

**DENYING THE
UNDENIABLE:
ENFORCED
DISAPPEARANCES
IN PAKISTAN**

**AMNESTY
INTERNATIONAL**



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CONTENTS

SUMMARY AND INTRODUCTION	4
THE POLITICAL CONTEXT	9
THE EXECUTIVE VS. THE COURTS	10
NEW GOVERNMENT, NEW HOPE	12
DENYING THE UNDENIABLE	14
EVIDENCE OF ENFORCED DISAPPEARANCE PROVIDED BY VICTIMS.....	15
MASOOD JANJUA'S CASE	16
ENFORCED DISAPPEARANCES OF CHILDREN	18
FAILURE TO OBEY JUDICIAL DIRECTIONS	20
THE CASE OF DR IMRAN MUNIR.....	20
THE CASE OF HAFIZ ABDUL BASIT	23
CONCEALING THE IDENTITY OF DETAINING AUTHORITIES	24
HIDING THE DETAINED	26
SILENCING VICTIMS OF ENFORCED DISAPPEARANCE.....	28
MISUSE OF CRIMINAL CHARGES	30
FAILURE TO HOLD INTELLIGENCE AGENCIES TO ACCOUNT	32
INSUFFICIENT ACTION BY THE HIGHER JUDICIARY	33
SUFFERING IN LIMBO: RELATIVES OF THE "DISAPPEARED"	34
AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE NEW GOVERNMENT.....	36
APPENDIX 1: Glossary.....	38
APPENDIX 2: Affidavits	39

SUMMARY AND INTRODUCTION

"For us the restoration of the independent judges is a matter of life and death. We have high hopes with the new government to which we keep telling that our loved ones are illegally detained beyond all laws in the custody of [security] agencies. For us relief is only when our loved one is safe and sound standing freed before us. [...] I believe that my husband Masood is held only three kilometres from my home, yet he continues to suffer unknown ill-treatment and we, his wife, his children and his very old parents cannot even see him. They [the new government] must act now to bring them back immediately."

Amina Masood Janjua, 2 July 2008¹

Amina Masood Janjua's husband, Masood Janjua, was apprehended by Pakistani security forces in July 2005, along with another man, Faisal Faraz. The Pakistani government has detained them since then without filing any charges against them, officially acknowledging that they are being held, and in some cases, even denying their detention despite witnesses identifying them in detention. The two men (and even some children) are among hundreds of victims of enforced disappearance in Pakistan, held beyond the reach of the law or any outside monitoring. Their families continue to fear for the lives of their loved ones, aware that torture and other ill-treatment are routine in Pakistani places of detention. Those forced to fear for the fate of the "disappeared" are also victims of Pakistan's plague of enforced disappearances.

In August of 2006, the families of persons subjected to enforced disappearance began to organize and jointly seek legal redress. Amina Masood Janjua and Zainab Khatoon, the mother of Faisal Faraz, founded the “Defence of Human Rights” group. In the same month, they filed a petition in the Supreme Court seeking information about 16 persons they believed had been subjected to enforced disappearance. By December 2006, the group lobbied for information on the fate and disclosure of whereabouts or release of 43 people. Today the group represents 563 disappeared persons. Members of Pakistan’s Baloch and Sindhi groups also began to campaign together against enforced disappearances of those who had been detained as a result of activism for greater rights for their communities.

The hopes of the relatives of the “disappeared” soared when Pakistan’s Supreme Court took up regular hearings of petitions filed on their behalf in 2006. Beginning in December 2005, the Supreme Court had taken action on its own initiative after noting a newspaper article about the enforced disappearance of Masood Janjua and begun to demand answers from the government about his fate and whereabouts and other “disappeared” persons. During Supreme Court hearings after October 2006, some 186 persons were traced from the list of cases of enforced disappearance pending before the Court (by then of 458 cases)² - they were either released or held in a known detention centre.

But these hopes were dashed on 3 November 2007, when Pervez Musharraf, in his role as the Chief of Army Staff, suspended the constitution, imposed a state of emergency, and eventually, unlawfully deposed majority of the judges of Pakistan’s higher Courts. For months, Pakistan’s higher courts had sought to curb some of the excesses of President Musharraf’s government, many of them justified in the name of the US-led “war on terror”. The courts challenged President Musharraf’s administration on a variety of grounds, ranging from his eligibility to contest presidential election while being the Chief of Army Staff to allegations of government corruption and widespread accusations of government human rights abuses.

The timing of the proclamation of emergency and of the dismissal of judges of the higher judiciary coincided with the increasingly insistent demands of the Supreme Court to call high officials of the intelligence agencies to testify. While it had earlier warned government officials against unlawfully concealing the whereabouts of victims of enforced disappearance, by October 2007 the Supreme Court, led by Chief Justice Iftikhar Chaudhry, announced that they would summon the heads of the intelligence agencies to explain their role in forcibly “disappearing” hundreds of people, and would initiate legal action against those responsible for enforced disappearance.

President Musharraf repeatedly justified his actions by condemning the judiciary’s attempts to impose the rule of law on Pakistan’s security agencies, and, by extension, hamper the US-led “war on terror”.

The Supreme Court heard its last case on enforced disappearances on 1 November 2007. Since then petitions filed on behalf of the “disappeared” pending before the Supreme Court have not been heard, and the process toward redress has come to a standstill. The relatives of the disappeared perceived this as a devastating blow as they rightly saw the momentum for redress being lost. Thus the fate of Pakistan’s “disappeared” has become inextricably linked with that of Pakistan’s deposed judges.

Pakistani voters repudiated President Musharraf's policies in the momentous parliamentary elections of February 2008, when they voted in representatives of parties opposed to President Musharraf. The new governing coalition has pledged itself to improving Pakistan's human rights records and to resolving the ongoing crisis of enforced disappearances. The parties also promised to uphold the independence of the judiciary, spurred by a popular and vocal movement by Pakistan's lawyers. Amnesty International welcomes early commitments by key political parties to reinstate the deposed judges who had begun, and could continue, to play a key role in providing redress to victims of enforced disappearance.

Despite the promises by the new government, not much has improved for the "disappeared" or their families—a frustration eloquently voiced by Amina Masood Janjua. As of the time of this report's publication, the coalition members had failed to agree on when and how to bring back the deposed justices, a disagreement that has already caused a significant rift among the top two coalition partners. It seems that the outcome of the struggle over the fate of the deposed judges will help determine the fate of the "disappeared".

This report relies on official records of Supreme Court proceedings, testimonies of persons who were traced after enforced disappearance and communications with their lawyers, to show the various ways in which government officials have attempted to deny the undeniable before the country's highest court. Amnesty International joins the relatives of those subject to enforced disappearance to call on the new government to act now to end this grave human rights violation.

Specifically, Amnesty International urges Pakistan's new government to:

- immediately reveal the fate and whereabouts of all persons who have been subjected to enforced disappearance;
- re-instate those judges who were deposed during the emergency and ensure that they can provide redress to the victims of enforced disappearance, without interference by the executive;
- ensure that government officials, including intelligence agencies, found responsible for committing enforced disappearances are brought under adequate oversight and made accountable for their actions.

A more comprehensive set of recommendations appears at the end of this report.

A NOTE ON NUMBERS

Enforced disappearances are characterized by an official shroud of secrecy. As a result, it is difficult to determine how many people the Pakistani government has subjected to enforced disappearance. Many people remain silent about their relatives' disappearance for fear of repercussions for the "disappeared" or themselves. Their cases neither reach the courts nor attract media attention.³ Accurately ascertaining the number of disappeared persons is also hampered by the fact that some people declared to have been released from among those whose cases were brought to the attention of the Supreme Court, were not in fact released while others were subjected to renewed enforced disappearance.

The Pakistani government extended the use of enforced disappearances, initially practiced mostly in the context of the US-led "war on terror", to activists involved in pushing for greater ethnic or regional rights, including Baloch and Sindhis. However, once they were in the custody of security and intelligence agencies, also received the same treatment. (See the case of Saleem Baloch.) The exact number of Balochs and Sindhis disappeared is not known. The HRCP has estimated that at least 600 persons have disappeared in Balochistan alone. Baloch groups put the number in the thousands, and the Pakistan Peoples Party Chief Minister for Balochistan, Nawab Aslam Raissani said that the Governor of Balochistan had been informed of 900 Baloch victims of enforced disappearance.

At the time of writing, the petitions of hundreds individuals subjected to enforced disappearance remain pending in the Supreme Court of Pakistan. The Defence of Human Rights added to its list of 43 disappeared persons first an additional list of 60 persons, then another one of 158 more persons. When in February 2007 the non-governmental Human Rights Commission of Pakistan (HRCP) filed its petition relating to persons subjected to enforced disappearance in the Supreme Court, it appended its own list of 148 missing persons; of these 104 came from Balochistan, 22 from Sindh, 10 each from Punjab and North West Frontier Province (NWFP), one was a US national and one came from Malaysia. This list grew to 198 persons in mid-2007. Subjecting persons to enforced disappearance has not come to an end, despite judicial scrutiny in 2007. The Defence of Human Rights informed Amnesty International in July 2008 that it had noted an additional 60 cases of enforced disappearance since the imposition of the emergency in November 2007.

ENFORCED DISAPPEARANCES VIOLATE INTERNATIONAL AND PAKISTANI LAW

Enforced disappearance is defined in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance which the UN General Assembly adopted in December 2006, as:

... the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

The Convention will come into force when 20 states have ratified it. At time of writing, 72 states have signed and four have ratified. In May 2008, Pakistan stated that it would accede to it. However, even without ratifying or acceding to the Convention, Pakistan is still bound by the prohibition of enforced disappearances which is a rule of customary international law. Pakistan should follow the standards set out in the 1992 UN General Assembly's Declaration on the Protection of All Persons from Enforced Disappearances, which, although a non-binding standard, reflects the consensus of the international community against this type of human rights violation and provides authoritative guidance as to the safeguards that must be implemented in order to prevent it.

Beyond being human rights violations as such, acts of enforced disappearances violate a range of other human rights, including freedom from arbitrary detention, the right to recognition as a person before the law, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.

Acts of enforced disappearance also violate several provisions of Pakistan's Constitution, including freedom from arbitrary detention, the right to judicial overview of detentions and to human dignity, and the prohibition of torture, as well as constituting criminal offences.

THE POLITICAL CONTEXT

Since Pakistan joined the US-led “war on terror” in late 2001, the Pakistani government has used the rhetoric of fighting “terrorism” to attacks its internal critics and justify its violations of human rights. Hundreds of people, both Pakistani and foreign nationals, alleged by the Pakistani government to be linked to terrorist activities have been arbitrarily detained in Pakistan, denied access to lawyers, families and courts, and held in undeclared places of detention run by Pakistan’s intelligence agencies, with the government concealing their fate or whereabouts. The Pakistani government took advantage of the more permissive attitude toward human rights violations by the international coalition fighting the “war on terror” to subject political opponents of the government, including members of Pakistan’s Sindhi and Baloch nationalities agitating for greater rights for their communities and for access to provincial resources to the same treatment. Placed outside the protection of law, all of these individuals were victims of enforced disappearance.

While Pakistan bears full responsibility for such human rights violations, its partners in the coalition pursuing the “war on terror” must bear their share of responsibility for assisting or condoning Pakistan’s human rights violations. Pakistan’s foreign allies, chief among them the USA and the United Kingdom, encouraged, condoned or acquiesced in grave violations of human rights and failed to use their influence to end them. Several individuals who survived enforced disappearance in Pakistan and were released from custody have subsequently stated that they were visited and interrogated by intelligence agents of other countries who cannot reasonably claim not to have known that these persons were arbitrarily detained, in secret places of detention and without access to lawyers or family and that most were subjected to torture or other ill-treatment.

