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PAKISTAN

Legalizing the impermissible: The new anti- terrorism law

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SUMMARY

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The Anti-Terrorism Act, 1997 was passed by parliament on 13 August 1997. It came into force a few days later when the President signed it. Special courts were set up under the Act in late August and the first convictions and sentences, including death sentences, have now been reported.

Amnesty International believes that the Anti-Terrorism Act is seriously flawed as it contravenes several legal safeguards of the Pakistan constitution and Pakistan law as well as international human rights standards. It invites serious human rights violations by placing wide powers in the hands of law enforcement personnel who are known for their frequent recourse to torture and extra-judicial executions. The special courts established under the Act are unable to provide the same legal safeguards as regular courts, as many of them are explicitly suspended. Political prisoners are likely to be subjected to unfair trials and people are at risk of being sentenced to death in manifestly unfair trials.

Amnesty International urges the Government of Pakistan to immediately repeal the Anti-Terrorism Act, 1997 and to ensure that in its pursuit of law and order, internationally and nationally guaranteed rights of people in Pakistan are fully honoured.

The present paper describes the political background to the introduction of the Anti-Terrorism Act, summarizes it and analyses its provisions against the backdrop of international human rights standards. A list of recommendations concludes the paper.

KEYWORDS: LEGISLATION / COMMUNAL VIOLENCE / DEATH PENALTY / POLICE / INDEPENDENCE OF JUDICIARY / IMPUNITY / TRIALS / CONFESSIONS / ARBITRARY ARRESTS / UNLAWFUL DETENTION / CIVIL UNREST / RELIGIOUS GROUPS / NATIONAL HUMAN RIGHTS COMMISSION / AI AND GOVERNMENTS /

This report summarizes a 22-page document, PAKISTAN: Legalizing the impermissible: The new anti-terrorism law (AI Index: ASA 33/34/97) issued by Amnesty International in September 1997. Anyone wishing further details or to take action on this issue should consult the full document.

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PAKISTAN

Legalizing the impermissible: The new anti-terrorism law

“This is a recipe for turning an innocent person into a suspect, and a suspect into a culprit -- even a dead culprit. The law almost assumes guilt. It makes things as difficult for the accused as possible behind the figleaf of due process.” Aziz Siddiqui, Human Rights Commission of Pakistan¹

The two houses of the Pakistan Parliament passed the Anti-Terrorism Act, 1997 on 13 August 1997. It was signed by the President on 17 August and came into force at once. Special courts provided for by the Act were set up in Punjab province in the following days and began trying cases. The first convictions have been reported.

Amnesty International believes that the Anti-Terrorism Act, 1997 is seriously flawed as it contravenes several legal safeguards of the Pakistani constitution and Pakistan law as well as international standards. It invites serious human rights violations by placing wide ranging powers in the hands of law enforcement personnel who are known for their frequent recourse to torture and extra-judicial executions. The special courts established under the Act are unable to provide the same legal safeguards to defendants as regular courts, as many of them are explicitly suspended. Political prisoners are likely to be subjected to unfair trials and people are at risk of being sentenced to death in manifestly unfair trials.

Amnesty International appeals to the Government of Pakistan to immediately repeal the Anti-Terrorism Act, 1997 and to ensure that in its pursuit of law and order, the internationally and nationally guaranteed rights of people in Pakistan are fully honoured.

1. Political background to the Anti-Terrorism Act

The government of Prime Minister Mian Nawaz Sharif, in office since February 1997, has repeatedly declared that the revival of the Pakistan economy was its first priority; the main obstacle in the path to attaining this goal is a rapidly deteriorating law and order situation in Sindh and Punjab provinces. In Punjab, where major industrial production centres lie, sectarian violence between the Shia and Sunni communities rapidly escalated in the first half of 1997, leading to some 130 deaths of members of both groups during that period. Similarly in Sindh, which had experienced a temporary calm under the interim government, large scale violence

¹*Dawn*, Karachi, 17 August 1997

erupted shortly after the general and provincial elections in February 1997, leading to over 400 politically motivated killings in the same period².

