged, and incommunicado detention. Section 9 of the Protection of Pakistan Act, 2014, (PPA) authorizes secret and unacknowledged detention, as well as in some cases, the nondisclosure of grounds for detention. Section 9 of the PPA authorizes law	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	enforcement agencies, security forces and investigating officers to withhold information, indefinitely and possibly permanently, except from the high courts or the Supreme Court, regarding the location of individuals deprived of their liberty, the place of their detention, and rather ambiguously, any “information with respect to any detainee or accused or internee or his whereabouts”. The withholding of information is permitted by the PPA not only in the interest of the security of the personnel but also for any “reasonable cause”. Section 9 also allows the Government to keep secret “the grounds for detention” and “any information relating to a detainee, accused or internee” characterized as an “Enemy Alien” or a “Militant”, as defined in the Act. Section 9(3) allows those convicted under the law to be “confined at any place in Pakistan”. UNPO: Reports continue to emerge on the widespread use of unofficial places of detention by law enforcement agents. Alarming, the Protection of Pakistan Act (PPA) can be interpreted as providing legal basis for the use of “secret” places of detention. Article 9(3) of the PPA establishes that convicted individuals “may be confined at any place in Pakistan including the prisons established by the Provincial and Federal Governments”. This provision exacerbates the lack of	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	transparency of law enforcement agents. Similarly, article 9(2) (a) stipulates that the Government and armed forces can “in the interest of the security of its personnel [...] or for any other reasonable cause withhold the information regarding the location of the detainee [...] or his whereabouts”. Therefore, PPA gives a large way to the government and its security agencies not to disclose information on the whereabouts of detainees – leaving families and friends unaware of the fate of their loved ones. Other: The observations of the Working Group are still relevant as all the constitutional safeguards are bypassed in general and especially when the person in question is accused of having dissenting views. Other: The situation is predominantly the same. One change is that if the victim has been tortured to a certain degree and chances of survival are slim, then that individual is likely to be handed over to a local hospital where he is left to die. Although post mortem reports often confirm that the cause of death is due to inflicted injuries and unnatural causes. State agencies have devised pocket organizations, many of them are being headed by tribal elements and in some cases non-tribal elements are also working on commands of same operator. These groups are armed by the agencies who	

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A/HRC/22/45/Add.2	A/HRC/22/45/Add.2	abduct political workers and keep them in their private detention centres. These pocket organizations openly can be with forces and commonly these resort to army cantonments. In Khuzdar, the Tutak Mass-grave incident is chief example of this logic, where discussed squad spitefully killed and dumped people in mass-graves but state authorities never took any measure against them. Many other groups are also functioning under the patronization of agencies that arrest people and keep them in unofficial detention centres, sporadically they kill and dump to abducted and also release some of them on various conditions. For doing so, elements are being promoted on high positions in Balochistan even to parliament bodies too.	
92. (c) Particular attention should be dedicated to the ongoing situation in Balochistan. [...], 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.	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.	Government: The Government pursues action against perpetrators who have been involved in enforced disappearances. Since the establishment of the CoIoED, hundreds of missing persons have been traced including from Balochistan. However, it has also been noticed that at times there is lack of sufficient incriminating material or concrete evidence to fix responsibility. Besides, it has been observed that sometimes inflated figures of enforced disappearances are quoted. Several factors come into play in this context, including terrorism and military; tribal Feuds; sectarianism; rivalry between groups; and involvement of foreign actors to destabilize Balochistan.	The Working Group raises grave concern about the large number of cases of enforced disappearances in Balochistan and the lack of investigation and persecution in relation to the crime. According to the reports that the Working Group has received, there is a climate of impunity in Pakistan with regard to enforced disappearances, and the authorities are not sufficiently
	53. [...] The two-member	In addition, the Government of Pakistan	

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	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. 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	remains committed to ensuring provision of all fundamental human rights to its citizens. The Working Group may note that the CoIoED, since its establishment, has not received information of increase in the number of reported cases of enforced disappearances. The claims mentioned in the communication are not substantiated by concrete numerical evidence, and instead appear to be general observations based on allegations by certain elements having their own vested interests. Other: According to the Vice-Chairman of the Voice of Baloch, Mr Abdul Qadeer Baloch, also known as Mama Qadeer, the situation in Balochistan has gotten worse. He is recorded to have said: “We would like to inform UN Working Group on Enforced or Involuntary Disappearances (WGEID) Pakistan has not implemented the above recommendations. In fact the state security agencies and secret services have intensified their atrocities in Balochistan since the UN working group visited Balochistan.”³ He further added that “since WGEID visit 250 Baloch have disappeared and the 70 previously enforced-disappeared Baloch have been killed under-custody. Their bodies have been dumped in different	dedicated to investigate cases of enforced disappearance and hold the perpetrators accountable. The Working Group observes that, despite various promises made by Government officials, cases of enforced disappearance have not been resolved in Balochistan. It also believes that stronger commitment from the Government is needed in order to resolve this sensitive human rights issue.

³ <http://www.bygwaaah.com/xnews/news.articles.203/Pakistan-has-failed-to-implement-Recommendations-of-UN-working-group---Qadeer-Baloch.html#.Vrk6DPmLTIU>

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	commitments relating to the issue of “missing persons”:	areas of Balochistan and Karachi.” ⁴	
	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.	ICJ and HRCP: Cases of enforced disappearances and dumping of bodies continue in Balochistan. The ICJ and HRCP as concerned they may see a further rise as the Government and security forces have indicated that will take all steps requires to ensure law and order for the proposed China-Pakistan Economic Corridor and the Gwadar port, new development projects parts of which run through Balochistan.	
	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	UNPO: While enforced disappearances remain a widespread phenomenon in Pakistan, Balochistan remains the most affected region. Since 2012, with the escalation of the Government’s crackdown on “terrorists” and “militants”, the number of missing persons has increased considerably. Pakistani officials have confirmed that 1,800 targeted operations were conducted in Balochistan between December 2014 and September 2015 alone. Besides the casualties and other violations of fundamental rights by security forces, it is possible to link these operations with the rise of enforced disappearances. In 2014, regional officials reported only 71	

⁴ <http://www.bygwaah.com/xnews/news.print.203/Printer-Friendly-Page.html>

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	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. 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:	missing people in Balochistan – while human rights organizations believe the number to be above 5000. This demonstrates that, particularly in Balochistan, the authorities are not sufficiently dedicated to investigate, prevent and punish cases of enforced disappearance. In 2015, 463 persons are reported to have been forcefully disappeared in Balochistan. The Interior Ministry of Balochistan stated that at least 8363 Baloch were arrested in 2015. However, no information on the identity, location and charges of the arrested were given. “Kill and dump” operations remain a sad reality in Balochistan. In 2015 alone, 157 mutilated bodies were found in Balochistan. In 2014, this number is believed to have been above 450. The Government has systematically denied the figures provided by human rights organizations. While it is difficult to ascertain the exact number of these cases, the discrepancy between the data provided by the Government and the number raised by human rights organizations should be interpreted as an indication of the Governments’ lack of cooperation and political will to investigate cases of enforced disappearance. In December 2015, the Supreme Court discharged the cases of 197 disappeared persons from Balochistan, allegedly after a request of the Chief Secretary of Balochistan.	