Despite undeniable evidence of “disappearances”, the government of Pervez Musharraf has consistently denied subjecting anyone to enforced disappearance or knowing anything of their fate or whereabouts. In September 2006 and December 2006, after Amnesty International released reports⁴ documenting dozens of cases of enforced disappearances, President Musharraf responded by stating: “I don’t even want to reply to that, it is nonsense, I don’t believe it, I don’t trust it”. He added that 700 people had been detained but that all were accounted for.⁵ In March 2007, President Musharraf asserted that the allegation that hundreds of persons had disappeared in the custody of intelligence agencies had “absolutely no basis” but that in fact these individuals had been recruited or lured by “jihadi groups’ to fight for their “misplaced causes”: “I am deadly sure that the missing persons are in the control of militant organizations”, he said.⁶

Amnesty International takes no position on the guilt or innocence of those alleged to have taken part in attacks characterized as acts of terrorism. However, everyone must be able to enjoy the full range of human rights guaranteed under national and international law. Amnesty International denounces indiscriminate attacks and attacks targeting civilians carried out by armed groups, including the Taleban and al-Qai’da, and fully recognizes the right and duty of the Pakistani authorities to prevent and punish crimes, including violent crimes such as acts of terrorism, and to bring to justice those responsible for committing such crimes. However, by subjecting persons suspected of terrorist activities or links with

terrorist groups to enforced disappearance, Pakistan has not only gravely violated their human rights but also failed in its duty to charge and try such individuals and to punish them if found guilty in a fair trial.



Amina Masood Janjua holding the photo of her husband, Masood Janjua, in September 2006. He was apprehended in July 2005.
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THE EXECUTIVE VS. THE COURTS

Over the course of 2006 and 2007, Pakistan's judiciary attempted to rein in the administration's excesses in a number of different areas, including allegations of corruption, violating Pakistan's constitution, and serious human rights abuses such as enforced disappearances. In response, President Musharraf's government sought to weaken and hamper the judiciary's efforts through a variety of means, which in turn prompted a strong response by Pakistan's civil society and in particular the country's legal community.

In March 2007, President Musharraf suspended Chief Justice Iftikhar Chaudhry for alleged misconduct. This step provoked country-wide protests from lawyers and civil society to which the executive responded with mass arrests. In July, Chaudhry was reinstated by the Supreme Court. On 3 November 2007, days before the Supreme Court to rule on whether President Musharraf was eligible to stand for re-election, while still holding the Office of Chief of Army Staff, he proclaimed a state of emergency, suspended the Constitution of Pakistan and

replaced it with the Provisional Constitution Order (PCO). Around 60 judges of the Supreme Court and the provincial high courts, including Chief Justice Chaudhry, were either not invited to take the new oath of office on the PCO as required or refused to take it. They were removed from office.⁷ On 22 November, selected judges of the Supreme Court sworn in under the PCO confirmed Pervez Musharraf's eligibility as president. On 29 November, he was sworn in as civilian president. In mid-December, President Musharraf lifted the emergency and restored the constitution that had been amended to incorporate changes introduced in the emergency period.

The crackdown on the judiciary in November 2007 in anticipation of its negative decision regarding Musharraf's eligibility for the president's office was shrouded in rhetoric about the judiciary's interference in the government's fight against terrorism. Among the 13 reasons given for the Proclamation of Emergency on 3 November 2007, eight declare that the state's ability to deal with: "*visible ascendancy in the activities of extremists and incidents of terrorist attacks ... posing a grave threat to the life and property of citizens of Pakistan [had been severely impaired due to] some members of the judiciary ... working at cross purposes with the executive and legislature in the fight against terrorism ..., thereby weakening the government and the nation's resolve and diluting the efficacy of its actions to control this menace*".

The emergency proclamation stated that as a result of such judicial interference, "*some hardcore militants, extremists, terrorists and suicide bombers, who were arrested and being investigated, were ordered to be released. The persons so released have subsequently been involved in heinous terrorist activities, resulting in loss of human life and property. Militants across the country have, thus, been encouraged while law-enforcement agencies subdued.*"

Referring to court hearings to which state officials were summoned, the Proclamation states: "*... the humiliating treatment meted to government officials by some members of the judiciary on a routine basis during court proceedings has demoralized the civil bureaucracy and senior government functionaries, to avoid being harassed, prefer inaction.*"

Allegations of undue judicial interference in the executive's anti-terrorist agenda were repeated by President Musharraf in his address to the nation on 3 November 2007, when he expressed regret that senior government officials were forced to visit the Supreme Court almost daily and that their reputation was being "dragged in the dirt". He continued: "Over 100 *suo motu* cases [on the Court's own initiative] are being heard by the Supreme Court, besides thousands of applications against the executive were being entertained due to which the government's system has collapsed totally". Senior government officials, he said, were not performing their duties due to fear and a state of uncertainty.⁸ When sworn in as a civilian president on 29 November 2007, Musharraf reiterated that obstacles had been created by "some elements of the judiciary" to the government's anti-terrorism drive.

This official justification for the imposition of emergency rule has been rejected by many commentators in Pakistan who have pointed out that the higher judiciary acted in accordance with its mandate to uphold the rule of law. Justice Chaudhry himself rejected the allegation that the Supreme Court had done anything wrong in releasing people whom the government had accused in some way of involvement with acts of terrorism: "*People were produced in the court. If there was no evidence against them, they had to be released. It is an internationally*

accepted principle of jurisprudence".⁹

NEW GOVERNMENT, NEW HOPE

The pre-election period under a caretaker government, in office since mid-November 2007, was marked by a series of suicide rule and other attacks on civilians, including the assassination of the Pakistan People's Party (PPP) chairperson and former Prime Minister Benazir Bhutto on 27 December 2007. These attacks did not end once elections took place on 18 February 2008. In addition, unrest has ensued as political parties have continued to be at cross purposes about the reinstatement of the deposed judges. Such reinstatement could have profound political implications. The restored judges are widely expected to rule against the legitimacy of President Musharraf's eligibility to hold the presidency but the two key political parties of the coalition government are yet to reach a consensus about his future in power. The reinstated judges may also reverse legal changes introduced during the emergency period and reverse the withdrawal of cases against politicians and others under the National Reconciliation Ordinance (NRO) promulgated by President Musharraf weeks before imposing emergency. The deposed Chief Justice had issued a stay order against NRO, on petitions filed challenging its legality. The NRO has facilitated withdrawal of several cases including "corruption charges" against several politicians. Asif Ali Zardari current head of the PPP and some of Musharraf's aides in the previous government are considered to be the main beneficiaries of the NRO.¹⁰

After general elections on 18 February 2008, a coalition government comprising the Pakistan People's Party (PPP) headed by Benazir Bhutto's widower Asif Ali Zardari,¹¹ the Pakistan Muslim League-N (PML-N) led by former Prime Minister Nawaz Sharif,¹² the Pashtun nationalist Awami National Party (ANP)¹³ and the Jamiat Ulema-i-Islam (JUI) was sworn in on 31 March 2008.¹⁴

Officials in the new government have made some commitments with regard to persons subjected to enforced disappearance. On 17 April 2008, Prime Minister Yusuf Raza Gilani assured the National Assembly that he would investigate "reports of political victimization". Adviser to the Prime Minister on Interior, Rehman Malik, stated that details about missing persons, alleged to have been detained by intelligence agencies under the previous government, were being collected.¹⁵ Similarly, Law Minister Farooq Naik stated that the government was collecting details of disappeared persons and pledged that all would be released.¹⁶ PPP legislator Nawab Aslam Raisani, who was to become Chief Minister of Balochistan province, declared that tracing disappeared persons would be a Balochistan government priority¹⁷ without however spelling out how this will be achieved. He called on the federal government to release Baloch political prisoners and to trace Baloch victims of enforced disappearance, of whom, he said, a report received by the governor of Balochistan, indicated, there were around 900.¹⁸

In early May 2008, the new government announced the establishment of a commission to trace disappeared persons as part of efforts to normalize the situation in Balochistan.¹⁹ To date, no announcement has been made about the commission's composition, powers or working methods. Also in May 2008, the Interior Ministry set up another committee to investigate the fate of all persons subjected to enforced disappearance; besides

representatives of the ministry, it consists of parliamentarians and representatives of the families of the disappeared. By early July 2008 it had met twice; the Defence of Human Rights informed Amnesty International that it was not aware of the committee's precise terms of reference.

However, in international fora representatives of the new Government of Pakistan have evaded questions relating to the issue of enforced disappearances. At the meeting of the Working Group on the Universal Periodic Review of the Human Rights Council, on 8 May 2008, Pakistan's representative asserted that: "*security forces were trained in international human rights law and necessary precautions were taken to avoid collateral damage and civilian casualties as well as access to prisons and detainees was granted to the International Committee of the Red Cross. It will, however, investigate and remedy any alleged human rights violations in the pursuit of the war on terrorism.*"²⁰ Questioned by several states on Pakistan's commitments to investigate arbitrary arrests, enforced disappearances, extrajudicial killings and torture perpetrated by security forces,²¹ to punish those responsible for arbitrary detention and enforced disappearance,²² end impunity of security forces for human rights violations²³ and ensure security of human rights defenders and witnesses of human rights violations,²⁴ Pakistan's representatives declared that its security forces, trained in international humanitarian law, were fully accountable. Its members were tried and convicted if they committed excesses.²⁵

On 9 March 2008, shortly after their election victory, PPP and PML-N leaders issued the "Murree Declaration", in which they committed their parties to jointly take measures to reinstate the unlawfully deposed judges within 30 days of assuming office. On being elected by the National Assembly as new prime minister on 23 March 2008, Yusuf Raza Gilani's first act was to order the release of all Superior Judiciary judges who were still under unlawful house arrest after their dismissal on 3 November 2007. However, the deadline set in the Murree Declaration and a further deadline on 12 May passed without the parties reaching agreement on the modalities of reinstatement. PML members of the cabinet resigned in protest on 13 May but Nawaz Sharif pledged his party's continued support for the PPP-led coalition government. In late May 2008, the PPP presented a comprehensive set of constitutional amendments that include ensuring the independence of the judiciary and providing steps for the judges' reinstatement. However, the HRCP described the proposal as: "*totally unconvincing, both in its intent and substance*", declared the sections relating to the reinstatement of judges unacceptable and expressed its concern that the proposals would deepen the ongoing judicial crisis.²⁶

Differences over how the independence of the judiciary can be ensured and the judges reinstated have persisted and continue to weaken the coalition government. The lawyer's movement, consisting of members of the country's Bar associations who are lobbying for the reinstatement of the deposed judges, which consolidated during the government two-phased crackdown on the judiciary in 2007, began a new phase of agitation for the reinstatement of judges in mid-June; several Bar associations have already rejected the comprehensive constitutional amendment.

DENYING THE UNDENIABLE

Official Supreme Court transcripts²⁷ obtained by Amnesty International, together with affidavits from people released following periods of enforced disappearance and communications from lawyers representing persons subjected to enforced disappearance show that government officials, particularly from the country's security forces, when called before the Supreme Court of Pakistan and the provincial high courts, resorted to a variety of means to avoid enforced disappearances being exposed. These tactics included denying detention takes place and denying all knowledge of the fate and whereabouts of disappeared persons; refusing to obey judicial directions; concealing the identity of the detaining authorities for example, by transferring the disappeared to other secret locations, threatening harm or re-disappearance and levelling spurious criminal charges to conceal enforced disappearances. But the sources cited in this report point to the identity of the detaining authorities and to several locations where people are believed to be secretly detained. A dangerous lack of accountability for acts committed by the intelligence services is also highlighted in these sources, together with evidence of pressure put on the judiciary not to use all its powers to provide redress.



Protests against enforced disappearances in front of Supreme Court of Pakistan. © Private

EVIDENCE OF ENFORCED DISAPPEARANCE PROVIDED BY VICTIMS

Dozens of people subjected to enforced disappearance, including over one hundred persons whose petitions were pending before the Supreme Court, were released as the cases were heard by the Court. Of those who were released, some were set free on the explicit orders of the higher judiciary while others were simply let go by the detaining authorities. Others were found to be in official places of detention charged with a criminal offence. Some of those who were released reported seeing other persons in detention whose relatives had been unable to ascertain their whereabouts. Dozens of people unlawfully transferred to other countries' custody, mostly the USA, have also after their release consistently reported being held and tortured or subjected to other ill-treatment while suffering enforced disappearance in the custody of Pakistan's intelligence agencies. All of these cases firmly establish that the persons concerned were detained incommunicado without charge or trial in undisclosed locations, and that state officials denying their detention or indeed any knowledge of their fate or whereabouts, concealed or helped to conceal them.

While some persons were subjected to enforced disappearances in unknown circumstances – where even the location of arrest remained unclear²⁸ in several instances, eye-witnesses have testified to government agents abducting persons whose custody the state later denied.