The government initially responded to the deteriorating law and order situation by calling on religious groups to restrain their followers and by banning motor bike pillion driving (as many attacks had been carried out by a pillion rider shooting from a moving motorbike and then fleeing the scene). When violence did not abate, the government in June and July 1997 resorted to mass arbitrary arrests and detention in both provinces. Often, when police failed to find sufficient evidence to pursue criminal charges, detainees were held under a preventive detention law, the Maintenance of Public Order Ordinance, or without any charges.

While there was a clear demand in the country for the restoration of law and order, there was also growing concern at the practice of arbitrary arrests and detention to cope with widespread politically or religiously motivated violence. Amnesty International believes that these concerns are legitimate. On 11 August, Amnesty International said that law and order concerns must not override citizens' fundamental rights and warned that Prime Minister Mian Nawaz Sharif's announcement that "we will tighten the noose around the enemies of peace" provided a fearful spectre of further disregard for the rights of ordinary citizens. The organization also feared that recourse to unlawful arrests and detention would set in motion a new cycle of violence. The widespread use of extralegal means to curb civil unrest in Karachi in 1995 had shown that such a practice feeds further violence, as those subjected to human rights violations and unlawful practices were observed to join armed opposition groups and to resort to human rights abuses in an effort to seek extralegal redress.

The higher judiciary also took notice of these concerns. Chief Justice Sajjad Ali Shah in July 1997 initiated public hearings into the killings in Karachi and the sectarian violence in Punjab. He also summoned government representatives to report to him what action they had taken to cope with the situation. In a seminar on 8 August, Sajjad Ali Shah said that the judiciary could not remain a silent spectator to the situation in the country.

Already in May 1997, government authorities had publicly declared that existing institutions of the country were unable to adequately deal with the law and order situation. A police reform proposal formulated by the federal government and sent to the provinces in April 1997, was turned down by the governments of Sindh and Punjab. The proposal stated that "the police force has crumbled mainly due to the negation of the principle of merit and discipline because of political interference at the command and operational level" and noted a serious lack of investigative skills among the police force. It envisaged improved police training and a new accountability mechanism. The governments of Sindh and Punjab rejected the proposal arguing

²For documentation of earlier large scale human rights violations in Sindh see: [Pakistan: Human rights crisis in Karachi](#), AI Index: ASA 33/01/96.

that the proposed changes would take law and order out of the control and responsibility of the provinces.

Around the same time, government officials began to talk of the inability of the judiciary to provide speedy justice which alone would deter future offenders. In July and August 1997 most official comments led the public to believe that the Special Courts for the Suppression of Terrorist Activities (STA courts) would soon be revived and expanded to try offenders responsible for “terrorist” and sectarian violence. For instance, Punjab Governor Shahid Hamid on 8 August declared that the restoration of Special Courts for Terrorist Activities was imminent.

Attempts to provide speedy justice by special courts have in the past led to political prisoners being subjected to unfair trials and to people being sentenced to death after manifestly unfair trials. Additionally and notably, the justice they provided was neither speedy nor a deterrent as promised by the government.³

The higher judiciary has repeatedly warned against re-establishing a parallel court system. Chief Justice Sajjad Ali Shah on several occasions assured the Prime Minister that a