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	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.	Other: At the International Human Rights and Enforced Disappearances in Balochistan Conference organized by the Voice of Baloch Missing Persons (VBMP) in 2013, activists and families of disappeared persons highlighted the failure of the Government in protecting the Baloch people from abductions. (Enforced Disappearance, Families of Missing Baloch Men to Carry On, Express Tribune, 2013.) According to VBMP, there are more than 2825 cases of enforced disappearances of Baloch activists since 2005. In January of 2013, a mass grave was discovered in Khuzdar that contained more than 100 bodies of missing Baloch activists (Families of Missing Baloch March for Justice, Asad Hashim, Feb 2014). The Government of Pakistan has established a judicial commission to investigate reports of missing persons and denies responsibility for missing Baloch persons. According to a senior official in the provincial home department, there are only 27 cases of disappearances in Balochistan, as opposed to the VBMP claim of more than 2000 missing Baloch persons (Families of Missing Baloch March for Justice, Asad Hashim, Feb 2014). Other: [...] does not support idea of Working Group to view acts of enforced	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	disappearance in Balochistan separately from the rest of Pakistan. [...] also does not encourage practice of assessing situations of enforced disappearance according to the motives of the perpetrators. Neither does it support the idea of segregating acts of enforced disappearance on territorial ground especially where one is discussing a whole country governed by a single constitutional framework. It is not to deny that Balochistan is affected with menace of enforced disappearance like the rest of Pakistan. [...] could not verify the number of disappearance in Balochistan as reported to Working Group. Neither the Pakistani authorities or [...] or other CSOs could record more than a few cases of enforced disappearances in Balochistan. Despite the special attention of Supreme Court of Pakistan, as observed by the Working Group, through Constitutional Petition No. 77 of 2010 (President Balochistan High Court Bar Association vs. Federation of Pakistan, etc.) not more than approximately 100 complainants came up for remedy. Other: The practice of killing and dumping has increased in Karachi, where 54 persons have been extra judicially killed by State forces. No action has been taken against the perpetrators. Families of the victims brought cases to the court. Even when compensation is ordered by the court it has never been implemented. The practice continues. In 2015, the Government announced that 129 dead	

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		bodies were found. Although this number may not reflect the reality. The 129 dead bodies were of those whose relatives had already been informed that their loved ones were abducted by secret agencies. Various nationalist parties claimed that in various operations, mutilated body parts of activists who had been abducted earlier were thrown out from helicopters at high altitude. In addition, State forces stage “false encounters” during which disappeared persons are executed. The Commission of Inquiry has taken testimonies from families of victims. Some families expressed that the attitude of the head of the Commission could be improved. Despite various promises made by Government officials, cases of enforced disappearance have not been resolved. Stronger commitment from the Government is needed in order to resolve this sensitive human rights issue. Orders of the Supreme Court in relation to disappeared persons in Balochistan are not complied with by law enforcement agencies, including the frontier corps, and the Government.	
93. (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.	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	Government: A high level committee has been constituted which is mandated to prepare reforms regarding FATA which includes this aspect. Currently, the high-level committee is in the process of finalization of its	The Working Group is encouraged by the announcement made by the Prime Minister, on Nov 8, 2015, to establish a Federally Administered Tribal

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	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.	recommendations. Other: The jurisdiction of the superior courts has not been extended to the Federally Administered Tribal Areas (FATA), however, a bill was unanimously passed by the Senate Standing Committee on Law and Justice which aims to extend jurisdiction of the Superior Courts to FATA. The Provincial Assembly of Khyber-Pakhtunkhwa (K-P) through a unanimous resolution passed in May 2012 also called for deleting clause (7) of Article 247 of the Constitution. Also the Supreme Court has held that enforcement of Arts.4, 10 & 10A of the Constitution could not be denied to anyone, therefore the Supreme Court was empowered to assume jurisdiction in (any) such area. On Nov 8, 2015, the Prime Minister announced the formation of a FATA Reforms Committee headed by his adviser on Foreign Affairs, Sartaj Aziz. So far, the Committee is continuing to conduct visits to the region (with the latest one being to North Waziristan at the end of January 2016), but has not released any substantive recommendations or plan of action as yet. ICJ and HRCP: Prime Minister Nawaz Sharif has constituted a special committee to consider FATA reforms. The Committee is considering appropriate measures to remedy the discrimination faced by the people of FATA, including extending the	Areas (FATA) Reforms Committee headed by his adviser on Foreign Affairs, Sartaj Aziz. The Working Group urges the Committee to take immediate action to bring about actual changes. The Working Group encourages the Government of Pakistan to share any information on the outcome of the work of the Committee on the reforms.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	jurisdiction of superior courts to the region. A Constitutional Amendment Bill, initiated by parliamentarians from FATA, has also proposed merging FATA and the province of Khyber-Pakhtunkhwa. The reforms, however, are still in the early stages and it remains to be seen whether and how they will ultimately be implemented. UNPO: Despite attempts in the Senate to pass a bill extending the jurisdiction of high courts to the FATA, no positive development has been achieved. In early 2015, the Pakistani Government defended that extending the jurisdiction to the FATA is “a political question” and that the Supreme Court should refrain from getting involved in such discussions. Other: The region is controlled by the Federal Government of Pakistan and on behalf of the President the Governor of Khyber Pakhtunkhwa (formerly NWFP) exercises the federal authority in the context of the Federally Administered Tribal Areas. The Jurisdiction of the Supreme Court and the High Court of Pakistan does not extend to FATA and Provincially Administered Tribal Areas (PATA), according to Article 247 and Article 248, of the 1973 Constitution of Pakistan. The Khyber-Pakhtunkhwa Provincial Assembly has no power in FATA, and can only exercise its	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	powers in PATA that are part of Khyber-Pakhtunkhwa. Other: In October 2014, the Senate unanimously passed a resolution to extend the superior court's jurisdiction to FATA (Resolution passed to extend superior courts' jurisdiction to Fata, Dawn, October 2014). The KP Government and the Supreme Court urged the parliament to amend Article 247 (7) of the constitution. (SC urged to extend superior courts' jurisdiction to Fata, Dawn, Feb 2015). This however was challenged by the Pakistan Muslim League - Nawaz Government and the amendment to 247(7) has not yet passed. (The News International, September 2015). Other: The recommendation of the Working Group to extend the jurisdiction of superior judiciary to FATA has not been met with yet.	
93. (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.	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	Government: There is no limitation with regards to competence of High Courts in the exercise of their powers. In all cases where a person is detained and alleged that this detention is unconstitutional and in violation of the safeguards provided in the Constitution or that it does not fall within the statutory requirements of the law under which the detention is ordered, he/she can invoke the jurisdiction of the High Court, under Article 199 and ask to be released. When an order passed by an executive	Although the Government asserts that there is no limitation with regards to the competence of the high courts in the exercise of their powers, the Working Group remains concerned that article 199(3) of the Constitution still legally bars the high

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	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.	authority detaining a particular person is challenged by invoking extraordinary jurisdiction of High Court it is always by means of judicial review. The function of the Court in such cases is to see whether the order of detention is reasonable and objective. It is within the power of the Court to see whether the order of detention is really one under the law under which it purports to be passed. The Courts are therefore to decide on the matter in accordance with their power and without any limitation. Other: Article 199(3) of the Constitution still legally bars the High Courts from hearing cases related to the armed forces and such a limitation on its powers has not been removed. ICJ and HRCP: The limitations to the writ jurisdiction under Article 199 of the Constitution remain in force. The Pakistan Army Act bars civilian courts from exercising their appellate jurisdiction over decisions of courts martial. Civilian courts in Pakistan have however held they may use their extraordinary writ jurisdiction under Article 199 of the Constitution to hear cases related to military courts where “any action or order of any authority relating to the Armed Forces of Pakistan is...either coram non	courts from hearing cases related to the armed forces. Such a limitation on the powers of High Court should be removed.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	judice, mala fide, or without jurisdiction.” The Supreme Court, responding to petitions challenging the 21st amendment, reiterated this power of judicial review in cases decided by military courts. It should be noted that under Pakistani law, the scope of judicial review is highly restricted. Courts have also interpreted their review jurisdiction narrowly, and have held that “the High Court in its constitutional jurisdiction is not a Court of Appeal and hence is not empowered to analyze each and every piece of evidence in order to return a verdict” and that “controversial questions of facts...cannot be looked into in this limited extraordinary writ jurisdiction.” In hearing petitions for review challenging military courts’ verdicts, high courts have refused to intervene even in cases where the people convicted by military courts have been reported to be “missing”; where their families complain they were juveniles at the time of arrest; or cases where there are reports of torture and other ill-treatment in detention. UNPO: The competence of the High Courts remains limited due to the establishment of a special military court system in charge of dealing with possible human rights violations by members of armed forces. The Protection of Pakistan Act (PPA) also permits the establishment of “Special Courts” to deal with cases falling under the Act.	