Syed Nasir Ali Shah was picked up on 14 April 2007 in Akora Khattak, district Nowshera. Malik Ihsanullah,²⁹ a scrap dealer at Havai Camp, Akora Khattak, district Nowshera, stated in a sworn affidavit that he was sitting in front of his shop at 1.30pm when he saw men in two vehicles take Syed Nasir Ali Shah away in the direction of Peshawar. His case is one among hundreds of cases of enforced disappearances submitted to the Supreme Court by the Defence of Human Rights group. His fate and whereabouts remain known.

The affidavits submitted to the Supreme Court in December 2006 stated that persons subjected to enforced disappearance had, during their frequent transfers from one secret place of detention to another, sighted 38 other named victims of enforced disappearance. The evidence grew as more people were released and more affidavits were filed.

Abdul Basit,³⁰ a resident of Lahore, witnessed a number of people being secretly detained in Lahore. In a sworn affidavit on 3 September 2007 he stated that: he had been “*picked up by police and plain clothed intelligence agency staff on 21 April 2007 at 10am near the sessions courts [in Lahore]. I was kept in Inter Services Intelligence (ISI) custody in a secret detention centre near Lahore zoo. After two months I was shifted to Kharian for one and a half months, then again taken back to Lahore and was released after 14 days on 8 August 2007. I am the witness of many secretly detained persons kept in Lahore cell near the zoo. Abdul Kareem Mehmood Baluchi was also in that detention centre with severe arthritis and many other ailments. Maulvi Iftikhar of Lakki Marwat was also suffering ... [a] temperature. I also came to meet Khayyal Jamal of Darra Adam Khal, Qari Muhammad Asif of Sahiwal, Abdul Khaliq of Kabeerwala, Aasif of Kabeerwala and Tariq picked up from Lakshmi Chowk Lahore...*”

There are many accounts from witnesses who, while being detained themselves, have sighted other victims of enforced disappearance.

In the North West Frontier Province, Nisar Khan³¹ testified that he, and two other men,

Khayal Jamal³² and Suqlain³³, had been stopped at Badaber Scheme Chowk while travelling to Peshawar on 23 February 2007, by uniformed men.

“They forced us out of the car and after blindfolding us put us in a pick up truck. They took us to an unknown location, where we were interrogated. For the first 24 days we three were in one cell. After 24 days, on 17 March, we were separated and transferred to another jail ... On 14 May, 2007, I and Saqlain were released at 9.30pm. However, Khayal Jamal is still in detention.”

In some cases several affidavits filed by different persons support each other in that they point to the enforced disappearance of the same named person whose whereabouts the state continues to deny and whose whereabouts remain unknown.

Siddique Akbar was apprehended in Peerwala, district Multan, Punjab province, on 24 March 2004 and remains subjected to enforced disappearance. Ghulam Nazik³⁴ testified that several men on 24 March 2004 “captured Siddique and forced him into a car”. He later saw that: “Siddique Akbar and Zafar were put in an Elite Force [a special unit of police force]³⁵ vehicle. At this point, Siddique’s arms were twisted at the back.” The same events are reported in an affidavit by Mohammad Bilal Tahir³⁶ and Siddique Akbar’s brother, Mohammad Safdar³⁷ who was apprehended as well.

Mohammad Safdar reports being forced into an Elite Force vehicle and taken to Lahore where he was presented to an officer whom he characterized as a colonel and questioned about Siddique Akbar; in the evening of the same day he was blindfolded once more and taken to Rawalpindi and held in what other detainees told him was the “Federal Investigation Unit’s headquarters, 10 Core Rawalpindi”. Here he met his brother Siddique Akbar who was handcuffed in the presence of the Colonel. Mohammad Safdar in his affidavit mentions that at that point, “my brother’s handcuffs were opened and we embraced each other”; this is seen by Pakistanis as a frightening indication of a final farewell. He was then left near some transport to take him back to Multan. The affidavit of Mohammad Tariq³⁸ also testified that he saw in his place of detention (not identified) amongst several other persons, “Siddique Akbar from Multan”.

MASOOD JANJUA’S CASE

Several affidavits have also pointed to the fate and whereabouts of **Masood Janjua**, a 45-year-old businessman from Rawalpindi who was apprehended on 30 July 2005 while travelling with his friend **Faisal Faraz**, a 25-year-old engineer from Lahore, on a bus journey from Rawalpindi to Peshawar. When neither a police complaint nor informal approaches yielded any insight into their fate and whereabouts, habeas corpus petitions were filed and in August 2006 the Supreme Court was petitioned. In December 2005, the Chief Justice of Pakistan took *suo motu* notice of a newspaper report of Janjua’s enforced disappearance. In May 2007, his wife, Amina Masood Janjua, filed an affidavit in the Supreme Court stating that five released persons had reported seeing her husband in different places of detention run by the ISI, including within a workshop called by the army which runs it, the “501 Workshop”³⁹ in Rawalpindi cantonment. On several occasions in 2007, the state denied before the Supreme Court that it held Masood Janjua and Faisal Faraz and denied all knowledge of their whereabouts.



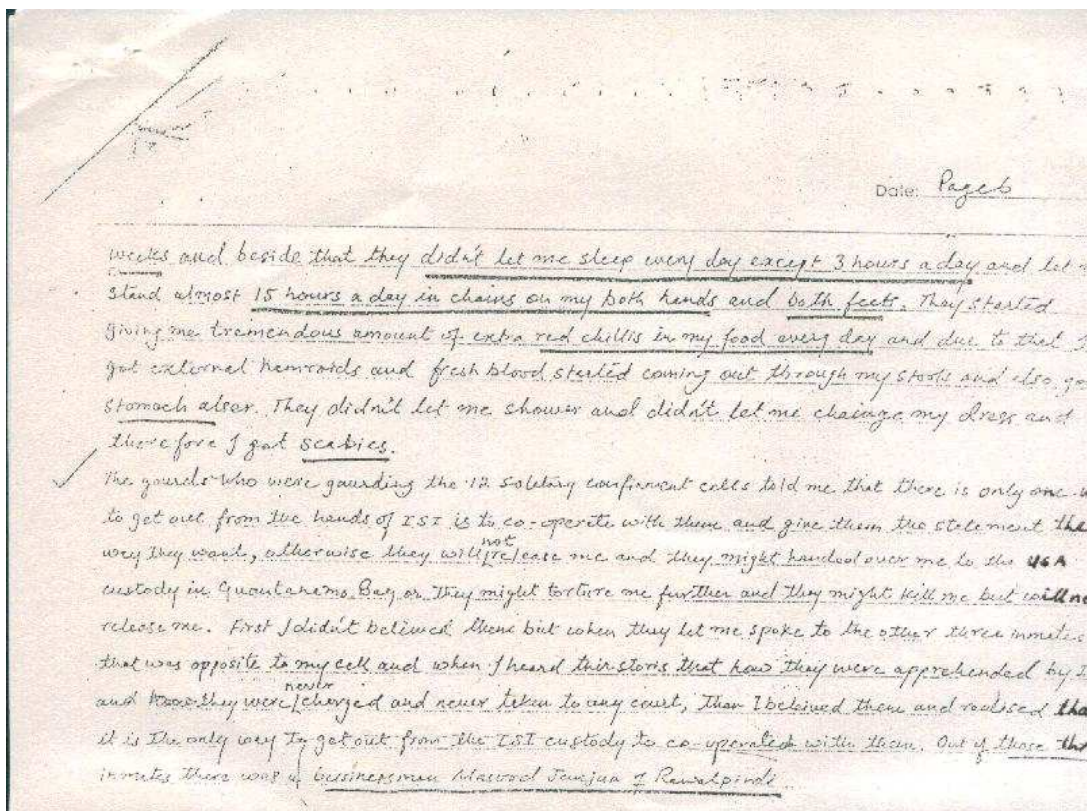
Relatives of Atiq-ur-Rehman (left) and Faisal Faraz (right), protesting in front of Supreme Court in Islamabad. in September 2006.
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A resolution of Masood Janjua's enforced disappearance appeared well within reach but for the dismissal of judges of the Supreme Court on 3 November 2007: The strongest evidence for Masood Janjua's detention and whereabouts come from **Dr Imran Munir**, whose hand-written diary was in August 2007 brought on the record of the Supreme Court. On 11 October, the Attorney General stated before the Supreme Court that he had seen Dr Munir's diary and that he would consult "concerned authorities", presumably meaning those implicated in holding Masood Janjua. When army authorities then detaining Dr Munir delayed bringing him before the Supreme Court and he was then hospitalized, his statement was not taken note of before the Supreme Court judges were deposed. (For related details see case of Dr Munir below.)

Dr Munir in his hand-written note, available to Amnesty International, after describing the ill-treatment he suffered, states:

"The guards who were guarding the 12 solitary confinement cells told me that there was only one [way] to get out from the hands of ISI, ... [namely] to co-operate with them and give them the statements they want, otherwise they will not release me and they might hand [...] me over to the US custody at Guantanamo Bay or they might torture me further or they might kill me but will not release me. First I didn't believe them but when I spoke to the other three inmates that [were] opposite to my cell and when I heard their stories that they were apprehended by ISI and were never charged and never taken to court, then I believed them and realized that it is the only way to get out from ISI custody is to co-operate with them. Out of those three inmates there was a businessmen Masood Janjua of Rawalpindi."

Please see the original of Dr Munir's note enclosed below.



ENFORCED DISAPPEARANCES OF CHILDREN

Both eye witness accounts of persons released after enforced disappearance and their own statements have established that children have been subjected to enforced disappearance along with their relatives and that intelligence agents attempted to make them testify against their relatives.

Abdullah, a 10-year-old boy was arrested on 16 May 2006 along with his father, **Mufti Munir Shakir**, at Karachi airport. After his release, Abdullah told the media that he was interrogated and ill-treated to make him confess that his father had links with al-Qa'ida. He refused to do so and was held for 15 days in a separate cell; he initially refused offers to be released as he did not want to leave without his father. Eventually he was released after 58 days of enforced disappearance and dropped off in Peshawar after being given assurances that his father would be freed within 15 days. Mufti Munir Shakir was released on 21 August 2007.

Asad Usman, a nine-year-old boy was set free on 27 April 2007, after the Supreme Court ordered his release. The chairperson of the non-governmental Human Rights Commission of Pakistan, Asma Jahangir informed the Court that the boy had been picked up by the

Balochistan Frontier Constabulary and that federal Minister Zobiaida Jalal was on the record as having said that he would be released after his wanted elder brother surrendered.⁴⁰ He had been held in held in Tump or Mand, Turbat, Baloshistan. The Supreme Court order stated that he be released “if not required in any other case” without paying heed to the child’s illegal detention and enforced disappearance.

Arresting and detaining relatives of persons wanted by the authorities solely as leverage on these persons to make them hand themselves in, or in order to coerce the relatives to implicate such persons clearly amounts to arbitrary detention, which is strictly prohibited under international law. Such detainees must immediately and unconditionally be released. The effect on such detention and treatment on children, in particular young ones, may be far more serious. Article 37(b) of the UN Convention on the Rights of the Child, to which Pakistan is a state party, prohibits the unlawful or arbitrary deprivation of liberty of children absolutely. The arbitrary detention of children, and in particular young children, may in itself amount to cruel, inhuman or degrading treatment, which is prohibited absolutely under Article 37(a) of the Convention and under customary international law. Any physical or mental abuse of detained children is prohibited absolutely.

In addition the Juvenile Justice System Ordinance, passed by Pakistan in 2000, in Section 10 regulates arrest and detention of children, including the duty to inform the guardian of an arrested child as soon as possible after arrest.

THE RIGHT OF DETAINEES TO JUDICIAL REVIEW (HABEAS CORPUS)

Government that detain a person in secret, incommunicado and refuse to acknowledge the fact that the person is in fact detained, violate a number of international human rights, among them the rights to be brought before a court and to be able to challenge the legality of one's detention (often protected under the petition for a writ of habeas corpus). These rights are crucial to the very concept of the rule of law and the prohibition of arbitrary detention, as well as a key safeguard against torture and other ill-treatment. The right to judicial review generally, and to habeas corpus specifically, are peremptory norms of customary international law, that are binding on all states, and not subject to derogations even in times of emergency.