³Under the Suppression of Terrorist Activities (Special Courts) Act, 1975, many times subsequently amended, special courts were set up in all the provinces of Pakistan to try suspects for loosely defined “terrorist offences”. The provisions governing the Special Courts for Terrorist Activities (STA courts) were manifestly flawed in a number of ways; two of the most serious defects were the curtailment of the presumption of innocence of defendants and the insufficient independence of its judges from the executive. Judges of the STA courts were by the Lahore High Court found to be dependent on the executive for their appointment, tenure, transfers and the supervision of their work. See also: Pakistan: Memorandum submitted to the government following a visit in July-August 1989, AI Index: ASA 33/03/90. In two provinces STA courts meanwhile ceased to function in their original form. Following a Lahore High Court judgement in July 1996 which declared that the constitutionally secured separation of the judiciary from the executive was not observed in the setting up of STA courts, they ceased to function in the Punjab. However by late 1996, some of these courts were reconstituted by placing them under the supervision of the provincial high court and appointing judges after due consultation with the chief justice of the high court. In Sindh province, STA courts were abolished in January 1997 by the interim government without replacement and pending cases were referred to regular courts. A Pakistan Law Commission report of August 1997 mentions that in mid-1997 some 18,625 cases were pending under the Suppression of Terrorist Activities Act in the four provinces and would require an additional 121 judicial posts to be cleared speedily.

In 1991, shortly after the beginning of Prime Minister Nawaz Sharif’s first term in office, Special Courts for Speedy Trial were set up for a period of three years under the 12th Constitutional Amendment. This amendment, too, had serious flaws as it limited the rights of defendants to present a full defence and disregarded the principle of equality before the law. It lapsed without replacement in 1994. See: Pakistan: Special Courts for Speedy Trial, AI Index: ASA 33/23/91. The Terrorist Affected Areas (Special Courts) Ordinance, 1991 provided for speedy courts in specially notified areas but, since no area was subsequently notified as “terrorist affected”, no courts were set up under the terms of this ordinance.

quick disposal of cases could be achieved within the existing judicial system. The Pakistan Law Commission on 3 August 1997 presented to the public a judiciary reform proposal which had been submitted to the Prime Minister on 27 July. It suggested measures to strengthen the existing judicial system and warned, too, of creating a parallel court system. It proposed increasing the number of judicial officers, raising the retirement age of judges, improvement of judicial training, measures to ensure attendance of witnesses in court, liberalization of provisions relating to bail and fewer adjournments of hearings. It also mentioned that the police investigative branch should be strengthened to ensure timely submission of adequate police reports.

Despite these warnings of the country's highest judiciary, an anti-terrorism bill drafted by the Law Ministry was actively discussed in government circles in early August. On 12 August 1997, a committee was set up to remove objections raised by the allies of the ruling Pakistan Muslim Leagues (PML), mainly the Mohajir Qaumi Movement (MQM, later renamed) and the Awami National Party (ANP) as also by some PML members. Prime Minister Mian Nawaz Sharif publicly said that the judiciary and the government's allies had been consulted and agreed with the need for stern action to combat sectarian and other political violence. On 13 August 1997, one day before the nation celebrated the fiftieth anniversary of its creation, Interior Minister Chaudhry Shujaat Hussain presented the Anti-Terrorism Bill to both houses of parliament; it said that "there is a spate of terrorist activities and commission of heinous offences in Pakistan. It is necessary that appropriate administrative and judicial measures are adopted."

The Pakistan People's Party (PPP) opposed the bill in both houses and demanded further detailed discussions; the MQM, a coalition partner of the ruling PML, stayed away from the parliamentary proceedings altogether. Prime Minister Mian Nawaz Sharif gave assurances to the National Assembly that "no political victimization will be done by the government" but refused to postpone the vote. Following the opposition walk out in both houses in protest, the bill was passed in the National Assembly and the Senate without any of the amendments proposed by the opposition. It was signed into law by President Farooq Leghari on 17 August.

Shortly after the passing of the Act, Prime Minister Mian Nawaz Sharif openly dismissed human rights concerns voiced inside the country and abroad about the Act and said on 15 August that his government would "bring about ideal conditions of law and order in the country within a matter of months by publicly hanging terrorists -- without caring for the objections of the so-called human rights organizations".⁴

2. The Anti-Terrorism Act, 1997

⁴*Dawn*, Karachi, 17 August 1997

The Anti-Terrorism Act, 1997 (the Act) is intended to “provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto” (introductory paragraph of the Act); it explicitly overrides all other legal provisions (section 32), comes into force at once (section 1(3)) and applies to the entire country (section 1(2)).