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		In early 2015, the XXI Amendment to the Constitution of Pakistan was passed, establishing military courts to decide on terrorism-related offences through speedy trials. The amendment is set to expire in January 2017. Different sources indicate there is a lack of transparency regarding the methods, procedures and decisions of cases brought before military courts. Reportedly, family members only got to know about the trials before military courts after their relatives had been executed. Other: The recommendation of the Working group to remove the limitation of the High Courts in the exercise of their powers under article 199 of the Constitution has not been met with yet. Other: Article 199 of the Constitution remains unchanged.	
94. With regard to the Commission of Inquiry, (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.	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.	Government: The relatives/family members of the disappeared persons are regularly called to attend the hearings held of their cases in the Commission. They are also heard in person by the President of the Commission in confidence in his Chamber, if they so desire without any fear of any representatives of Agencies. Therefore the allegations leveled in this regard are unfounded. In addition, where desired, The Representatives of the Agencies also remain present at the hearings and the relatives of the	The Working Group takes note of the Government's reply. However, it remains concerned about the mistrust of the Commission by families of enforced disappearances demonstrated in many reports received from civil society organizations. The

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	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.	disappeared persons are allowed to engage with them during the hearings. the Commission remains in touch with the civil society organizations, such as Defence of Human Rights and its representatives are allowed to attend the hearings whenever so desired. Other: As far as AI is aware, this has not taken place as recommended. ICJ and HRCP: The Government has implemented none of these recommendations so far, and now more than before, the CoI has lost relevance in the struggle against enforced disappearances in the country. Groups working on enforced disappearances, including the NGOs Defence for Human Rights and Voice for Baloch Missing Persons (VBMP), continue to express their mistrust in the Commission of Inquiry, which they consider biased and ineffective. They argue the ineffectiveness of the Commission is demonstrated by the fact that security agencies defy its orders on a regular basis. They also claim that Commission members appear biased against the cause of families of the disappeared. They cite these factors as giving rise to concern that the actual effect of the Commission is actually to protect the security agencies allegedly responsible for carrying out the enforced disappearances and to further entrench impunity. Cases brought to the attention of the Commission as long as four years ago are still pending.	Working Group is also concerned about the ineffectiveness of the Commission as reported by civil society organizations. Since witnesses and family members of victims continue to be threatened or intimidated following the opening of investigations into cases of enforced disappearances, the issue of confidentiality remains a major matter of concern, thus, the Working Group recommends that as a rule, relatives of disappeared persons should be heard in confidential meetings before the Commission.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	In June 2012, addressing a press conference, Justice (r) Javed Iqbal, one of the Commissioners, called the figures of disappeared persons given by human rights groups “baseless propaganda”, and claimed that foreign intelligence agencies who wanted to destabilize Pakistan were responsible for the “missing persons”. Judges of the Supreme Court have also in the past remarked that the Commission of Inquiry is incompetent and ineffectual. In May 2013, however, the Supreme Court of Pakistan disposed of a constitutional petition on enforced disappearances filed by HRCP in 2007 and observed that HRCP could pursue the matter before the Commission. HRCP then filed a review petition in the Supreme Court, requesting the Court to reconsider its order. HRCP contended that the jurisdiction of the Supreme Court under Article 184 (3) could not be replaced by a Commission, whose majority comprised non-judicial authorities, especially since the matter raised was of public importance and clearly involved violation of fundamental rights, the enforcement of which fell squarely within the jurisdiction of the Supreme Court. HRCP highlighted that 47 people on its list submitted to the SC had still not been found, and their families had not in practice had effective access to the Commission set up by the Government of Pakistan. The review petition hearings have resumed, but no decision has so far been made. This particular case, as well as many others where cases of enforced disappearance are	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	referred to the Commission of Inquiry by the courts, demonstrate that though ostensibly formed to provide a measure of public accountability, the commission on enforced disappearances has served to promote impunity by diverting investigation of human rights violations and crime through the criminal justice process into a parallel ad hoc mechanism vulnerable to political interference and manipulation. Committee for Missing Persons: In Karachi, the Commission of Inquiry has never held any private meeting with families of disappeared persons. UNPO: Since witnesses and family members of victims continue to be threatened or intimidated following the opening of investigations into cases of enforced disappearances, the issue of confidentiality remains a major matter of concern. In December 2015, the Pakistani Senate's "Committee of the Whole" started discussions on a proposal to adopt a bill "to provide witness protection, security and benefit". This bill prescribes the application of a witness protection programme. Among other provisions, this proposal would allow witnesses to "conceal his or her identity by wearing a mask, changing his or her voice, appearance or any other form of segregation during the investigation [...]" and would also "allow video conference in order to secure the protected person". Such safeguards would be particularly	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	welcomed to reduce the feeling of insecurity when speaking out about cases of enforced disappearances. Other: Relatives are brought in before the Commission as complainants. An article produced by Herald, Dawn sheds light on the procedure of the Commission of Inquiry: “I ask the complainants about the circumstances in which their relatives have disappeared,” says Muhammad as he explains the commission’s procedure. A list of missing people is then given to the representatives of each agency and the police to check if they are in official custody anywhere in the country. The officials are also told to check if the missing person is being held at the army-run internment centers in Khyber Pakhtunkhwa and the tribal areas. “The commission, however, does not [have the mandate to] seek details of any cases registered against the [missing] person. [Our] mandate is limited to tracing the disappeared,” says Muhammad. If all agencies report that the missing person is not in their custody, the commission then asks the police to check with the Edhi Foundation and hospitals if they have any information about him. The police are also told to inquire from the foreign ministry if the missing person has shifted outside Pakistan. When these efforts fail to yield results, the commission has the authority to set up a	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	Joint Investigation Team (JIT) to find out if the missing person disappeared voluntarily or whether his disappearance was enforced by the security and intelligence agencies. The JIT also looks into the possibility of someone having gone missing due to some personal enmity or in a criminal incident. If this team does not reach a conclusion, a second JIT is formed to perform the same tasks all over again — and then a third one. The second last step in this process is the constitution of a provincial task force to make special efforts at the highest administrative level, in a province, to trace the missing person. Provided nothing else works, explains Muhammad, all the three members of the Commission of Inquiry on Enforced Disappearances then jointly conduct investigations on their own.” (Operation Overkill, Herald, 2015). Other: With regard to the Commission of Inquiry the recommendation of the Working Group to hear the relatives of missing persons in confidential meetings before the commission has not been implemented by the Commission. The situation remains the same as when the Working Group visited Pakistan. Other: There is no recorded evidence that shows families have been told about the fate or whereabouts of their relatives. Human Rights Report 2014.	

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A/HRC/22/45/Add.2	A/HRC/22/45/Add.2	Alleged politically motivated killings of Baloch nationalists and political workers (MQM) continued in Balochistan and in Karachi. For example, the Voice for Baloch Missing Persons (VBMP) in September compiled a list of 3,556 Baloch activists it claimed were abducted or killed since 2005. The VBMP claimed the army or security agencies killed 471 of these persons while holding them in custody. Concerned authorities have failed to resolve this issue. Involved agencies are not providing any statistics in this regard either. No confidential meeting was held with relatives of Baloch Missing Persons by the Commission of Inquiry.	The Working Group welcomes the appointment of a new member of the Commission of Inquiry and the information that the Commission arranges for parallel hearing of cases in Islamabad, Lahore and Karachi. However, given the increased workload, the Commission still remains understaffed. It seems impossible for the Commission to initiate investigation on all the cases of
94. (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.	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.	Government: The Commission of Inquiry on Enforced Disappearances has already been strengthened by appointment of a retired Judge of the Sindh High Court as a Member of the Commission and necessary staff has already been deputed with him. A sub Office has been established which is working at Karachi since October 2014. Every proposal for enhancement of resources, whenever put forward by the Commission, is given due consideration and generally accepted. The Commission, with the sources provided to it, also arranges for parallel hearings of cases at Islamabad, Lahore and Karachi. Other: According to reliable sources on the	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	ground, the Commission has not been strengthened, despite one extra staff member being appointed. It has extremely limited resources, staff, and mandate. Committee for Missing Persons: The Commission of Inquiry (CoI/ED) extended in Sindh Province by appointing a new member who is the retired Justice of High Court of Sindh. However, families of disappeared persons have lost trust in the work of the Commission. UNPO: The Commission of Inquiry has increased its workload since the visit of the WGEID. However, it remains understaffed and unable to investigate all the cases of enforced disappearance throughout the country. Other: Cases of similar nature are taken up together for hearing. They aren't evaluated on an individual basis. Hearings conducted by the Commission include high ranking officers like the Inter-Services Intelligence, Military Intelligence, Intelligence Bureau, intelligence wing of the rangers and a police officer ranked as an inspector general. (Operation Overkill, Herald, 2015). According to a member of the Commission, the commission could only receive a limited number of applications of missing	enforced disappearance throughout the country. The Working Group recommends that the Commission should be strengthened with additional staff and resources.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	persons in comparison to the actual number of incidents that had occurred. Other: The capacity of the commission has been increased from two members to three members. Yet the number of cases is so high that one case receives 2 to 4 hearings in a year at the most. There are examples of cases which have not been heard for more than a year and a half.	
95. (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.	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	Government: The Commission of Inquiry on Enforced Disappearances enjoys all the powers to ensure compliance of its orders including the request for sworn affidavits and writs of the Commission, as enunciated in the Pakistan Commission of Inquiry Act, 1956. Other: The Commission of Inquiry has little to no powers to ensure compliance with their orders. The Commission is only able to record complaints and has only in some cases been able to trace individuals to certain internment centres. Contempt of court powers have been exercised to seek compliance of courts orders in respect of enforced disappearance cases by the Courts but have not led to any	The Courts and the Commission of Inquiry have failed to ensure compliance with their orders, using all their powers. 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.