These rights are also generally, though not fully, protected in Pakistani law. Articles 9 and 10 of the Constitution of Pakistan provide for freedom from arbitrary detention with an exception regarding "preventive detention" which is not compatible with international law and standards as described above. It provides the right to habeas corpus in Article 199, and in Article 184(3) empowers the Supreme Court to take up any matter it considers of public importance with regard to the enforcement of human rights. Provincial high courts have under Article 199(1)(c) the power to issue orders to provincial authorities with regard to the enforcement of fundamental rights upon receipt of a complaint from any person; under Article 199(2) this right may not be curbed.

FAILURE TO OBEY JUDICIAL DIRECTIONS

The refusal of the state to meaningfully and truthfully respond to Supreme Court directions has stalled the tracing of persons subjected to enforced disappearance in Pakistan. It has kept the families of the disappeared in a state of desperation as the only avenue for relief and redress has been closed. It also inflicted more wide-ranging damage by allowing its intelligence agencies to commit such grave human rights violations and collaborating in their cover-up, the state has undermined citizens' trust in the rule of law and the protection of human rights guaranteed in the Constitution of Pakistan. By not holding any agency or individual to account, the state has also sent a dangerous signal that it condones impunity for committing, condoning or concealing such human rights violations.

THE CASE OF DR IMRAN MUNIR

When state resistance to scrutiny of cases of enforced disappearance persisted, the Supreme Court from mid-2007 expressed its impatience ever more clearly and said it would hold members of the intelligence agencies to account for enforced disappearances. One of the key cases in this sharpening confrontation between the executive and the Supreme Court was that of **Dr Imran Munir**.

The whereabouts of Dr Imran Munir, a Malaysian citizen of Pakistani origin following his arrest in July 2006 remained unknown until the Supreme Court was informed in its hearing on 4 May 2007 that Dr. Munir was facing a court martial on charges of “spying against Pakistan”, charges which have not been explained publicly.

In a hearing on 6 June 2007, the Court ordered that Munir’s counsel be given access to him to provide necessary legal advice.⁴¹ When told of his deteriorating health, the Supreme Court directed the Deputy Attorney General to ensure adequate medical care. However, on 20 June, the Court was informed that Munir had been sentenced to eight years’ imprisonment and was held in District Jail Jhelum. The Court observed:

“it is quite amazing ... as to how he has been convicted and sentenced without having proper legal advice regarding which a direction was issued by this court in an explicit manner on 06-06-07 that Mr. Abdul Majeed Pirzada, ... [his counsel] should have access to see him for doing the needful. It appears that the order of the court has been violated in flagrant manner. Let Secretary Interior and Secretary Defence appear before this court on the next date of hearing and explain as to why contempt of court proceedings may not be initiated against them.”

The Court ordered that the entire record of the proceedings of the court martial be brought before it, if necessary in chamber. The court also directed the DAG to submit the latest medical report of Imran Munir and a report by the superintendent of jail Jhelum to enable it to pass appropriate orders. It also directed that the case be separated from other cases of enforced disappearances.

On 20 August 2007, the Court directed the DAG to bring Dr Munir, by then transferred to the custody of the army at Mangla cantonment to Court. The Court was later on the same day informed by Director General of the National Crisis Management Cell (NCMC), Brig. (rtrd.) Javed Iqbal Cheema that Munir was on his way and would be in court within an hour. As it was already late, the Court then directed that Munir be taken to Adiala Jail, Rawalpindi and be brought to court on the following day.

When on the following day, 21 August 2007, Imran Munir appeared in court⁴² he told the bench that he had on 20 August started his journey at 7am and reached Rawalpindi at around 11am, well in time for the hearing, and been placed in an Federal Investigation Unit (FIU) lock up, that his face had been covered with a cloth when he was brought to court and that he has been handed over to police before being brought into court. He declared that he feared for his life.⁴³

The Court observed that the DAG had misinformed the court about Munir’s whereabouts on the previous day and that the court’s clear instructions to place him in Central jail Adiala had not been carried out. It directed the Director General of the NCMC to submit in writing the names and details of persons to whom he had conveyed court orders before the next date of hearing. It is not presently known by Amnesty International if this order was carried out. The Court ordered the Islamabad Inspector General of Police (IGP) to personally take custody of Dr Munir and to admit him to the Pakistan Institute of Medical Sciences for a two-week treatment and to bring him to court again later to testify in the case of Masood Janjua, whom he had seen in custody while confined at Chaklala, Rawalpindi. In case there was no hearing after two weeks he was to be taken to Adiala Jail. The IGP was also instructed not to hand Dr

Munir over to any intelligence agency and to allow family members to meet him. On 4 September and again on 5 October, Dr Munir's stay in the Pakistan Institute of Medical Sciences in police custody was extended.⁴⁴

In a subsequent hearing on 4 September 2007, the official Supreme Court record notes:

The "Court observed that Aleem Nasir, Hafiz Abdul Basit, Muhammad Tahir who was statedly detained with Hafiz Basit, have been recovered; we have strong reasons to believe that stand taken by the Ministry of the Interior and Ministry of Defence that the missing persons whose cases are before us, are not in the custody of the Agencies, seems to be incorrect and in view of these facts, we solicit assistance of Attorney General for Pakistan to ensure production/release of all other persons, list of which shall be provided by DAG Naheeda Mehboob Elahi after consulting files as well as with the assistance of counsel appearing on behalf of missing persons in Court."

In a hearing on 5 October, the Chief Justice directed the Defence Secretary and the Interior Secretary to question the heads of intelligence agencies as well as provincial authorities about several cases of enforced disappearances pending before the Court and to recover the remaining disappeared persons by the next hearing on 11 October. When told by Interior Secretary Syed Kamal Shah that tracing these persons was in the remit of the provincial authorities,⁴⁵ the Chief Justice reportedly said that:

"Police say [that] these people were not lifted by them and that they are in the custody of federal agencies. If the Defence Secretary says he cannot do anything we will summon heads of intelligence agencies. Uniformed generals of ISI and MI will be standing here and [be] questioned."⁴⁶

He reportedly observed that there was evidence that the missing persons were in the custody of the intelligence agencies and that criminal charges would be brought against those responsible for holding persons in "illegal custody", unless they were released.⁴⁷

On 11 October 2007, the Chief Justice said that the Court was making a last "concession" to the government by "asking it to regularize the custody of the missing persons".⁴⁸ In the same hearing, the Attorney General told the Court again that Masood Janjua was not in the custody of the ISI. He was pointed by the Court to the diary pages submitted by Dr Imran Munir who reportedly sighted him in intelligence agency custody. The Attorney General stated that "he has seen the diary of Imran Munir and if some time is given to him, he will consult the concerned authorities."⁴⁹ In the subsequent hearing on 29 October 2007, the Chief Justice reiterated that there was ample proof that the intelligence agencies held the disappeared persons and again threatened legal action against those responsible.⁵⁰

At a hearing on 1 November 2007, Dr Munir conveyed to the court that his statement regarding enforced disappearance was ready; the Chief Justice then gave the state respondents time to present the detainees concerned on 13 November. Before that hearing could take place, the Chief Justice and some 60 other judges of the higher judiciary were removed from office with the imposition of emergency rule on 3 November 2007. Amnesty International has been informed that Dr Imran Munir has not yet been re-tried on spying charges which are pending against him and is still confined to hospital.

THE CASE OF HAFIZ ABDUL BASIT

As shown in the Supreme Court's official records, in 2006 and 2007 government security officials went to increasing lengths to thwart the Supreme Court's attempts to shed light on the fate of the disappeared. For example, in the case of **Hafiz Abdul Basit**,⁵¹ the state denied that a receipt for handing him over to another agency was genuine and denied that the person who had signed the receipts existed. The government only responded to judicial orders after the court threatened to imprison the Director General of the Federal Investigation Agency (FIA), Tariq Pervez.

Hafiz Abdul Basit, a teacher, was detained by police on 13 January 2004 in Faisalabad. In December 2006, 10 people who had been released after periods of enforced disappearance, stated in sworn affidavits that they had seen Basit in secret places of detention. Nevertheless, it took months of insistent queries by the Supreme Court to secure Basit's release.

In a hearing on 11 May 2007, the District Police Officer of Faisalabad told the Court that Hafiz Abdul Basit had, after his arrest by police of the Crime Investigation Department (CID), been handed over to a Military Intelligence (MI) officer, Captain Amir Ali, at a military camp at the Pindi Bhattian Interchange of the Lahore-Islamabad motorway. On 25 May 2007, a Faisalabad assistant sub-inspector of police presented in Court a written receipt of having handed over Hafiz Abdul Basit to Captain Amir Ali of the MI. In a hearing on 4 July 2007, Colonel Lodhi, director of the NCMC stated before the Supreme Court that no captain by the name Amir Ali could be found in the MI; the Deputy Attorney General (DAG) then expressed his doubt about the genuineness of the receipt, made on plain paper, according to which Basit was handed over to MI Captain Amir Ali. The Supreme Court ordered that the issue be resolved but in subsequent Court appearances, the DAG simply dropped any reference to the identity of the MI officer and the authenticity of the receipt. It was never resolved. The DAG's report of 1 August 2007 reproduced in court states: "*The suspect was ... on the direction of the in charge officer ... taken to Pindo Bhattian Toll Plaza where he was handed over by Iftikhar Hussain, an Assistant Sub-Inspector (ASI) of police to army officers under proper receipt, as disclosed ... on 5-6-2007.*"

In a hearing on 6 June 2007, Basit's uncle, Hafiz Abdul Nasir, submitted an affidavit stating that he had later been picked up by army personnel to put pressure on his nephew and that he had met Basit, who was then, he stated, very ill, in detention. When at this point the NCMC director denied that he had any information about Basit, Justice Javed Iqbal ordered that he bring Basit to court or disprove on oath the statements given by Faisalabad police or Basit's uncle. On 18 July 2007, the Supreme Court examined the record of Hafiz Abdul Basit; it had been alleged by the DAG that he was implicated in an attack on President Musharraf. The Court found no evidence against Basit: he had not been named in the First Information Report, the initial complaint with police, nor was his name amongst those of the convicted persons. As such the Court ordered his release. It also directed the Deputy Inspector General of Faisalabad police to inform the court at the next hearing about Basit's whereabouts as otherwise action would be taken against him for unlawfully detaining Basit.

When no information about Basit's whereabouts was forthcoming, the Supreme Court on 20 August 2007 directed the Director General of the Federal Investigation Agency (FIA), Tariq Pervez, to bring Hafiz Abdul Basit before the Court on the very same day or face jail. Pervez

had been the Additional Inspector General of Punjab at the time of Basit's arrest and transfer to MI custody in 2004 and so been responsible for it. Pervez told the Court on 20 August 2007 that he was not aware of Basit's current whereabouts and asked for more time to find out. Chief Justice Iftikhar Chaudhry declined, telling Pervez "it has been proved that you lifted the person and now you are responsible for the production of the detainee before this bench. Either produce the detainee or get ready to go to the dungeon".⁵² Tariq Pervez left the courtroom twice during that day's hearing to comply with the court direction but every time came back without a positive response. Attorney General Malik Muhammad Qayyum told the bench that Basit's exact location had not been determined but that he had received a fax informing him that a person called Abu Musa Khalid alias Basit was in the custody of the Political Agent in the Khyber Agency⁵³ and that he could be brought to Islamabad in one or two days. The bench was set to send Tariq Pervez to jail but after the Attorney General's intervention granted him one day adjournment. More generally, the judge warned state representatives not to delay the tracing of the disappeared to the extent where the Supreme Court had no choice but to summon the heads of intelligence to depose before it.⁵⁴

On the following day, 21 August 2007, the Attorney General stated that as per the information gathered by him in the previous 24 hours, Hafiz Abdul Basit was indeed in the custody of the Political Agent, Khyber Agency, and that efforts were being made to bring Basit from the Khyber Agency to Islamabad by the evening. The court directed that Basit be handed over to his uncle in the office of the Director General of the FIA before 8pm and that the Supreme Court Registrar be informed of his release. This order was complied with and Basit was released.⁵⁵

CONCEALING THE IDENTITY OF DETAINING AUTHORITIES

Evidence obtained from persons subjected to enforced disappearance who were released and official Supreme Court records indicate that the detaining authorities took measures apparently intended to obscure their identity by transferring such persons to the custody of other agencies before release.