The Act specifies that resort to the provisions of the Act should be preceded by the federal government notifying in the official gazette that “the commission of terrorist acts and scheduled offences have become commonplace in Pakistan” (section 3). Following this notification, the federal government may on its own initiative or upon the request by a provincial government, call in the armed or civil armed forces (which include the Frontier Constabulary, the Frontier Corps, the Pakistan Coast Guards, Pakistan Rangers or any other civil armed force notified by the government as such a force) to aid the civil authorities in the “prevention or control of terrorist acts or scheduled offences” (section 4). In the pursuit of this task, these forces may exercise powers equal to those of the police (section 5(1)).

The powers of police -- and consequently of the armed forces or civil armed forces called in for the purposes specified in the Act -- are enhanced by the Act. Police and other law enforcement personnel may “after giving sufficient warning, use the necessary force to prevent the commission of terrorist acts or scheduled offences” (section 5(1)). This may include the power to shoot to kill. Law enforcement personnel may “after giving prior warning use such force as may be deemed necessary or appropriate ... against any person who is committing, or in all probability is likely to commit a terrorist act or a scheduled offence, and it shall be lawful for any such officer, or any superior officer, to fire, or order the firing upon any person or persons against whom he is authorized to use force... “ (section 5(2)(i)). Law enforcement personnel may not be subject to “suit, prosecution or other legal proceedings” for any acts done in “good faith” under the Act (Section 39). Further, law enforcement personnel may under the Act arrest suspects without warrant (section 5(2)(ii)) and enter and search homes without warrant (section 5(2)(iii)).

Offences covered by the Act include “terrorist acts” defined in section 6⁵, “acts intended or likely to stir up sectarian hatred” defined in section 8⁶, scheduled offences listed in the appended schedule which include murder, incitement to religious hatred and gang rape, as well as the attempt or abetment of any of these offences. The Act also empowers the federal or provincial government to add any offence to the schedule or delete any offence from it

⁵ Section 6: “Whoever, to strike terror in the people, or any section of the people, or to alienate any section of the people or to adversely affect harmony among different sections of the people does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or fire arms, or other lethal weapons or poisons or noxious gases or chemicals or other substances of a hazardous nature in such a manner as to cause, or to be likely to cause the death of, or injury to, any person or persons, or damage to, or destruction of, property or disruption of any supplies of services essential to the life of the community or displays fire arms, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties commits a terrorist act.”

⁶ The Act does not mention acts which arouse ethnic hatred.

(section 34). It also authorizes the government to declare any association unlawful “in the interest of the maintenance of public order” (section 40). The punishment for any “terrorist act” which results in death is the death penalty; in other cases a minimum of seven years’ imprisonment up to life imprisonment and fine is prescribed (section 7). The punishment for acts stirring up religious hatred is up to seven years’ imprisonment with possible fine (section 9).

Police have to complete their investigation of anyone arrested under the Act within seven days (section 19). Though an extension may be granted by the court in exceptional circumstances, failure to speedily complete the investigation may lay police open to prosecution for contempt of court (section 19(2)) while “defective investigation” may lead to criminal prosecution of police by the Special Court which may sentence an investigating police officer with up to two years’ imprisonment (section 27). Confessions obtained by police may be used in court against the accused subject to certain evidentiary rules (section 26).

Suspects arrested under the Act may only be tried by Special Courts directed to be set up by the Act (section 12); suspects arrested for offences allegedly committed before the Act came into effect may also be tried under the Act provided the punishment given corresponds to the punishment provided by the law at the time of the commission of the offence (section 38). Special Courts may hear cases in any place the federal government may consider appropriate, including mosques or the places where the offences were allegedly committed (section 15). Special courts may also try suspects in their absence (section 19(10)) but must then appoint an advocate to defend him. Trials have to be concluded within seven days (section 19(7)). This time limit may only be extended if strictly required and only for two days. Appeal against conviction and sentence lies exclusively to Special Appellate Tribunals to be set up under the Act (section 24); the judgement of a special court, subject to the result of the appeal to the Special Appellate Tribunal, which has to reach a decision within seven days, is final (section 31).