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	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. 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	convictions.⁵ Other: The Judiciary in 2008, 2010, 2012 and 2013 took some pragmatic steps, as a result, a few missing persons were released. Human rights cell was established but after the retirement of Justice Iftekhhar Mohd Chaudry, it became inactive. The committee established by the Ministry of Interior had rarely had any meetings. Families of Baloch Missing Persons have never been invited. The Supreme Court has not established any committee to work on the issue of missing persons. In June 2010, the Federal Government formed a Commission of Inquiry for six month initially, and subsequently its tenure was extended. The Commission of Inquiry's second Chair, Justice Javed, after three days hearings, in March 2012, made a decision and declared via a press conference that all security agencies and forces were acquitted from enforced disappearances cases. Other: Working Group's observations regarding behaviour of superior courts still hold true. But its determination is waning with the time. For example Supreme court did not hear cases of enforced disappearance during most of the 2012. It started to hear	

⁵ <http://www.dawn.com/news/1060685>

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	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. 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	cases in the second quarter of 2013 and continued till June 2014. Since June 2014 Supreme Court has not given a single hearing to the cases of enforced disappearances. Provincial high courts do hear the cases of ED but do not use their power to proceed to any successful conclusion. In most cases the complainants reported a disinterest on the part of the presiding judge and an inclination to dispose off the petition as soon as possible. Regarding commission of inquiry families have many complaints. Commission has issued, according to information collected so far, production order in very few cases which were not complied with. Neither it has ever recovered a missing person physically or by an explicit order. The visible functions of commission are limited to recording the complaints, informing the family of presence of a missing person in an Internment Centre if disclosed by Army, and counting the closed cases where a person is released and dropped near his house according to the explicit discretion of the perpetrators. Other: The courts and the Commission of Inquiry have failed to ensure compliance with their orders, using all their powers. “The presence and cooperation of law enforcement and intelligence agencies” has also not improved. Orders of the courts to the police to investigate cases are implemented only to the extent that first	

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	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. 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,	information reports are registered without any investigation. Thus, no extra pressure is applied on the police to carry out investigations that would hold the security forces accountable.	

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	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.		
95. (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.	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	Government: CoIoED never hesitates to exercise its powers to establish contempt of the Commission. Orders issued by the Commission are implemented by Federal/Provincial Government Departments. The Commission does not feel itself handicapped in implementation of its orders. In addition to the Focal Persons of all concerned department/agencies, who are always higher middle level officers, the high-ups and heads of Ministries/Departments always respect the orders of the Commission for appearances as well as response on their part. Other: The higher judiciary including high courts of the four provinces as well as the Supreme Court on several occasions (in cases of enforced disappearances that have been brought before them) found personnel from the Pakistan army and Para-Military forces to have been involved. On several occasions the courts have ordered the officers to be brought before the court – however, these orders have not been respected by the government or the security agencies. In one case the Supreme Court of	The Working Group is concerned that, on several occasions, the courts have ordered the officers to be brought before the court, which did not happen. However, in spite of the Government's indication that they always are, these orders are reportedly not being respected by the Government or the security agencies. 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.

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	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.	Pakistan gave an order for the arrest of an Army Brigadier on charges of having been directly involved in an incident of enforced disappearance – but that order was not yet fulfilled.⁶ On November 18, 2014, the Peshawar High Court issued arrest warrants for two officials for their failure to comply with the court orders.⁷ UNPO: The Pakistani Government continues to lag behind Courts and sectors of the Senate in what regards enforced disappearances. The Government is particularly unresponsive to calls to enforce the supervision over law enforcement and intelligent agencies. Other: All previous Governments and especially the present one have been involved in acts of enforced disappearances. In the past this attitude of Government could be attributed to the weakness of political power in the face of military establishment but gradually the civilian establishment has joined hands with military. Owing to these facts the Government is least interested to empower the Commission of Inquiry or courts to tackle enforced disappearance. Hence the advice to Government to take necessary	

⁶ <http://reliefweb.int/report/pakistan/statement-mark-international-day-victims-enforced-disappearances>

⁷ <http://hrcp-web.org/hrcpweb/data/ar14c/2-2%20jails%20and%20prisoners%20-%202014.pdf>

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	steps to ensure the compliance of orders of the Commission of Inquiry and courts has not been given any heed. Other: Rather than enforce orders of the Commission of Inquiry and the Courts and ensure compliance by enforcement and intelligence agencies, the Government of Pakistan passed the Pakistan Protection Act which grants law enforcement agencies wide impunity. This includes the power to detain a suspect for 90 days without any trial. The PPA counters any effort to hold law enforcement agencies accountable for enforced disappearances.	
96. In regard to fighting against impunity of perpetrators, 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;	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. 65. 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.	Government: The establishment of CoIoED in 2010 has helped to address the issue of enforced disappearances. The Government has been regularly sharing details of traced persons with the WGEID. This clearly demonstrates that there is no impunity for perpetrators of enforced disappearances. Any person involved in such activities is dealt with in accordance with domestic laws. The Government takes note of the recommendation. The existing legal framework has sufficient provisions to deal with the crime of enforced disappearance. Pakistan Penal Code 1860 contains offences and provides punishment. Section 359, 360, 361, 362, 363, 364, 364-A, 365, 365-A, 366, 366-A, 366-B, 367, 368 and 369 exhaustively deal with the question of	No amendment has been made in the Pakistan Penal Code regarding the specific criminalizing of enforced disappearances so far. 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

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	abduction and kidnapping/enforced disappearances. These provisions are sufficient to cover the crime of enforced disappearance. Besides, the provisions of Section 154 and 157 of CrPC also cover the issue. Other: No amendment has been made in the Pakistan Penal Code regarding the specific criminalizing of enforced disappearances, neither have any steps been taken in that direction. ICJ and HRCP: In addition to the WGEID's recommendation, Pakistan had accepted a recommendation to criminalize enforced disappearances during its 2012 Universal Periodic Review. In three years since the Working Group's report and the UPR, Pakistan is yet to specifically criminalize enforced disappearance. Criminal complaints, where registered by the police, are filed under sections of the Pakistan Penal Code related to abduction and unlawful confinement more generally. ICJ and HRCP are not aware of any pending bills before Parliament that criminalize enforced disappearance. UNPO: Despite growing recognition by the media, the Senate and even the Pakistani government itself that enforced disappearances represent an overspread	Disappearance and with all the legal consequences flowing from this qualification.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	phenomenon in Pakistan, it is still not considered an autonomous crime. Other: To date there has not been any move to include enforced disappearance as an autonomous crime in penal code. Instead passage of PPA and amendments in Army act, taken place after the visit of Working Group, has strengthened the culture of impunity. Other: Enforced disappearance is not an independent crime in Pakistan.	
96. (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;	54. [...] 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. Please also refer to paras. 65 to 74 of the report (A/HRC/22/45/Add.2)	Government: Article 10 of the Constitution of Pakistan provides safeguards regarding arrest and detention. It provides protection against unlawful detention and codifies the right to be informed of the grounds for arrest. In addition, Article 10-A explicitly entitles individuals to a fair trial and due process in the course of civil matters and criminal proceedings. Other: There has been an utter lack of investigations and prosecutions of those suspected of criminal responsibility for enforced disappearances. The situation mentioned during the visit still stands in relation to the names of those suspected of criminal responsibility not being provided, lack of evidence, and indeed, will, to carry out independent and thorough	Even if the Investigation for Fair trial Act 2013 was promulgated along with the Investigation for Fair Trial Rules 2013 to regulate the powers of the law enforcement and intelligence agencies, adequate protection for those suspected is not provided under the Acts, as any hearing of such a warrant is not publicly conducted. Investigation against and punishment of perpetrators should be in accordance