Hafiz Mohammad Tahir from Bahawalpur, Punjab province, was mentioned in several sworn affidavits submitted to the Supreme Court in December 2006 by people who had seen him in places of secret detention and who were then released. He had been arrested in January 2004 by intelligence personnel along with several family members for their alleged involvement in an attack on President Musharraf on 25 December 2003. His whereabouts remained unknown until **Hafiz Abdul Basit's** affidavit of 25 August 2007 which Amnesty International has obtained, reported seeing Tahir and others in "an army workshop".⁵⁶ Following Supreme Court orders for his release, he was brought to court on 4 September 2007, reportedly accompanied by a police officer, Nazir Ahmed, from police station Samasatta, near Bahawalpur. According to media reports, the police officer had been ordered on that morning to a location in central Islamabad, known as Zero Point,⁵⁷ where a car awaited him; it had taken him to a house in Islamabad where Hafiz Mohammad Tahir was handed over to him without explanation. The police officer apparently had no idea who Tahir was or why he had been placed in his care.⁵⁸ The official record of Supreme Court proceedings shows that Tahir was released on the orders of the Supreme Court on the same day.

In some instances, there is clear evidence that a person subjected to enforced disappearance is in the custody of a state agency yet their whereabouts remain unknown and they remain in unlawful custody. When an ISI official facilitated a meeting between Aleem Nasir and his mother it became clear that the agency was detaining him. (See case below.)

In **Ali Asghar Bangulzai's** case, his brother's affidavit lists informal confirmations by the authorities of his detention, yet his fate and whereabouts have not been established.

In a sworn affidavit⁵⁹ made available to Amnesty International, Dad Mohammad Bangulzai stated that, on 18 October 2001, his younger brother Ali Asghar Bangulzai, a then 38-year-old tailor and father of eight children, was picked up by persons in a vehicle which apparently belonged to a state agency in Quetta; this information was confirmed by Mohammad Iqbal Bangulzai who had been arrested along with Bangulzai but released some three weeks later from the custody of intelligence agencies.⁶⁰

The Deputy Inspector General of Police on 20 October 2001 told Dad Mohammad Bangulzai that "secret agencies had informed him they have arrested Ali Asghar and Mohammad Iqbal"; police later repeatedly refused to register his complaint because of what they admitted was intelligence involvement.

On 27 April 2002, he filed an application with Corps Commander of the army, Abdul Qadir Zehri; Dad Mohammad Bangulzai stated on 16 May 2002: several men "*told [me] that they have been sent by the Corps Commander in relation to Ali Asghar [saying] your brother is fine, don't worry and there is no need to contact any one. Your person is in the custody of secret agencies and they will release him after their satisfaction. I waited....*"

His brother was not released, but Dad Mohammad Bangulzai was told on two later occasions by ISI officials that his brother was in their custody. Facilitated by Member of the National Assembly (MNA), Hafiz Hussain Ahmed, and accompanied by three persons including the parliamentarian, Dad Mohammad Bangulzai met ISI Brigadier Mohammad Sadique on 27 December 2002. "*He said that Ali Asghar is with the secret agencies and is absolutely fine. After some days I again went to the office of ISI Brigadier Mohammad Sadique who called in Col. Bangash and asked for the case [file] of Ali Asghar. The Col. brought a file. After reading that, Brigadier Sadique told me that your person is innocent. He said that two persons filed a complaint against him but that was not proven. I will do my inquiry, he said, and he will be released. I kept going to this ISI office for one year and during my meetings, Brigadier Sadique said to me, ... your person is in our custody and is fine. Brigadier said to me that he would arrange my meeting with Ali Asghar. On 4 October, 2003, Brigadier Sadique asked me via Hafiz Hussain Ahmed (MNA) to bring clothes for Ali Asghar which will be delivered to him...*"

The affidavit also mentions that an MI inspector, Hakim Shahid also confirmed to Dad Mohammad Bangulzai that his brother was alright. Dad Mohammad Bangulzai lost contact with ISI and MI officials after personnel changes in these intelligence agencies.

MNA Hafiz Hussain Ahmed in a letter on his official letterhead dated 14 July 2007 confirmed the content of the affidavit regarding the meetings with ISI officials and their statements and added that after the transfer of their ISI interlocutors, their successors

denied the custody of Ali Asghar Bangulzai. In 2006, while visiting a hunger strike camp protesting against the enforced disappearance of Ali Asghar Bangulzai and others, the MLA publicly reiterated that senior officials of a secret agency had confirmed that Ali Asghar Bangulzai was in its custody.⁶¹

The petition filed in the Supreme Court by the HRCP in February 2007 lists Ali Asghar Bangulzai. During its hearings up to November 2007 no information regarding his fate and whereabouts were revealed. According to the record of Supreme Court proceedings, the DAG mentions the release of Ali Asghar from Balochistan on 5 October 2007 but this appears to be another person by that name. The HRCP list of persons still remaining untraced which it submitted to the Supreme Court on 30 October 2007 still lists Asghar Ali Bangulzai as untraced.

In some cases representatives of the agencies alleged to be responsible for enforced disappearance have blatantly admitted holding that person before the Supreme Court yet were not held to account nor the person concerned recovered.

On 11 October 2007, the HRCP's chairperson, Asma Jahangir, stated that the mother of Sajid Iqbal whose custody at the Chaklala base had been acknowledged in the previous Supreme Court hearing, was denied access to him. Parveen Akhtar stated that she had contacted the concerned authorities but been told that Sajid Iqbal was not in their custody. On this Col. Khalid who was present in court stated that he would arrange a meeting of mother and son. The Court then directed that Col. Khalid remain in contact with Parveen Akhtar and facilitate the meeting. The Court did not question the detaining authority about the grounds of his continued detention.⁶²

HIDING THE DETAINED

The testimonies of persons traced after a period of enforced disappearance also provide evidence for the method of obscuring the identity of the detaining authorities as well as the location of their secret detention by frequently transferring such detainees between undeclared places of detention; this also makes it more difficult for their relatives to trace them.

The use of secret detention facilitates torture and ill-treatment is prohibited under international human rights law. The UN Human Rights Committee, responsible for monitoring the implementation of the International Covenant on Civil and Political Rights has stated that "provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention... to be kept in registers readily available and accessible to those concerned".⁶³ The UN Special Rapporteur on torture has also said that "the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention."⁶⁴

The affidavit by Hafiz Abdul Basit from Faisalabad describes in some detail where he was held and how he was transferred from one secret place of detention to another. After being presented to the Deputy Superintendent of Police in Faisalabad on 30 January 2004, he was handed over to another police officer who took him blindfolded and handcuffed on a half-

hour car journey; then another car took him on a four hour drive to a place of detention where his blindfold was removed. Hafiz Abdul Basit testified that those present were “all military persons in uniform”. He believes that the detention centre was close to Chaklala airbase, Rawalpindi. On 14 June 2007, he was transferred to Jhelum Cantonment, and on 20 August 2007, he was again handcuffed and again taken to Rawalpindi. Following a medical examination, he was then taken to Peshawar where he was handed over to Frontier Corps (FC) personnel who took him to Torkham border with Afghanistan. His testimony continues, *“border officials attitude towards me was very good. They said that army officials wanted to pass the buck to them. ... After this, the FC officials sent me back to Peshawar and handed me over to FIA [Federal Investigation Agency]. Peshawar FIA made me reach FIA headquarters in Islamabad and on 21 August 2007 at 9pm, I was handed over to my maternal uncle Hafiz Nasir.”*

The technique of transferring – or pretending to transfer – persons subjected to enforced disappearance to the tribal areas or to other parts of the country on unsubstantiated charges, apparently intended to conceal enforced disappearances, was used frequently to make it difficult to trace them.

Aleem Nasir, a 45-year-old German national of Pakistani descent, was arrested on 18 June 2007 at Lahore Airport. He later reported that he had been picked by the ISI for carrying valuable gemstones and was transferred to Islamabad. After his mother had petitioned the Supreme Court, state officials in the initial hearing on 4 July 2007 denied any knowledge of his whereabouts. During a hearing on 18 July, the DAG then stated that Nasir had been traced and that a criminal complaint (of an unspecified nature) under the Frontier Crimes Regulation had been registered against Nasir in Dera Ismail Khan, (North West Frontier Province) and in a subsequent hearing on 20 August 2007, said that Nasir had been involved in “sensitive activities” in the frontier regions - which he could not divulge in court - but that he was not in the custody of any intelligence agency.⁶⁵ However, in the same hearing, Nasir’s mother Nazir Begum and his brother Waseem Nasir told the court that they had met Aleem Nasir after Col. Javed Iqbal Lodhi of the National Crisis Management Cell (NCMC) had contacted ISI Col. Zikiria who had arranged the meeting on 18 July in a house located in Islamabad’s sector I/8. This had established that Nasir was in ISI custody and not in Dera Ismail Khan as claimed.

The Court directed Col. Lodhi to contact Col. Zikiria so that he could explain the matter. When Col. Lodhi failed to do so, Brig. Javed Iqbal Cheema, the head of the NCMC, assured the court that he would contact him and inform the court. It is not reported if Colonel Zikiria subsequently appeared before the Court. On 21 August 2007, Nasir was brought before the Supreme Court and stated that he had been held at ISI headquarters (no location given) and been threatened with transfer to US custody. The bench ordered his immediate release. The court questioned why and under whose authority intelligence agencies picked up people but no answer was obtained.⁶⁶ Aleem Nasir was returned to Germany after his release.

Several of those who were released after enforced disappearance have testified in sworn affidavits where and in whose custody they were held, leading to a preliminary list of likely places where persons subjected to enforced disappearance may be held. However, other such places of secret detention may exist and new ones may be added. As persons subjected to enforced disappearance have consistently reported that they were blind-folded during most of

their detention, the locations may not always be accurately identified.

Early in the Supreme Court's hearings (December 2006), written affidavits of 10 persons who had been released after enforced disappearance were made available. These and other affidavits that followed stated that the victims had been detained by Pakistani intelligence agencies, including ISI, MI, FIU in secret places of detention in different parts of the country and listed the following places of detention: Faizabad; Chaklala Scheme III; 501 Workshop; a place of detention near Islamabad airport; Rawalpindi; Nowshera; Attock Fort; Lahore and Peshawar. In May 2008, Amina Masood Janjua identified the following detention facilities: ISI detention facilities at Cantt. Garrison, Chaklala (near Rawalpindi airport), behind the Military Hospital, Rawalpindi, at Hamza Centre (Ojri Camp, Rawalpindi) and Cell 20 in Sector 1-9, Islamabad, and an FIA facility near Qasim Market.

SILENCING VICTIMS OF ENFORCED DISAPPEARANCE

The Supreme Court repeatedly indicated that it would initiate legal action against persons responsible for enforced disappearances. Fearful of being held to account, Intelligence agencies sought to prevent the truth emerging by threatening relatives of the "disappeared" to withdraw petitions and to silence people being released. Such threats may also account for the fact that only a few of the released persons have submitted affidavits to the Supreme Court. The HRCP stated in its annual report for 2007: "*Families told courts and newspapers about being contacted by intelligence agencies with assurances that their relatives will be returned, if they kept quiet. Many people might have preferred silence to coming out in the open about a "disappearance" and risk upsetting a government agency holding a missing relative.*"⁶⁷

In addition, some of those who were released after enforced disappearance faced renewed disappearance when they spoke up about their experience.⁶⁸

Saleem Baloch, senior vice-president of a political party in Balochistan, called the Jamhoori Watan Party, on 20 December 2006 reported at a press conference organized by the HRCP about his recent enforced disappearance. According to the affidavit that he submitted in the Sindh High Court on 29 December 2006, he had been picked up on 10 March 2006 in Lyari, Karachi, by intelligence agents and uniformed police in front of many local people. He described being held in an undeclared, underground place of detention in Karachi, along with another person picked up on the same day, **Saeed Brohi**. On 19 April 2006, the two men were transferred to a secret detention place in the Punjab, then frequently transferred again - one place, he stated in his affidavit, was close to an airport where planes could be heard taking off and landing. He mentioned that the transfers were carried out by an army officer driving the car and that he saw several other persons subjected to enforced disappearance in detention. On 14 December, he was taken by train back to Karachi, where he was released two days later. According to his affidavit, Saleem Baloch was frequently deprived of sleep and questioned about his own family members. The reason for Saleem Baloch's enforced disappearance is unclear. In a petition filed by Saleem Baloch's family in the Sindh High Court in May 2006, he was unlawfully detained to punish him for having attended the High Court hearings of another victim of enforced disappearance from Balochistan, **Abdul Rauf Sasoli**, whose name is on the list pending before the Supreme Court

and whose whereabouts have not yet been established.