Judges of Special Courts are directed to impose the maximum penalty prescribed by law; if a lesser punishment is given, the judge has to record the reason for this decision (section 20). The federal government may decide the “manner, mode and place of execution of any sentence ... having regard to the deterrent effect which such execution is likely to have” (section 22).

Criticism of the Act is risky: “A Special Court or an Appellate Tribunal shall have the power to punish with rigorous imprisonment for a term which may extend to six months and with fine any person who ... scandalizes the Court or Tribunal or otherwise does anything which tends to bring the Court or Tribunal ... into hatred, ridicule or contempt ...” (section 37).

3. Contravention of fundamental rights and legal safeguards by the Anti-Terrorism Act

It is important to note that the existing legal and judicial system is already equipped to deal with all the offences referred to in the Act. The problem then seems to be a lack of implementation, not a lack of laws. Amnesty International believes that recourse to a law which explicitly dispenses with constitutionally secured fundamental rights will not in the long term secure the rule of law. To curtail people's rights, subject suspects to unfair trials and to hang them publicly will further undermine the respect for the law and brutalize society. Given the summary nature of court procedures innocent people may be wrongly convicted. Reforming the police, strengthening the judiciary and insisting at every level on the strict implementation of the existing law are alone able to restore respect for the rule of law and secure fundamental rights for all citizens of Pakistan⁷.

The Act contravenes international standards in a number of important respects. This will be detailed below.

3.1. Wider powers given to the police and other security forces

a. The right to shoot to kill

*“... an officer of the police, armed forces and civil armed forces may:-
(i) after giving prior warning use such force as may be deemed necessary or appropriate, bearing in mind all the facts and circumstances of the situation, against any person who is committing, or in all probability is likely to commit a terrorist act or a scheduled offence, and it shall be lawful for any such officer, or any superior officer, to fire, or order the firing upon any person or persons against whom he is authorized to use force in terms hereof ...”*(section 5(2)(1)).

Police in Pakistan are notorious for their use of torture to extract information, confessions or bribes and their resort to extrajudicial executions of common criminals and political opponents of the government. Amnesty International has over the years consistently documented the high level of extra-judicial executions perpetrated by police which the authorities have then sought to cover up as killings in “encounters” of criminal suspects with police. Government officials have sometimes conceded that police take the law into their own hands simply because they fear that in long-drawn litigation, defendants secure their release and evade justice⁸.

The non-governmental Human Rights Commission of Pakistan aptly characterized police performance in its annual report for 1996: “The conduct of law enforcing agencies caused as much anxiety as the high rate of crime, partly because of their inability to apprehend criminals

⁷see also: [Pakistan: Time to take human rights seriously](#), AI Index: ASA 33/12/97.

⁸see: [Pakistan: Torture, deaths in custody and extrajudicial executions](#), AI Index: ASA 33/05/93; [Pakistan: The pattern persists: Torture, deaths in custody, extrajudicial executions and “disappearances” under the PPP government](#), AI Index: ASA 33/01/95, [Pakistan: Human rights crisis in Karachi](#), AI Index: ASA 33/01/96, [Pakistan: Time to take human rights seriously](#), AI Index: ASA 33/12/97.

and partly because of their excesses. They were apparently led to believe that killing of outlaws and criminals was in order and little was done to persuade them that investigation did not mean only extortion of confession through torture. Apart from deaths in encounters, scores of deaths in custody were reported ...". Similarly, the Pakistan Law Commission in its report of August 1997 listed "inefficiency and lack of integrity on the part of investigating staff" as primary reasons for delay of police reporting. A judicial inquiry commission investigating the death of Murtaza Bhutto similarly urgently recommended a reform of the police department to which over the years, appointments had been made in disregard to qualification and merit. Government officials have also admitted the shortcomings of police. Punjab Chief Minister Shahbaz Sharif on 22 August 1997 said in a press conference in Faisalabad that police after torturing people to death hid the fact by claiming that they had committed suicide; he added that ordinary people feared police and did not dare approach them with their complaints.⁹