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	investigations. The Investigation for Fair trial Act 2013 was promulgated along with the Investigation for Fair Trial Rules 2013, with an attempt to regulate the powers of the law enforcement and intelligence agencies. In practice, however, there has been no regulation at all. The Acts empower the intelligence and law enforcement agencies to seek surveillance warrants against persons whom they consider to be involved in or associated with anti-state terrorist activities. Adequate protection for those suspected is not provided under the Acts as any hearing of such a warrant is not conducted publically, but instead, in the chambers of a High Court Judge, and no record of the warrant or the hearing is kept in court but is returned to the related department. No appeal mechanism is provided through these laws either. ICJ and HRCP: No perpetrator has faced trial for enforced disappearance (including under general offences such as abduction or unlawful confinement) in Pakistan. UNPO: Since December 2014, when Pakistan lifted a moratorium on executions, the country has executed more than 200 prisoners. Besides the clear inhumane character of the death penalty, the capital punishment is	with the law and with all the guarantees of a fair trial. Since December 2014, when Pakistan lifted a moratorium on executions, the country has executed more than 200 prisoners. The Working Group believes that the capital punishment should not be imposed for the punishment of the perpetrators of enforced disappearances.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	particularly worrying in countries with widespread arbitrary use of power by the police and military, as well as frequent violation of civil rights, such as Pakistan. Other: There is no question of guarantees of fair trial for perpetrators of enforced disappearance as there are only a couple of instance of perpetrators being tried. [...] can recall two such instances where whole state machinery stood behind the accused perpetrators. In these cases, although there was enough evidence in the opinion of [...] to convict them, through corrupt practices prevalent in judicial system they were acquitted. Other: In Balochistan, the State forces are committing human rights violations and they enjoy impunity. The authorities forbid visits by international media and organizations to Balochistan to conceal the human rights violations committed by them. Other: Pakistan has not held accountable a single perpetrator of enforced disappearance to account.	
96. (c) Investigations should be initiated whenever there are reasonable grounds to believe that an enforced disappearance has been	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	Government: Families of missing persons can file formal complaints not only in the Police Station but also with the CoIoED. Even before receiving reports of complaints by the	The Working Group stresses that the Government of Pakistan should make efforts to combat impunity.

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committed, even if there has been no formal complaint;	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. 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	family of a missing person, Human Rights Cell of the Supreme Court of Pakistan or from any Human Rights Organization, the CoIED has at several occasions constituted Joint Investigation Teams without any formal complaint. This mechanism has been put in place to ensure accountability. Other: From the information AI has received from lawyers working on such cases, the police often refuse to even file a missing persons complaint. Family members go to the Commission, formed to deal with such cases, and as mentioned above, the Commission writes to the government demanding to know the whereabouts of the missing person. They get a response (according to one lawyer, usually after 1-2 years) saying whether the person is in custody at an internment centre or not. ICJ and HRCP: The impunity enjoyed by perpetrators of enforced disappearances continues. In many cases, the police refuse to register a criminal complaint against suspected perpetrators, who are predominantly members of the security agencies. Even where complaints are registered, investigations are compromised and partial. It is no surprise, therefore, that despite orders of the Supreme Court, testimonies of eye-witnesses and accounts of victims of disappearances who have been freed from captivity implicating security agencies in the practice of enforced disappearance, not	An essential step is to ensure that families of enforced disappearances can file first information reports of cases of enforced disappearances at local police stations. The Working Group welcomes investigations which were carried out against state agents in cases of enforced disappearances, but it remains concerned that there is still serious ineffectiveness in terms of holding perpetrators accountable. 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.

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	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.	a single perpetrator of enforced disappearance has been brought to justice in Pakistan thus far.	
	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.	Committee for Missing Persons: It is very difficult for families of disappeared persons to identify the perpetrators as they are often masked and they use vehicles without registration number when conducting the abductions. Following the reappearance or release of the victims, some families of disappeared persons chose not to initiate legal proceedings against the state forces who conducted the initial abduction. In some cases when victims are released, after some days or months, their families tend to decide not to testify against any State Agents. We have witnessed that several victims of enforced disappeared were extra judicially killed in fake encounters staged by the police or Pakistan Rangers despite that their cases had been reported to the Commission of Inquiry and the High Court of Sindh.	
	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	UNPO: Despite the work of the Commission of Inquiry on Enforced Disappearances (CIED), which located 982 missing persons from 2011 to 2014, the process of filing complaints on cases of enforced disappearances is still open to criticism, as cases of intimidation by the police	

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	conviction of State agents in relation to acts of enforced disappearance.	continued to be reported.	
	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.	Despite actions by the CIED, the investigation of enforced disappearances seems inefficient in Pakistan. For example, in contrast to the number of 1265 disappeared persons in 2014 as claimed by the CIED, human rights organizations estimate it to be above 5000. In 2015, according to The Voice for Baloch Missing Persons (VBMP), approximately 463 people were forcefully disappeared while 157 mutilated bodies were found from Balochistan alone. While the CIED has been somehow efficient in tracing those missing persons who were found to be in internment centres, it has been ineffective in terms of holding perpetrators accountable and preventing enforced disappearances. Most worryingly, victims of “killing and dumping” following enforced disappearances remain overlooked. Some improvements can be found in the <i>suo moto</i> power of High Courts to initialise investigations into enforced disappearances. However, we are unaware of any wide-ranging investigation into the role of State agents in cases of enforced disappearances. Other: Absolutely no legal or legislative measures have been taken to automatically initiate an inquiry on cases of enforced disappearance. On the other hand, as observed by the Working Group, families of victims still	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	face problems in lodging complaints. Often a First Information Report is not registered without an judicial order. [...] can provide documentary proofs where names and identification of perpetrators have been provided by the complainants but none of them was ever summoned by the commission of inquiry. Although names have been provided by many complainants while filing the initial complaint, the information given to the Working Group that families or victims are not keen to file complaints against perpetrators is true to some extent. The real reason behind this fact is that once a person is found or released, families usually do not have the strength, resources or enough faith in the judicial system to initiate legal proceedings against the perpetrator. Challenging the State is far more difficult in Pakistan than in developed countries. [...] can cite at least one case where investigations were carried out against an agent of intelligence agency. In that investigation the perpetrator was found guilty. But somehow the case was manipulated in such a complex way that the inquiry report was abandoned and a new inquiry was initiated in which he was declared innocent. Other: The Commission may initiate criminal proceedings against police officers. But most of the disappeared persons are held by Intelligence Agencies who work secretly. However, according to a report of the	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	Commission, it has recommended filing of criminal cases against 117 personnel from the police, the frontier corps, the Intelligence Bureau and the Inter-Services Intelligence in 2013. After lodging First Information Reports with the police, cases of enforced disappearance are not referred to the Commission of Inquiry automatically, unless the family of the victim formally submits an application to the commission. The case would then be forwarded to the Joint Investigation Team (JIT). Solid evidences were provided to the commission by families of victims; regrettably the authorities of the commission never exploited their attained powers. Fewer and fewer victims of enforced disappearance reappear. Most of the victims are found dead. Many cases of enforced disappearance are dismissed by courts. Following a Supreme Court decision of 2010, police officers started to register cases of alleged enforced disappearances for some time. Recently, the police again refuse to register reports of enforced disappearance against security agencies.	
96. (d) Measures should be taken to ensure that, in the event of human rights violations, suspected perpetrators, including army personnel, are suspended from official	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	Government: Appropriate mechanisms are in place to hold accountable anyone involved in violations of human rights including enforced disappearances. Mechanisms are in place for investigations	The Working Group is informed that, in January 2015, the Supreme Court formulated a series of questions to be considered regarding