Saleem Baloch expressed his fear at the HRCP press conference on 20 December 2006 that he might be picked up again as he had been warned not to approach the media or civil society groups and sought the protection of the court. This fear proved well-founded. He was rearrested by government agencies on 31 December 2006 in front of many people and subjected to enforced disappearance again. In January 2007, the HRCP urged authorities to release him; his name was listed in the petition filed in the Supreme Court in February 2007. Nothing was known about his fate and whereabouts until he was released on 11 October 2007 and the Attorney General informed the Supreme Court about his release.⁶⁹

In mid 2007, lawyers informed Amnesty International that they had advised their clients, who had been released, not to reveal their experiences in secret detention as that would expose them, their families and associates to the danger of further enforced disappearance and other human rights violations. One lawyer said to Amnesty International: “who will guarantee his safety if he tells you or the media where he has been and what has been done to him?” On 25 May 2007, another lawyer, Hashmat Habib, told the Supreme Court that, on releasing his client Qari Saifullah earlier that month (after two years and nine months of enforced disappearance) intelligence agencies had warned him not to reveal details of his detention otherwise he would be picked up again.

Some persons released after years of enforced disappearance and their families have remained completely inaccessible to the media and human rights organisations.

The fate and whereabouts of **Naeem Noor Khan**, whose arrest on 13 July 2004 in Lahore according to a senior Pakistani intelligence official “opened the floodgates of information”, apparently linked to computer files reportedly found in his possession, remained unknown for almost three years. Unidentified persons threatened his family with dire consequences if they did not withdraw their habeas corpus petition on his behalf,⁷⁰ but the family persevered. Nevertheless, in hearings of the petition in the Lahore High Court, state officials consistently denied any knowledge of his whereabouts. In the Supreme Court, too, state officials denied his detention and any knowledge of where he might be. On 4 May 2007, Deputy Attorney-General Tariq Khokhar stated before the Supreme Court that Naeem Noor Khan was amongst several persons who remained untraceable. In the hearing of 6 June 2007, his counsel Babar Awan submitted that then Information Minister Sheikh Rashid, then Interior Minister Faisal Saleh Hayat and Director General of the Inter Services Public Relations, Maj.Gen. Shaukat Sultan, had mentioned Khan’s arrest which was also reported in the media.

The DAG directed that these persons be contacted in this regard and that Khan, if found to be in detention, be brought to court. In the hearing of 20 June, the DAG said that the search was made in the name of Hayat Noor Khan whereas it was Naeem Noor Khan. On 4 July, the DAG was ordered to seek information from the two ministers and the ISI spokesperson as no progress had been made in tracing him. On 18 July 2007, the DAG informed the court that Naeem Noor Khan was amongst five traced persons and had reached home. The Court said that no further action was required and that the named persons may “approach the concerned quarter for redressal of their grievances”.⁷¹

MISUSE OF CRIMINAL CHARGES

Several persons subjected to enforced disappearance were, though traced, not released but found to be in custody, having been charged with criminal offences months after their initial arrest without charge. These criminal cases were apparently brought to give their detention the appearance of lawfulness and conceal the preceding period of enforced disappearance. In the case of **Abdur Rahim Muslim Dost**, the criminal charges followed a renewed period of enforced disappearance linked to his publicly describing his experiences during his first period of enforced disappearance.



Abdur Rahim Muslim Dost, Peshawar, Pakistan, November 2005
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Afghan national Abdur Rahim Muslim Dost became a victim of enforced disappearance a second time⁷² when he was arrested by police of the Crime Investigation Department (CID) and intelligence personnel at a mosque in Peshawar on 29 September 2006, as witnessed by his brother and children.⁷³ He later reported that he was driven blindfolded by intelligence agents to their office near the Army Stadium where he had been detained in 2001 before his transfer to Guantánamo Bay. Earlier, intelligence agents had reportedly visited his and his brother's home and expressed their anger at the recent publication of their book, written in Pashto, *Da Guantánamo Mati Zolani* (The broken shackles of Guantanamo) which recounts their unlawful detention in Pakistani intelligence custody, rendition to the USA and torture in Pakistani and US custody.

According to communications from Dost's lawyers, in December 2006 the CID and the Defence Ministry before the Peshawar High Court, and in February 2007 the ISI before the Supreme Court, denied that Dost was in their custody and all knowledge of his whereabouts. In June 2007, it became known that he was in the custody of Assistant Political Agent, Landi Kotal, Khyber Agency, when fellow detainees told journalists that they had seen him there.⁷⁴ Dost had told them that he had been ill-treated by intelligence agents who had handed him over to the Khyber Agency administration after eight months' detention. This was confirmed by Dost's brother, Syed Mohammad, in an application appended to the main writ petition

filed in the Peshawar High Court in which he stated that he had met Dost in the Landi Kotal prison and Dost had stated that, on the night of 24-25 May 2007, intelligence agents had taken him to several police stations in the province to get a criminal complaint registered against him. When police refused, they took him to the Khyber Agency where the authorities obliged their request. On 22 June 2007, the Peshawar High Court directed the additional Advocate General to contact Khyber Agency administration to ascertain if Dost was held there. However, the Deputy Attorney General stated that Dost was not in the Agency's custody. Tribal journalists in the Khyber Agency who had succeeded in talking to him, confirmed his presence in the custody of the Political Agent, Khyber Agency on 23 June.

On 25 July 2007, the Peshawar High Court deposed the habeas corpus petition when the NWFP Advocate General submitted a report that Dost had been charged by Khyber Agency administration under Section 40 of the Frontier Crimes Regulation⁷⁵ and Section 14 of the Foreigners Act⁷⁶ and had been transferred to Peshawar Central Prison on 21 July 2007. His lawyer's argument that the Court should seek an explanation for Dost's unlawful nine-month-long detention and transfer to the tribal area administration was ignored. Dost remains in Peshawar Central Jail; his trial has not yet begun.

As in several other cases, the Supreme Court also became involved in Dost's case though the main habeas corpus petition was dealt with in the Peshawar High Court. On 20 June 2007, Senator Farhatullah Babar informed the Supreme Court that Dost had been in the custody of the intelligence agencies and was then in the custody of the Political Agent, Khyber Agency.⁷⁷ On 4 July 2007, the Political Agent Khyber Agency stated before the Supreme Court that Dost had been arrested on 24 May 2007 under provisions of the Foreigners Act on orders of a magistrate and was under investigation. The court then directed his counsel, former Senator Farhatullah Babar, to seek available remedies if desired as Dost had been traced.⁷⁸ The fact that Abdur Rahim Muslim Dost had been subjected to enforced disappearance since his witnessed arrest in September 2006 was not taken into account by the Supreme Court either.

On several occasions, the Supreme Court was informed by state officials that persons alleged to have been subjected to enforced disappearance were in lawful detention charged with a criminal offence.

Nazir Ahmed Osama, alias Osama Nazir was arrested on 18 November 2004 from a madrassa in Faisalabad and mentioned in Musharraf's book as a "high profile militant" and explosives expert. His arrest for alleged involvement in attacks on President Musharraf and then Prime Minister Shaukat Aziz was widely covered in Pakistani media. However, his case never came to trial and his whereabouts remained unknown. Hafiz Abdul Basit and Mohammad Tariq stated in their affidavits that they had seen **Osama Nazir** in a place of secret detention located at an army workshop (no location given in either affidavit). On 11 October 2007, the Supreme Court was told by the Home Secretary Punjab and Provincial Police Officer Punjab that Osama Nazir was in the custody of Rawalpindi police but lodged in Taxila, about 24 kilometres north of Rawalpindi.⁷⁹ Given that police may only detain a person on a criminal charge for up to 15 days after arrest⁸⁰ it appears that there was no legal ground for his detention since November 2004; however, the Supreme Court did not question under whose authority and where he had been in enforced disappearances for this period.

FAILURE TO HOLD INTELLIGENCE AGENCIES TO ACCOUNT

A key difficulty in tracing persons subjected to enforced disappearance and putting an end to this grave violation is the lack of clear institutional control and accountability of Pakistan's intelligence agencies. In a Supreme Court hearing on 20 August 2007, HRCP chairperson Asma Jahangir reiterated a request to the Supreme Court already contained in the HRCP petition, to clarify under what authority the intelligence agencies take custody of people and under what legislative provisions this is done. The Court replied that it would take up this issue at a later stage.⁸¹

In July 2006, during a habeas corpus petition at the Sindh High Court, the Defence Secretary stated that the Ministry had only administrative, not operational, control over its own intelligence agencies, including the Inter Services Intelligence (ISI) and Military Intelligence (MI), so could not enforce their compliance with court directions.⁸² In August 2006, in another hearing of the Sindh High Court, an unsigned confidential letter purported to have been sent by the Judge Advocate-General's (JAG) office of the General Headquarters (GHQ) of the Pakistan Army, Rawalpindi, stated that "the GHQ is a part of the Ministry of Defence and the MI Directorate falls within the purview of the GHQ. The civilian entity under which the Pakistan Army works is the Ministry of Defence". Defence lawyers present in court pointed out that the letter contradicted assertions made earlier to the court that the MI did not function under the overall control and supervision of the Ministry of Defence.⁸³ Defence Ministry representatives also deflected all responsibility in the Supreme Court by hiding behind organizational obstacles. On 27 April 2007, Defence Secretary Kamran Rasool stated somewhat ambiguously that the ISI and MI were answerable to the Interior and Defence Ministries, "apart from the operational command channel",⁸⁴ on 5 October 2007, he reiterated that they were under the administrative control of the Defence Ministry.

INSUFFICIENT ACTION BY THE HIGHER JUDICIARY

The proactive role of the Supreme Court in seeking to provide redress to victims of enforced disappearance helped to trace several individuals subjected to enforced disappearance who were released either on the orders of the Supreme Court or were simply released by the detaining authorities once the Supreme Court had begun hearing such cases. The higher judiciary may have anticipated that this process would be halted if it held those responsible for enforced disappearances to account. On several occasions, the Supreme Court emphasized that its primary task was to trace people and that it would address questions of accountability later. This in itself is an indictment of the executive which made it impossible for the higher judiciary to ensure full redress of enforced disappearances by ensuring accountability and ending impunity for this grave human rights violation.

Provincial high courts have routinely dismissed habeas corpus petitions when state representatives denied detention of the persons concerned or knowledge of the whereabouts of detainees without questioning these statements further. (See case of Abdur Rahim Muslim Dost.) Similarly the Supreme Court did not question in whose custody persons subjected to enforced disappearance had been once they were released.

There are dozens of cases on record where no attention was paid to the identity of the detaining authority and consequently no one was held to account for enforced disappearances.

The father of **Ansar Ali**, Aziz Akbar Kiyani, stated before the Supreme Court on 11 October 2007⁸⁵ that his son had been picked up in his presence on 7 January 2004 by a team of ISI personnel, comprising three persons in plain clothes. Ansar Ali was taken away on the pretext of questioning him but his whereabouts remained unknown until, on 10 October 2007, his father was contacted by phone and asked to go to a particular location on Talagang Road, Chakwal, Punjab province, where his son would be brought from Lahore. Intelligence agents arrived in two cars and released his son. His son later told him that a colonel and two majors of the Federal Investigation Unit (FIU) had brought him from Rawalpindi to Chakwal. Despite clear evidence that he had been subjected to enforced disappearance for three years and 10 months in the illegal custody, the Supreme Court did not initiate any inquiry in this regard and did not hold anyone to account.

Despite the urgency of habeas corpus matters, courts have permitted long adjournment of hearings and failed to respond to HRCP calls to set up a separate bench to hold daily hearings of cases of enforced disappearance. Faced with defiance by state officials when the latter refused to adequately respond to judicial directives, courts did not always exhaust all means at their disposal to enforce their directions. Judges did not take any judicial action, such as recourse for contempt of court legislation, when after the state's denial of detention, the person concerned was found to be in state detention. Judges, while threatening criminal prosecution for enforced disappearance, did not initiate any action.