To entrust this police force, little aware of, habituated or willing to abide by national and international safeguards relating to the use of force and known for their frequent recourse to unlawful means, with the power to shoot to kill on the mere assumption of terrorist intent invites serious human rights violations. Under the Act, police are given vast discretionary powers, if not licence, to determine when lethal force is called for. The Act does not provide clear and unambiguous guidelines on when the use of force is legitimate. Thus the resort to lethal force is legitimate against anyone who in the subjective judgement of a police officer of any rank is "...in all probability ... likely to commit a terrorist act or scheduled offence". The Human Rights Commission of Pakistan warned that under the Act, "the police will .. have the sanction of the law to take extreme steps in pursuit of mere suspicion." Many commentators have similarly pointed out that the law provides a legal cover and sanction for extrajudicial killings. Under the regular law of Pakistan, police may not open fire at a crowd without the order of a magistrate present on the spot.

The Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17 December 1979 (Resolution 34/169) states in Article 3: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by consensus by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990 sets out clear conditions when the use of force and firearms is permitted. Principle 9 states: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly

⁹The Frontier Post, Peshawar, 23 August 1997

unavoidable in order to protect life”. Principle 8 lays down that: “Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.”

The Act not only provides no guidance as to the circumstances in which it is “reasonable” to use force, and permitted to employ lethal force; it actually provides strong inducement for police to apply lethal force. If a police officer chooses not to shoot a “terrorist” suspect, but arrests him instead, the police officer works under a number of restrictions. Despite his limited investigative skills, resources and equipment, he has to complete the investigation in seven days and he faces severe reprimand or even a jail sentence if he fails to do so or if his investigation is deficient. Even without the threatened reprimand or criminal prosecution, police are known to have taken the law into their own hands and killed the suspect¹⁰.

b. Indemnity for acts done in “good faith”

The random resort to lethal force is not only made lawful by the Act, it is also indemnified. Section 39 of the Act says: “No suit, prosecution or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.”

To explicitly place any acts of police or other law enforcement personnel, including possibly random resort to lethal force outside scrutiny and accountability may give law enforcement personnel the impression that they may commit such acts with impunity if only they can claim to have done them in good faith. It breaches a basic requirement of the rule of law, namely its equal and exceptionless application to everyone. Principle 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions says: “In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.” Further, Principles 9 and 18 respectively call for all such violations to be investigated and for the perpetrators to be brought to justice. Again, Principle 23 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Personnel says: “Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process”.

Amnesty International believes that the phenomenon of impunity, literally the exemption from punishment is one of the main factors contributing to continuing patterns of human rights violation the world over. When investigations are not pursued or even barred by law, and the perpetrators are not held to account, a self-perpetuating cycle of violence is set in motion resulting in continuing violations of human rights cloaked by impunity.

c. Rigid time limits for police investigation

¹⁰For instance, during a visit in December 1995, Amnesty International was told by a government official that the slowness of the judicial process and the ease with which criminal suspects could obtain bail had contributed to police officers in Karachi taking the law into their own hands and killing suspects.

Under Pakistan law, police are to complete investigations of criminal complaints within 14 days and submit their final or interim report to a magistrate, but further investigation may be carried out beyond this period. Despite these more flexible time limits under the regular law, police in Pakistan are known to have falsified evidence to present a report to the magistrate or to obtain a good rating in crime resolution. Coercive methods, including torture, rape and threats of these violations have frequently been applied. To demand the completion of an investigation within seven days without improving the training and facilities available to police virtually invites the use of torture. By threatening to discipline and prosecute inefficient police officers and by making confessions extracted by police admissible in court, the new Act further in effect allows the use of torture to obtain timely results.