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duties during the investigation and are tried only by competent ordinary courts, and not by other special tribunal, in particular military courts;	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.	in cases where allegations of misuse of power are made against law enforcement personnel (both civil and military). Other: AI does not have specific research into this area but a local lawyer who regularly works on missing persons cases has provided as follows: “The Supreme Court in an enforced disappearance case considered registering an FIR against the armed forces and stated that the civilian courts were superior to the military courts in matters of concurrent jurisdiction. No officials have been suspended in this regard to date. In January 2015 the Supreme Court formulated a series of questions to be considered regarding the trial of army personnel in civilian courts and submitted a request to the Supreme Court Chief Justice for a larger bench consisting of 5 Supreme Court judges to be constituted. The Questions to be considered by a larger bench of the Supreme Court were: 1. When a person is accused of committing an offence under the Pakistan Penal Code (PPC) and that person is serving in the Pakistan Army, is it the ordinary criminal forum/courts set up under the Criminal Procedure Code (CrPC) that will try the offender or is it for the forums under the Pakistan Army Act (PAA) 1952 to try such an accused? 2. Whether the ordinary criminal courts (the courts at Malakand) are obliged to accede to the request made by the army authorities	the trial of army personnel in civilian courts and that it submitted a request to the Supreme Court Chief Justice for a larger bench consisting of 5 Supreme Court judges to be constituted. The Working Group would like to receive information on concrete cases where perpetrators of enforced disappearances are held accountable in Pakistan.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	or is it within the discretion of the ordinary courts to determine whether or not to allow the request of the army authorities for the transfer of the case to them? 3.If it is for the ordinary forums to exercise discretion in the matter of a request received from the army authorities, what is the basis on which such a request should be considered and then accepted or declined? The Supreme Court stated that all other cases of missing persons should also be fixed before the same bench in order to have uniform consideration of these issues. There has been no further progress in this case thus far and the military personnel implicated have not been arrested.” ICJ and HRCP: In the case of Muhabat Shah, which relates to the unacknowledged removal of 35 detainees from a Malakand internment center by the armed forces, the question of ordinary courts’ jurisdiction over human rights violations committed by security personnel came into focus. In December 2013, the Supreme Court held that the removal of the 35 men amounted to enforced disappearance; no law could plausibly authorize the unlawful conduct of the armed forces; and the government should act “strictly in accordance with law” against the army personnel responsible. In March 2014, the Minister of Defense lodged first information reports (FIRs) under the Pakistan Penal Code for wrongful confinement against army officers	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	suspected of “disappearing” the 35 individuals (enforced disappearance is still not separately criminalized in Pakistan). A few days later, however, reportedly on the request of military authorities, the provincial administration of Khyber Pakhtunkhwa referred the matter to the military for further investigation and possible trial under the Pakistan Army Act, 1952. In response, the Supreme Court constituted a five-member larger bench to consider the scope of civilian courts’ jurisdiction to try serving members of the military for crimes committed under the penal code, including human rights violations. The Supreme Court is yet to decide the case. Commission for Missing Persons: In situation where the suspected perpetrators are not possible to be identified, their commanders or supervisors should be held accountable instead. UNPO: We are unaware of any positive development regarding the suspension of personnel from duty after suspected violation of human rights. Quite the opposite, the Protection of Pakistan Act (PPA) establishes that the review in cases of death or grievous hurt by	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	law enforcement agents should be done by “an internal inquiry committee constituted by the concerned law enforcement agency” and that “no member of the police, armed forces or civil armed forces [...] shall be liable to any action for the acts done in good faith during the performance of their duties”. We fear that an internal inquiry committee may lack the impartiality and willingness necessary to effectively investigate and punish cases of abuse of power. Voice for Baloch Missing Persons: In Pakistan, the State forces are treated as the “sacred cow”; they seem to be beyond domestic laws and they enjoy impunity. The application of double standards divides the society and creates injustice. [...]: There is absolutely no concept of suspension from duties in the cases of enforced disappearance. This observation applies to both civil and military perpetrators. Other: In July 2014, the Ministry of Defence was directed to submit separate reports on behalf of army officials explaining their position regarding various cases of enforced disappearances. These officials were named by family members of those who have gone missing. The order was issued by Peshawar High Court Chief Justice Mazhar Alam Miankhel and Justice Nisar Hussain Khan while hearing	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
		31 petitions regarding missing persons. Deputy Attorney General Manzoor Khalil, Additional Advocate General Mian Arshad Jan and Group Captain Muhammad Irfan from the Ministry of Defence appeared for the hearing. On May 15, the chief justice recommended that a larger bench of the supreme court should hear the cases of missing persons in which military officers were involved.	
96. (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.	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	Government: The existing constitutional and legal framework provides for sufficient safeguards for the protection of victims and witnesses in general. However, to further strengthen protection of the witnesses, especially women, Standard Operating Procedures have been put in place by the CoIoED. After recording the statement of witness, a direction in writing is issued that he/she should not be arrested. The Commission has not received any complaint of harassment of any witness so far after these directives. Implementation of these SOPs have been ensured in letter and spirit by all law enforcement agencies. Other: No comprehensive programme for the protection of victims and witnesses has been established by Pakistan yet. Having said that, witness protection laws have been introduced, but their implementation remains an issue. For instance, the Sindh Witness Protection Act 2013 was	The Working Group welcomes the introduction of victims and witness protection laws, such as the promulgation of the Sindh Witness Protection Act 2013. However, no comprehensive programme for the protection of victims and witnesses has been established yet. Special attention should be given for the protection of women as relatives of disappeared persons.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
	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.	promulgated to enable witness to give evidence in criminal proceedings. It does not include any special attention to women relatives of the victims and the law is aimed at all witnesses and not particularly to those involved in the cases of enforced disappearances. The Sindh government has also planned to establish a Witness Protection Unit (WPU). A private members' Federal Witness Protection Bill 2015 has also been submitted in the National Assembly Secretariat which if approved will apply as far as the executive authority of the Federal Government extends .at all levels of government, federal, provincial and local. The Protection of Pakistan Act 2014, passed by Parliament as well as the Anti-terrorism Act 1997 [section 21(2)], both have provisions empowering the courts and governments to make orders for the protection of witnesses but there is ineffective implementation of any of these witness protections laws.⁸ ICJ and HRCP: Witnesses, including family members of forcibly disappeared persons, and their lawyers report that they are frequently subjected to threats, harassment and other victimization, allegedly by members of the security forces. Despite this situation being drawn to the attention of the courts and the	

⁸ <http://nation.com.pk/national/21-Oct-2015/war-on-terror-without-witness-protection-programme>

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	Commission of Inquiry, neither the courts nor the Commission have ensured that concrete measures for protection of witnesses are put in place. The reluctance of witnesses to testify at all, or if they do testify to tell the whole truth, in such climate of fear -real or perceived- has an impact on the fairness and effectiveness of the proceedings. Despite well-documented security concerns faced by witnesses in cases of human rights violations and other serious crime, Pakistan does not have robust witness protection laws. Out of all the provinces, only Sindh has a witness protection law, but even that is rarely implemented. Committee for Missing Persons: There is no comprehensive programme adopted by any Government (Federal & Provincial) regarding the victim of enforced disappeared persons, their family, witnesses and other reported person(s). (Ref: See point 1 of Recommendations / observations by the Committee for Missing Persons, Karachi, Pakistan). UNPO: Victims and witnesses of enforced disappearances continue to be subjected to threats, intimidation and even murder. Particularly in Balochistan and Sindh province, the lack of improvement has led to a growing fear of reporting cases of enforced disappearances to the relevant	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	authorities. The 2013 Sindh Witness Protection Act, which was at first considered a step in the right direction, has not been put into practice by Government officials. This is yet another example demonstrating the unwillingness of the executive power to turn judicial and legislative advances into reality. The Pakistani Senate's "Committee of the Whole" started discussions in December 2015 to propose the adoption of "A Bill to provide for a witness protection, security and benefit program" (link), which is based on the 2013 Sindh Witness Protection Act, but valid throughout all Pakistan. This As mentioned above, "a bill to provide witness protection, security and benefit" is under discussion. The bill prescribes the creation of a Witness Protection Unit under the Ministry of Interior that would be responsible for ensuring the application of the Witness Protection Programme. This programme seeks to protect witnesses from intimidation and threats, allowing for their essential contribution to judicial proceedings, on an anonymous manner if required. We regret that enforced disappearance is not explicitly listed as one of the offences in respect of which a witness shall be protected under the law. However, the draft does include witnesses of "any other offence [...] committed by [...] a law enforcement officer" when the Chief Witness Protection Officer finds	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	appropriate. We are of the opinion that victims and witnesses of enforced disappearances would benefit from an explicit mention to this widespread practice as an autonomous crime, worthy of witness protection. The language should also be clearer to ensure that the bill encompasses actions committed by the multitude of governmental agencies, including intelligence agencies and paramilitary powers, known to be involved in enforced disappearances. Another concern is the lack of special provisions on female victims and witnesses – they are often in an even more fragile situation in cases of enforced disappearances of family members, being themselves victims of such crimes. They also suffer from economic and social distress when they are unable to provide for themselves after their husbands, sons and/or fathers have been enforcedly disappeared. Finally, there are reasons to be sceptical about the enforcement and effectiveness of this possible bill. Based on the example of the 2013 Sindh Witness Protection Act, and taking into account the measures so far taken by the Pakistani State on enforced disappearances, the Government seems to lack political will to enforce legislation on this matter. [...]: Absolutely no program for the protection of victims and witnesses regarding cases of enforced disappearance has been set up.	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	Government might mislead by a supposed witness protection mechanism introduced in PPA and by amendments in Army Act but that system is directed totally towards the cases of so called ‘war on terror’ instituted against citizens and this mechanism has absolutely no implication in the cases of enforced disappearance where state itself is the accused. Voice for Baloch Missing Persons: Relatives of disappeared persons are not protected under any specific law or regulation. Family members of disappeared persons and persons working for organizations dealing with disappearance issues are often intimidated and threatened. Several times pamphlets were thrown in homes of members of the organization VBMP, and in other ways the members of organization and relatives of missing persons also are being intimated and threaten. Initially, male members in the families of disappeared persons are actively pursuing the cases with courts and other relevant bodies. Since many of them are threatened and harmed, subsequently female members in the families come forward to pursue the cases and they are also being harassed in various ways. Other: No such program has come to attention.	
97. Concerning intelligence agencies,(a) Clear rules and dedicated institutions should be	75. During its visit, the Working Group repeatedly received allegations that there was a lack of supervision and	Government: In Pakistan, competent authorities at the Federal and Provincial levels of	The provisions of the Protection of Pakistan Act, 2014, that prohibits the