SUFFERING IN LIMBO: RELATIVES OF THE “DISAPPEARED”

As hopes for the recovery of “disappeared” persons first soared and then faded and new disappearances were reported, relatives of individuals subjected to enforced disappearance continued to suffer hardship, isolation and despair, in some cases made worse by threats and false promises from government officials. Causing such suffering to family members of disappeared persons – an inevitable, and at times deliberate outcome of enforced disappearance – is also a human rights violation. In a number of cases, international human rights bodies have held that the authorities’ denial of their right to know what has happened to their relatives for months and years violated the prohibition of torture and other ill-treatment. The relatives of disappeared persons, too, are victims of enforced disappearance.

In addition, many family members have been subjected to harassment and threats. On 28 December 2006, 17-year-old Mohammad Masood, the eldest son of Amina Masood Janjua who founded the “Defence of Human Rights”, was stripped of his trousers by police, apparently to humiliate him, and beaten in front of hundreds of people when the group Defence of Human Rights tried to march to the army’s headquarters to present a memorandum to the Vice-Chief of Army Staff protesting against enforced disappearances. His picture was widely carried in the media. He was released after a few hours.

Harassment and intimidation have continued. In May 2007, Amina Masood Janjua sought the Supreme Court’s protection against threatening telephone calls. She said that callers were using abusive language, had issued death threats against her and threatened to block her mobile telephone, which had occurred twice in the past. This, she said, had made it difficult for other families of “disappeared” persons to contact her and the organization. Moreover, she told Amnesty International in May 2007: “I feel that I am being watched and my calls being monitored continuously”.

In June 2008, with parties opposed to President Musharraf in charge of the Parliament and the prime minister’s office, Amina Masood Janjua again voiced her frustration at not knowing her husband’s fate, and called on the new government to respond to the plight of hundreds of families like hers:

"We have joined the lawyers movement in solidarity...because for us the restoration of the independent judges is a matter of life and death. We have high hopes with the new government to which we keep telling that our loved ones are illegally detained beyond all laws in the custody of [security] agencies. For us relief is only when our loved one is safe and sound standing freed before us. I believe that my husband Masood is held only three kilometres from my home, yet he continues to suffer unknown ill-treatment and we, his wife, his children and his very old parents cannot even see him. They [the new government] must act now to bring them back immediately."



Relatives of victims of enforced disappearance, protesting outside HRCP Islamabad office, 29 September 2006
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AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE NEW GOVERNMENT

Amnesty International has repeatedly called on the Government of Pakistan to end enforced disappearances and the wide range of human rights violations involved in this practice and to fully respect the rule of law. Amnesty International believes that the new government should urgently resolve the issue of enforced disappearances and end years of state culpability and concealment. Amnesty International calls on the new government to build on the positive commitments to human rights it has made in recent months and put them into action. The newly elected government of Pakistan should:

- publicly condemn enforced disappearance under any circumstances, and commit itself to ending the practice;
- immediately release or else reveal the fate and whereabouts of all persons who have been subjected to enforced disappearance. Those not released must be brought promptly before a regular civilian court, charged with a recognizably criminal offence and, if remanded by the court, held in an official place of detention with access to lawyers, family and the courts and given a fair trial without imposing the death penalty;
- ensure that state officials correctly and promptly follow orders of courts in habeas corpus cases ;
- bring to justice all those responsible for ordering or carrying out enforced disappearances, including by hiding the truth from courts in judicial proceedings, irrespective of rank and status, in proceedings which meet international standards of fair trial;
- ensure full reparations to all victims of enforced disappearance, including families of the “disappeared”;
- immediately close all secret and undeclared places of detention and prohibit in law the setting up of such places of detention;
- reinstate those judges who were extra-constitutionally removed from service during the emergency and ensure that they can perform their professional duties, including to provide redress to the victims of enforced disappearance, without interference by the executive;
- ensure that those intelligence agencies found responsible for committing enforced disappearances are brought under adequate oversight and made accountable for their actions;

- ratify relevant international human rights treaties which protect rights violated by enforced disappearances, including the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture, both of which Pakistan signed in April 2008, and the International Convention for the Protection of All Persons from Enforced Disappearance, implement enabling legislation and fully apply their provisions.

APPENDIX 1: Glossary

Glossary

AG - Attorney General

ANP- Awami National Party

CID - Crime Investigation Department

DAG- Deputy Attorney General

DIG - Deputy Inspector General

FIA – Federal Investigation Agency

FIR - First Information Report

FIU - Field Investigation Unit

HRCP - Human Rights Commission of Pakistan

IB - Intelligence Bureau

IGP - Inspector General of Police

ISI - Inter Services Intelligence

JUI - Jamiat Ulema-e-Islam

MI - Military Intelligence

NCMC - National Crisis Management Cell

NGO - Non-governmental organisation

NWFP - North West Frontier Province

PCO - Provisional Constitution Order

PML-N - Pakistan Muslim League-Nawaz

PPP - Pakistan Peoples Party

APPENDIX 2: Affidavits

Translations of two affidavits by victims of enforced disappearances are available below. The original affidavits in Urdu are attached after the translations.

AFFIDAVIT 1:

From Mohammad Safdar s/o Ghulam Mohammad

I, Mohammad Safdar s/o Ghulam Mohammad, resident of Hameed Khanwali, Tehsil Jalalpur Peerwala, District Multan solemnly state that I am the real brother of Siddique Akbar who was abducted. On 24-03-2004, (the day Siddique Akbar was abducted from his land), I set off to inform my father about Siddique's abduction. On my way I came across Elite Force vehicles. From one of [the vehicles], two men got out. They dragged me forcefully into their vehicle without speaking a word to me.

After this, the Force personnel entered our home and searched it for two hours. I was blindfolded and made to wear a Black cap. We reached Lahore the next morning. After, *Asar* prayers [prayers said in late afternoon by Muslims] I was presented before a Colonel who questioned me about my brother. I was tortured and shown some photographs. I was asked to identify persons in those photographs. I could not identify any one.

After, the evening prayers, I was again blindfolded and driven to Rawalpindi. The journey lasted the whole night. In Rawalpindi I was physically tortured and later locked in room number 2. I was photographed and asked to telephone my maternal uncle.

I learnt from other detainees that this place was FIU [Field Investigation Unit] headquarters, 10 Core Rawalpindi. I was presented before the Colonel. My brother Siddique Akbar, tied in chains, was sitting in front of the Colonel. Siddique Akbar was asked if he wanted to express any wish [meaning his "last wish"]. He asked for a pen and paper to write down the details of his loans. The Colonel said that he could do it for him. The Colonel noted down the details on a slip of paper and handed it over to me. My brother's handcuffs were untied and we brothers embraced each other. The Colonel gave me Rupees 500/ and I was left near the transport for Multan. To date, my brother has not been released.

Signed

Mohammad Safdar

Affidavit attested by the Oath Commissioner, stamped and signed by him, dated 30-08-07

AFFIDAVIT 2:

From Mohammad Tariq s/o Nizam Din, street *bypasswali* Sialkot Road Mohalla Usman Colony, Gujranwala.

- 1- I solemnly state that I am the resident of the above mentioned address;
- 2- I solemnly state that the place of my detention was an army workshop;
- 3- I solemnly state that there were other detainees [with him where he was detained] namely: Usama Nazir resident of Mailsi, Siddique Akbar Baloch of Multan, Hafiz Tahir resident of Bahawalpur, Ansar Ali from Rawalpindi. These detainees told me that they were from these places;
- 4- I solemnly state that on 25-11-2006 Siddique Akbar Baloch from Multan and Ansar Ali from Rawalpindi were medically examined, along with me, at CMH [Combined MilitaryHospital] Rawalpindi. I was released on 28-11-2006;
- 5- I solemnly state that Siddique Akbar Baloch from Multan was suffering from a serious kidney complaint.
- 6- I solemnly state that the above mentioned statement is true to the best of my knowledge and in this statement no information has been withheld.

Signed

Mohammad Tariq

Affidavit attested by the Oath Commissioner, stamped and signed by him, dated 30-08-07

Stamp paper for affidavit purchased in the name of Mohammad Tariq on 30-08-07 and his Computerised National Identity Card number entered on the back of this paper.

ENDNOTES

¹ Email message by Amina Masood Janjua to Amnesty International, 2 July 2008.

² According to Interior Secretary Syed Kamal Shah before the Supreme Court on 1 November 2007, reported in “Government serious about missing persons, SC told”, *Daily Times*, 2 November 2007, <http://www.dailytimes.com.pk/default.asp?page=2007>

³ While many cases of enforced disappearance have come to light with the help of the media and civil society groups, a group that is so far under-researched are Afghan nationals subjected to enforced disappearances in Pakistan. Such cases occasionally come to light when a forcible repatriation of Afghans to Afghanistan, prisoner exchanges or the release of Afghan detainees in exchange for kidnapped Pakistanis are reported.

⁴ See Amnesty International’s reports *Pakistan: Working to stop human rights violations in the “war on terror”*, (Index: ASA 33/051/2006); *Pakistan: Human rights ignored in the “war on terror”*, (Index: ASA 33/036/2006); *Pakistan: Human rights abuses in the search for al-Qa’ida and the Taliban in the tribal areas*, (Index: ASA 33/011/2004).

⁵ “West ‘will fail’ without Pakistan”, *BBC News*, 30 September 2006, http://news.bbc.co.uk/1/hi/world/south_asia/5394278.stm

⁶ Inamullah Khattak, “Jihadi groups blamed for disappearances”, *Dawn*, 28 March 2007, <http://www.dawn.com/2007/03/28/top2.htm>

⁷ For details see: Amnesty International, *Pakistan: Repairing the damage: ensuring robust human rights safeguards*, March 2008, (AI Index: ASA 33/001/2008)

⁸ Ihtasham ul Haque, “Emergency to end judicial activism”, *Dawn*, 4 November 2007 <http://www.dawn.com/2007/11/04/top12.htm>

⁹ “Iftikhar ready to meet president for judiciary’s cause”, *Dawn*, 9 November 2007, <http://www.dawn.com/2007/11/09/top4.htm>

¹⁰ NRO dealt with cases registered between the period from 1 January 1986 to 12 October 1999. Nawaz Sharif also has outstanding corruption charges, as well as a criminal conviction in hijacking of the aeroplane, in which Gen. Musharraf was travelling on 12 October 1999, hours before he took power. Nawaz Sharif’s eligibility to hold public office is still an unresolved legal issue.

¹¹ The PPP (Pakistan People's party), was founded in 1967 by Zulfikar Ali Bhutto and has been in power four times since 1972, including twice in the 1990s under Zulfikar's daughter, Benazir. Its primary power base is now in province of Sindh but has support in other provinces and is Pakistan's largest political party.

¹² The Pakistan Muslim League (PML) which is a continuation of All India Muslim League founded in 1906 has over the years adopted different names and split in different factions. One faction is called PML-N after its leader the former Prime Minister Nawaz Sharif. Its main power base is in Punjab province. The party was in power when General Musharraf took over in October 1999; perhaps as a result, there is intense personal discord between Nawaz Sharif and Pervez Musharraf.

¹³ The Awami National Party (ANP) is a mostly Pashtun, secular party, successor of National Awami Party (NAP) founded in late 1950's. Its power base is in North West Frontier Province (NWFP) province and has some support in Karachi.

¹⁴ Jamiat i Ulema-e Islam, Fazal ur Rehman Group (JUI-F) is a religious political party with support in NWFP and Balochistan provinces. This party has supported various governments since 1988 including PPP and PML-N.

¹⁵ Raja Asghar, "No victimisation, assures PM", *Dawn*, 18 April 2008, <http://www.dawn.com/2008/04/18/top2.htm>

¹⁶ "All missing people to be traced, says Naek", *Dawn*, 17 April 2008, <http://www.dawn.com/2008/04/17/top3.htm>

¹⁷ Saleem Shahid, "Balochistan PA session sought by April 1", *Dawn*, 29 March 2008, <http://www.dawn.com/2008/03/29/top6.htm>

¹⁸ Several Baloch nationalist activists were released from enforced disappearance, including Mir Shahzain Bugti, grandson of Baloch leader Nawab Akhtar Bugti who was reportedly extrajudicially executed in 2006. Mir Shahzain Bugti had disappeared in May 2007; in the following month, his whereabouts in detention was established. He was released from the Mach jail on 23 May 2008. Amanullah Kasi, "Bugti's grandson Shahzain freed", *Dawn*, 24 May 2008, <http://www.dawn.com/2008/05/24/top4.htm>. See also supra note 5 on discrepancy of the figures on disappeared persons.

¹⁹ It was announced on 4 May 2008 by Senator Babar Awan, the Secretary of the PPP's Reconciliatory Committee on Balochistan. For more information, see "Committee set up to trace missing people: Awan", *Dawn*, 5 May 2008, <http://www.dawn.com/2008/05/05/top2.htm>

²⁰ Draft report of the Working Group on the Universal Periodic Review, Pakistan, A/HRC/WG.6/2/L.8, 2008, para. 8.

²¹ Draft report of the Working Group on the Universal Periodic Review, UK, para. 30.

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- ²² Draft report of the Working Group on the Universal Periodic Review, Greece, para. 83.
- ²³ Draft report of the Working Group on the Universal Periodic Review, Sweden, para. 68.
- ²⁴ Draft report of the Working Group on the Universal Periodic Review, Brazil, para. 64.
- ²⁵ Draft report of the Working Group on the Universal Periodic Review, Pakistan, para. 104.
- ²⁶ Issam Ahmed, "PPP package will deepen judicial crisis: HRCP", *Dawn*, 8 June 2008, <http://dawn.com/2008/06/08/nat1.htm>
- ²⁷ The attested copies of order sheets of proceedings of the Supreme Court can be obtained, on payment of prescribed fee, by enrolled lawyers from the relevant branch of the Supreme Court. The cases of enforced disappearances including related constitutional petitions before the Supreme Court were amalgamated under Saqlain Mehdi v. The Federation of Pakistan through Secretary Ministry of Interior and others, Human Rights case No 965 of 2006. Amnesty International obtained copies of order sheets (Supreme Court proceedings record) for the period 26 March to 11 October 2007.
- ²⁸ See for instance the cases of Saifullah Paracha and Masood Janjua. On Saifullah Paracha, see: Amnesty International, *Pakistan: Human rights ignored in the "war on terror"*, (AI Index: ASA 33/036/2006), p. 14; on Masood Janjua, see Amnesty International, *Pakistan: Human rights ignored in the "war on terror"*, (AI Index: ASA 33/036/2006), p. 52; *Amnesty International, Pakistan: Working to stop human rights violations in the "war on terror"*, (AI Index: ASA 33/051/2006), p. 5.
- ²⁹ Son of Ahmed, resident of Havai Camp, Akora Khattack, tehsil and district Nowshera, North West Frontier province. His affidavit was attested by the Oath Commissioner, Nowshera, dated 31 July 2007.
- ³⁰ Son of Syed Zainul Abedeen, resident of Ichhra, Lahore.
- ³¹ Son of Abdul Hannan, resident of Sheikh Alam Khan Kalay, Dara Adam Khel, Frontier Region Kohat. This affidavit is on plain, not the required stamped paper, and not formally dated, stamped and attested.
- ³² Son of Gul Rehman, resident of Sani Khel, Dara Adam Khel, Frontier Region Kohat.
- ³³ Son of Habib Ullah, resident of Alam Khan Kalay, Dara Adam Khel, Frontier Region Kohat.
- ³⁴ Son of Qadir Bakhsh, resident in Tehsil Jalalpur Peerwala, district Multan, Punjab province. The affidavit is not dated or attested.
- ³⁵ The Elite Unit helps ordinary police in special operations and provides security to important buildings and individuals. Members of this force undergo special commando training.

³⁶ Son of Allah Wasaya, resident of Tehsil Jalapur Peerwala, District Multan, Punjab province.

³⁷ Son of Ghulam Mohammad, resident of Tehsil Jalapur Peerwala, district Multan. The affidavit is signed and attested by the Oath Commissioner on 30 August 2007.

³⁸ Son of Nizam Din, resident of Mohalla Usmani Colony, Gujranwala, Punjab province His affidavit is duly attested by the Oath Commissioner, stamped and dated 30 August 2007.

³⁹ The army have internal numbering system of its buildings, including workshops. The army workshop based in building 501 is commonly referred as "501 Workshop".

⁴⁰ Supreme Court proceedings record.

⁴¹ All details of case from Supreme Court proceedings records.

⁴² The DAG under instructions from the Director General NCMC also informed the court that Imran Munir was now in military custody at Mangla in view of his upcoming court martial proceedings after the appellate forum had set aside his conviction. Source: Supreme Court proceedings records.

⁴³ He expressed fear for his life as he had been held in chains during the last three nights in Mangla: "I was brought here blindfolded and handcuffed like a hardened criminal. I was kept at FIU last night. I am a heart patient but I am not being given medicines. I fear for my life and health in military custody". Reported by a journalist attending proceedings in the Supreme Court, Mohammad Kamran, "SC releases two 'missing persons'", *Daily Times*, 22 August 2007, <http://www.dailytimes.com.pk/default.asp?page=2007>

⁴⁴ All details of hearing from Supreme Court proceedings records.

⁴⁵ The police services are a provincial subject whereas the intelligence services under the Defence Ministry are a federal responsibility.

⁴⁶ These statements of the Chief Justice are identically reported by journalists of the newspapers *Daily Times* and *Dawn* who covered Supreme Court hearings of 5 October 2007. The Supreme Court proceedings record does not contain these words. (*Daily Times*, "SC tells government to recover all missing people by 11th", *Daily Times*, 6 October 2007, http://www.dailytimes.com.pk/default.asp?page=2007\10\06\story_6-10-2007_pg7_1; "CJ threatens to summon heads of agencies: Missing people", *Dawn*, 6 October 2007, <http://www.dawn.com/2007/10/06/top2.htm>. The content of these statements was also confirmed to Amnesty International by others attending the hearing.

⁴⁷ Identically reported in *Dawn*, *Daily Times*, 6 October 2007.

⁴⁸ Identically reported by court reporters of *Daily Times* and *Dawn* of 12 October; contents confirmed by other persons attending court proceedings. These statements are not contained

in the Supreme Court proceedings record; the content of this statement was confirmed to Amnesty International by another person attending the Court hearing. Nasir Iqbal, "Supreme Court asks govt to regularise 'disappearances'", *Dawn*, 12 October 2007, <http://www.dawn.com/2007/10/12/top5.htm> "Another 37 missing people traced, govt tells SC", *Daily Times*, 12 October 2007, <http://www.dailytimes.com.pk/default.asp?page=2007>

⁴⁹ Supreme Court proceedings record.

⁵⁰ Identically reported by court reporters of *Daily Times* and *Dawn*, 30 October 2007, "Govt warned of stern action if missing people not released", *Daily Times*, 30 October 2007, <http://www.dailytimes.com.pk/default.asp?page=2007>; Iftikhar A. Khan, "CJ vows to ensure release of the missing", *Dawn*, 30 October 2007, <http://www.dawn.com/2007/10/30/top3.htm>

⁵¹ Son of Bashir Ahmed Gujjar, from Gulberg, Faisalabad, Punjab province.

⁵² Reported verbatim by journalists attending the Court hearing, Mohammad Kamran, "Missing persons case: Produce detainee or face jail, SC tells FIA chief", *Daily Times*, 21 August 2007, <http://www.dailytimes.com.pk/default.asp?page=2007>; "SC tells DG FIA Produce missing person or go to jail", *The News*, 21 August 2007, http://thenews.jang.com.pk/arc_default.asp

⁵³ The Khyber Agency is one of seven Federally Administered Tribal Areas, (FATA) which are governed by the Frontier Crimes Regulation (FCR) of 1901; they are not subject to the regular laws and judicial institutions of Pakistan. Offences are dealt with under the FCR by tribal councils or jirgas who advise the head of a FATA region, the Political Agent who combines executive and judicial functions and is not bound by this advice. Detainees held under the FCR do not have the right to habeas corpus.

⁵⁴ Reported by journalists attending the Court hearings, Assad Hameed, "SC warns DG FIA: Produce Basit or face jail", *The Nation*, 21 August 2007, <http://www.nation.com.pk/daily/aug-2007/21/index4.php>

⁵⁵ Supreme Court proceedings records.

⁵⁶ Affidavit of 25 August 2007 by Hafiz Abdul Basit, obtained by Amnesty International.

⁵⁷ Zero Point is the name of a major street crossing in South Islamabad. This is a reference point to measure the distance of other cities from Islamabad.

⁵⁸ Nasir Iqbal, "Apex court orders release of the missing", *Dawn*, 5 September 2007, <http://www.dawn.com/2007/09/05/top5.htm>

⁵⁹ Affidavit attested by Atiq-ur Rehman, Notary Public, Advocate High Court, Quetta, Balochistan, on 2 August 2007. All details about his meetings with ISI staff are taken from this affidavit.

⁶⁰ See also Amnesty International's Urgent Action appeal, AI Index: ASA 33/025/2005, 26 September 2005.

⁶¹ Daily Mashriq (an Urdu daily), 14 March 2006.

⁶² Supreme Court proceedings records.

⁶³ UN Human Rights Committee, General Comment 20, Article 7.

⁶⁴ UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

⁶⁵ Both statements from the Supreme Court proceedings records.

⁶⁶ Human rights activists have noted that the DAG's claim to possessing "sensitive information" on Nasir was not acted upon, nor was this material apparently handed over to the Supreme Court. This could either mean that the information was inconsequential or that, if the evidence was strong, it meant that the state failed in its duty to prosecute criminal offences.

⁶⁷ The state of human rights in 2007, HRCP 2008.

⁶⁸ See also the case of Abid Raza Zaidi, described in Amnesty International report, Pakistan: Working to stop human rights violations in the "war on terror", December 2006, AI Index: ASA 33/051/2006, p. 8. He was detained by MI agents on 4 October 2006 after reporting on his previous experience of enforced disappearance at a workshop organized by Amnesty International in Islamabad in late September 2006. He later reported that he had been taken to a detention centre at the Red Fort in Lahore and threatened with dire consequences if he publicly spoke again about his experience in detention. He was released after 24 hours' detention at the intervention of the HRCP. At the workshop he had reported being detained by an unknown intelligence agency for over three months earlier in the year and being beaten to make him confess to taking part in a suicide bomb attack in Nishtar Park in Karachi in April 2006.

⁶⁹ Supreme Court proceedings records.

⁷⁰ For details on Naeem Noor Khan, see Amnesty International: *Pakistan: Human rights ignored in the "war on terror"*, (AI Index: ASA 33/036/2006), p.17.

⁷¹ Supreme Court proceedings records

⁷² He and his brother were first arrested on 17 November 2001 and transferred to Guantanamo Bay; Rahim Dost was released on 20 April 2005, his brother in September 2004.

⁷³ Amnesty International issued an Urgent Action appeal on 1 November 2006 and wrote to the Minister for the Interior on 7 November 2006 seeking information about the fate and

whereabouts of Abdur Rahim Muslim Dost. No answer has been received.

⁷⁴ “Afghan writer in custody of Political authorities”, *Daily Times*, 28 June 2007, <http://www.dailytimes.com.pk/default.asp?page=2007>

⁷⁵ This section is vaguely formulated and enables the local administrator to detain a person if he is of the “opinion that it is necessary for the purpose of preventing murder, or culpable homicide ... or the dissemination of sedition”, to require that person to execute a bond or to detain him up for up to three years.

⁷⁶ This section relates to foreigners being in Pakistan without permission.

⁷⁷ Supreme Court proceedings records.

⁷⁸ Supreme Court proceedings records.

⁷⁹ Supreme Court proceedings records.

⁸⁰ Section 167 Code of Criminal Procedure. Shujat Ali Khan, “Unsigned ‘confidential’ letter submitted to court”, *Dawn*, 3 August 2006, <http://www.dawn.com/2006/08/03/top8.htm>

⁸¹ Source Supreme Court proceedings records.

⁸² “No operational control over ISI and MI, defence ministry tells court”, *Dawn*, 12 July 2006, <http://www.dawn.com/2006/07/12/top3.htm>. The hearings related to several Sindhi and Baloch men who are victims of enforced disappearance.

⁸³ During a hearing of the habeas corpus petitions filed on behalf of Saleem Baloch and several others on 2 August 2006. Shujat Ali Khan, “Unsigned ‘confidential’ letter submitted to court”, *Dawn*, 3 August 2006, <http://www.dawn.com/2006/08/03/top8.htm>. The letter also shielded MI personnel when it stated that none of its personnel could be identified by name as this would amount to issuing the person’s “death warrant in view of the ‘sensitive nature of the war on terror’”.

⁸⁴ Supreme Court proceedings records.

⁸⁵ Supreme Court proceedings records.

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