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
created to ensure the oversight and accountability of law enforcement and intelligence agencies.	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. 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.	Government are under obligation to conduct prompt and impartial investigation after allegations of misuse of power are made. In the course of these investigations, agencies fulfil their responsibilities and conduct unbiased investigations into allegations of abuse to monitor the situation. Efforts are being made to further strengthen oversight and accountability. Other: No laws have been enacted to ensure or increase the accountability of intelligence agencies by the Parliament. A bill seeking accountability of the intelligence agency of Pakistan was submitted to the Senate in 2012 and remains pending to date. The enactment of the Pakistan Protection Act 2014 gives law enforcement and intelligence agencies even more powers to operate with impunity. ICJ and HRCP: As Pakistan continues to conduct counter-terrorism operations and to implement counter-terrorism measures, security agencies are in fact gaining wider and less restrained legal powers. The increase in power, however, is not accompanied by corresponding improvements in accountability mechanisms. Section 20 of the Protection of Pakistan Act, 2014, for example, provides that “no member of the police, armed forces or civil armed forces acting in aid of civil authority...shall be liable to any action for	liability of member of the police, armed forces or civil armed forces in aid of civil authority violates Pakistan’s obligations under international law, including under ICCPR Article 2(3), to investigate allegations of human rights violations, to prosecute those responsible for certain such violations, as well as to ensure victims’ rights to effective remedy including truth, justice and reparation. The Working Group is also concerned that the newly constituted National Commission for Human Rights has been explicitly barred under its establishing statute from inquiring into the practices of intelligence agencies. The Working Group reiterates the recommendation contained in its 2012

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	the acts done in good faith during the performance of their duties.” Section 6(5) of the Act retrospectively applies this immunity indefinitely to arrests and detentions made by the armed forces or civil armed forces before the Protection of Pakistan (amendment) Ordinance, 2014, came into force. This provision of the PPA violates Pakistan’s obligations under international law, including under ICCPR Article 2(3), to investigate allegations of human rights violations, to prosecute those responsible for certain such violations, as well as to ensure victims’ rights to effective remedy including truth, justice and reparation. Amendments to the Army Act, first made through an Ordinance in February and later enacted as law in November 2015, also provide all those associated with military courts complete indemnity from prosecution for actions taken in “good faith” and gives military courts broad powers to take measures such as like holding in camera proceedings and keeping the identities of individuals associated with the cases secret, “for the protection of witnesses, President, members, prosecutors, defending officers and other persons concerned in court proceedings”. Even where legal immunities are not a bar to prosecution under Pakistan law, harassment of witnesses, non-implementation of court orders, and incompetent and partial investigations result in perpetuating the crisis of impunity in cases of human rights violations,	visit report that clear rules and dedicated institutions should be created to ensure the oversight and accountability of law enforcement and intelligence agencies.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	particularly enforced disappearances, where the security agencies are the alleged perpetrators. UNPO: We are unaware of any positive development regarding ensuring accountability of law enforcement and intelligence agencies. On the contrary, the Protection of Pakistan Act (PPA) is a drawback to the oversight of law enforcement agencies. Summed to all aforementioned grievances of this act, the following drawbacks can be observed: (a) The Act provides for the review in cases of death or grievous hurt by law enforcement agents, but such review should be done by “an internal inquiry committee constituted by the concerned law enforcement agency” (PPA, 3(2)(a)). We are of the opinion that an internal inquiry committee may lack impartiality and necessary willingness to effectively investigate and punish cases of abuse of power. It does not equate to, and rather hampers, appropriate investigation by civil and impartial committees. (b) PPA establishes that “no member of the police, armed forces or civil armed forces [...] shall be liable to	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	any action for the acts done in good faith during the performance of their duties” (PPA, 20). We believe, particularly in light of the growing number of human rights violations in Pakistan, that this provision can be used to avoid liability of law enforcement agents, with grave consequences to the investigation, punishment and non-recurrence of cases of enforced disappearances. The Pakistani Senate’s Committee of the Whole recalled in December 2015 the importance of passing a piece of legislation to appropriately subject enforcement agencies to law, oversight and control. Other: Although some law makers have tried to introduce legislation to regulate the country’s premier intelligence agency i.e, Inter-Services Intelligence but so far the bill could not be tabled. On the other hand, as concerned many other law enforcement and intelligence agencies such as Police, Federal Investigation Agency (FIA) etc, no known step has been taken to improve the failed oversight and accountability mechanism. Voice for Baloch Missing Persons Officially secret agencies are under the control of the Ministry of Interior, but it was echoed on assembly floor that these are defiant to the ministry. During the assembly process which always is covered by media and entire world witnessed these passed	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	remarks that agencies do not follow instruction or order of this house. Once the Chief Justice of Supreme Court during a hearing inquired, the agencies controlled by which departments, so he was informed that these are not controlled by any department, than the honourable judge remarked, “How this country is being run?” As similar, agencies personnel do not comply with provincial government authorities, particularly the Balochistan government’s authorities are totally helpless in front of agencies. What is described in paragraph 76 is still happening. Other: In January 2016, the Committee of the Whole Senate asked the Government to adopt a bill relating to the functions, powers and regulation of the Inter-Services Intelligence (ISI). It said that in the case of missing persons, the federal Government formally stated before the Supreme Court on 27 April 2007 that the operations of the intelligence agencies were beyond its control. It suggested that the director general may issue written orders to take into preventive custody any person who in his opinion is acting or has acted in furtherance of a terrorist act or in a manner prejudicial to the security of Pakistan, or has aided or abetted any such act. The bill said that the director general shall fix the period of custody, not exceeding 30 days, in the order of preventive detention of any such person and this period can be extended up to 90 days on special grounds. If a	

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	person is required to be detained for more than 90 days, the ISI chief shall place the matter before a review board set up for the purpose under article 10 of the Constitution, it said. The newly constituted National Commission for Human Rights has been explicitly barred under its establishing statute from inquiring into the practices of intelligence agencies. With respect to complaints of human rights violations pertaining to armed forces the commission's powers are limited to seeking a report from the Government and making recommendations.	
97. (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.	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."	Government: Trainings to the personnel of law enforcement and intelligence agencies on human rights is provided, which includes enforced disappearances. Equality, justice and respect for all members of the community without discrimination are the fundamental principles of all such training programs. Besides, human rights education is part of the training program of all training institutions where Law Enforcement and intelligence officials are trained. Other: According to a news article⁹, a training workshop for trainers from police training	The Working Group welcomes the information provided by the Government that a training workshop for trainers from police training schools and colleges was conducted. It is also pleased to know that human rights education, including on the prohibition of enforced disappearances, is part of the training program of all training institutions

⁹ <http://tribune.com.pk/story/841575/protecting-human-rights-training-of-master-trainers-concludes-in-karachi-police-academy/>

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	schools and colleges was conducted, but AI is not aware of the course material taught or the implementation of learnings after this. AI is also not aware of any training with a particular focus on enforced disappearances being provided to intelligence or law enforcement agencies. UNPO: Despite general recognition of human rights violations by members of law enforcement and intelligence agencies, there is no compulsory training on human rights issues, let alone on enforced disappearance. The Protection of Pakistan Act (PPA, 2014) does not stipulate any safeguard for human rights. The aforementioned Pakistani Senate's "Committee of the Whole" recommended in December 2015 that the "Constitution of Pakistan, Constitutional history and familiarization with the human rights shall be taught in all military, paramilitary and police academies across the country" However, it remains to be seen whether, and how, this recommendation will be put into practice by the government. Other: According to information obtained so far there has not been any particular arrangement to give any training in the field of human rights to law enforcement and intelligence agencies. Other: According to the Pakistan Government's	where law enforcement and intelligence officials are trained. The Working Group emphasizes that it is crucial to ensure that human rights and other appropriate trainings are provided to all law enforcement and intelligence officers. The Working Group recommends that the training on human rights with particular focus on enforced disappearances should be strengthened and compulsory for all members of law enforcement and intelligence agencies.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	submission to the ICCPR in October 2015: “Police and Prison reform have been one of the key priorities of the Government of Pakistan for over a decade. The police is being transformed from Police Force culture to Police Services culture. Intensive trainings and orientation sessions for police personnel, at all levels, are being conducted on regular basis. Prison rules and jail manuals as well as the Police Order 2002 emphasize on using protocols based on human rights standards in treating the arrested, detained and jailed persons. Each province has adapted the Police Order in line with its own respective needs and peculiarities” According to a report by USIP, “most police training schools are in a deplorable state due to a paucity of funds. The instructors are often officials who were removed from field duties for political reasons, and There is some international interest in revitalizing this area. The U.S. Government is supporting the KPP Government in building an additional police academy, which is a positive investment. France is sending experts to conduct training at police academies in Pakistan, and funds from the EU are likely to be geared toward enhancing police training standards. However, based on interviews with Government officials in the United States, France, and the UK, it appears that much more coordination is needed among international donors involved in supporting Pakistan’s law enforcement capacity, as the support currently shows some level of duplication.”	

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
98. In order to assist relatives of disappeared persons,(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.	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	Government: The Government takes note of the recommendation. Other: As far as AI is aware, this recommendation has not been implemented. ICJ and HRCP: The ICJ and HRCP are not aware of any such system for declarations of absence. Committee for Missing Persons: Still there is no specific legal system to deal with this complex issue. The Parliament should take action as soon as possible. The procedure at the civil court is very lengthy. Normally, filing a civil case in this regard takes couples of years. The Government of Pakistan should pass appropriate legislation in this regard. UNPO: We are unaware of any improvement in this regard. We reaffirm our concern that the legal uncertainty caused by cases of enforced disappearance make women particularly vulnerable to violations of other fundamental rights.	It is regrettable that no action has been taken to address the legal uncertainty created by the absence of the disappeared person. The Working Group reiterates its recommendation to introduce a system of declaration of absence as a result of enforced disappearance to minimize the negative impact on the enjoyment of the legitimate rights and freedoms of families of disappeared persons.

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<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
	the main breadwinner.	Other: Absolutely no step has been taken to devise a system of declaration of absence. Voice for Baloch Missing Persons: There is no institution which provides welfare or legal assistance to family members of disappeared persons. Moreover, families of disappeared persons are often halted by personnel of the State institutes from contacting the courts, registering First Information Reports with the police or approaching other judicial bodies. Intentionally, dead bodies of the disappeared persons are not handed over to their families but dumped in deserted areas in Balochistan. The description in paragraph 82 reflects the reality. . Other: The situation remains unchanged. No legal institution has been created. No aid or compensation has been provided to the families of the disappeared persons. Other: No such measures have been taken.	
98. (b) Mechanisms should be established to provide for social allowances or appropriate social and medical	83. The Working Group recommends the establishment of mechanisms providing for social allowances or appropriate social and medical measures for	Government: On the recommendations of CoIoED Monthly Subsistence Allowance is being paid by Pakistan Bait-ul-Mal in deserving cases. The Commission has also managed	The Working Group is concerned that no mechanism for full and prompt reparation, including

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>		
measures for relatives of disappeared persons in relation to the physical, mental, economic and other consequences of the absence of the disappeared.	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.	to ensure grant of family pension to wives of disappeared persons, if he was a government servant. Besides, families of disappeared persons are also provided financial assistance through various social safety-nets. The Federal Government is considering formulation of a comprehensive policy in this regard. Other: No mechanism in order to provide full and prompt reparation, including social and medical assistance to relatives (including women relatives) of disappeared persons has been so far established. ICJ and HRCP: No such social allowances or other assistance is available to victims, including families, of enforced disappearances. Committee for Missing Persons: There is no social welfare scheme or fund for relatives of victim(s) of enforced disappearances in Karachi, Pakistan from the Government of Pakistan or any other authority or person(s). UNPO: We are unaware of any improvement in this regard. We found no information to attest the	social and medical assistance to relatives of disappeared persons has been established. The Working Group believes that a special fund should be arranged to support the relatives of disappeared persons, which should not be limited to financial compensation, and that social allowances or other assistance should be made available to victims, including families, of enforced disappearances. The Working Group regrets the information that family pensions are granted to wives of disappeared persons only if the disappeared person was a government servant. It welcomes though the information that the Federal Government is considering the formulation of a comprehensive

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	effectiveness of the “fund dedicated to women that could be used for this purpose”, as mentioned by the Adviser on Human Rights to the Prime Minister. In light of the number of cases of enforced disappearances in the past years, there is a growing and immediate need for a special fund to support the relatives of disappeared persons, which should not be limited to financial compensation. Other: Absolutely no step has been taken by the Government or Adviser on Human Rights to cater for the financial needs of the families of disappeared persons. Other: There is no evidence of any compensation has been paid to any families. Other: No such measures have been taken.	policy in this regard.
99. With regard to reparation of victims of enforced disappearances. (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,	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	Government: The Government takes note of the recommendation. Other: No such integral reparation program for victims of enforced disappearances has been established.	There is still no integral reparation program for victims of enforced disappearances established. The Working Group reiterates that a program of integral reparation should be set up for all victims

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
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satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition.	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.	ICJ and HRCP: Families of forcibly disappeared persons, who are predominantly young men, continue to face social, psychological and economic hardships with no support from the Government. Courts have ordered compensation for victims in a few rare cases of enforced disappearance; however, the promised compensation is seldom actually delivered to the victims, including families of disappearances. UNPO: We are unaware of any widespread and effective system in place for the reparation of victims of enforced disappearances. In early 2015, the Peshawar High Court decided that the State is liable to pay <i>diyat</i> (blood money) to the legal heirs of the deceased when the murderer is unidentified. This is important insofar as it recognises State responsibility for cases of “dumped bodies” following enforced disappearances, when there are reasons to believe that the victim was under State responsibility (e.g., in internment centres). However, there is no sufficient information to ascertain if this has been an accessible and common means of reparation. Moreover, it does not change the need for a fully comprehensive system of reparation for victims of enforced disappearances. Other:	of enforced disappearances; and that the programme should include not only compensation but also full rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition.

<i>Recommendations</i>	<i>Situation during the visit</i>	<i>Observations: steps taken / current situation</i>	<i>Level of Implementation and observations (to be filled by the Working Group)</i>
<i>A/HRC/22/45/Add.2</i>	<i>A/HRC/22/45/Add.2</i>	Government has not taken any step for reparation or rehabilitation of the victims and their families. Other: Additional Attorney General for Pakistan (AAG) Karim Khan Agha assured the Supreme Court that the Government would compensate all families of missing persons as directed by the Court in October 2015. Appearing before the three-member bench comprising Justice Mian Shakirullah Jan, Justice Jawwad S. Khawaja and Justice Mian Saqib Nisar, he assured that all families of missing persons would be given compensation on monthly basis. He said that the process had commenced with the Government's approval. Justice Shakirullah Jan observed that they would look into the matter whether the court should proceed in the matter or it should be referred to the Commission of Inquiry on Enforced Disappearances.	