In its public defence of the Act, the government has emphasised the provision of providing punishment for police failure as a welcome step forward towards making police more accountable. Information Minister Mushahid Hussain stated that it was the first time that punishment had been proposed for police offenders under the Act. However, section 27 which deals with “punishment for defective investigation” does not explicitly refer to the human rights of detainees or the rule of law. It stipulates that the special court may prosecute an investigating officer or other officers who have not facilitated the prosecution of detainees because they “failed to carry out the investigation properly or diligently or have failed to pursue a case properly and in breach of their duties”.

3.2. Setting up of special courts

To obtain justice promptly and without undue delay is a legitimate concern of the users of justice. The Pakistan Law Commission in its report of August 1997 acknowledged that “the expeditious ... disposal of cases and provision of inexpensive justice would certainly have an impact in arresting the spiral of violence and lawlessness in society”.¹¹

¹¹ Courts in Pakistan have to deal with a considerable backlog of cases making the disposal of cases a long-drawn process. Sometimes criminal suspects are acquitted after spending years in detention awaiting trial or are given sentences shorter than the period in detention awaiting trial. According to the Pakistan Law Commission report, 747,632 cases were pending before the country’s judiciary in 1997. Of these, 8,031 cases were pending in the Supreme Court; 75,768 in the Lahore High Court; 62,669 in the Sindh High Court; 11,497 in the Peshawar High Court; 655 in the Quetta High Court; 1,322 in the Federal Shariat Court and 589,012 in the lower courts.

Amnesty International believes that the legitimate demand for justice without undue delay should not lead to the establishment of special courts which deny defendants the equitable, impartial and independent administration of justice. There is a strong presumption in international law against the use of special courts if these do not afford the full guarantee of a fair trial. The Special Rapporteur on extrajudicial, summary or arbitrary executions noted in December 1996: “The Special Rapporteur is particularly concerned about the imposition of the death penalty by special jurisdictions. These jurisdictions are often set up as a response to acts of violence committed by armed opposition groups or in situations of civil unrest, in order to speed up proceedings leading to capital punishment. Such special courts often lack independence, since sometimes judges are accountable to the executive ... Time limits, which are sometimes set for the conclusion of the different trial stages before such special jurisdictions, gravely affect defendants’ right to an adequate defence. The Special Rapporteur also expresses concern about limitations of the right to appeal in the context of special jurisdictions. This is particularly worrying as these special jurisdictions are generally established in situations where rampant human rights violations already exist.”¹²

a. The right to be tried by an independent and competent judiciary

Under international law, individuals have the right to be tried before competent, independent and impartial tribunals. Stressing the importance of the independence of the judiciary, the Special Rapporteur on the independence of judges and lawyers in February 1997 said: “An independent judicial system is the constitutional guarantee of all human rights. The right to such a system is the right that protects all other human rights.”¹³

The independence of the judiciary rests *inter alia* on qualified persons being selected for judicial office, the continued supervision of courts by the superior judiciary, no inappropriate or unwarranted interference with the judicial process and security of tenure of judges. The constitution of Pakistan secures all of these conditions to the country’s regular judiciary.

Under the Anti-terrorism Act unqualified people may become judges. A person may be appointed by the federal government after consultation with the chief justice of the relevant provincial high court who

- “(i) is or has been a sessions judge or an additional sessions judge; or;
- (ii) has exercised the powers of a district magistrate or an additional district magistrate and has successfully completed an advanced course in Shariah, Islamic law, conducted by the International University Islamabad; or;
- (iii) has for a period of not less than ten years been an advocate.....

Explanation.- The qualification of being an advocate for a period of not less than ten years may be relaxed in the case of a suitable person who is a graduate from an Islamic University and has studied Islamic Shariah and fiqh as a major subject.” (Section 14)

¹²E/CN.4/1997/60, p.13

¹³ E/CN.4/1997/32, p. 47

It appears hardly likely that a law graduate without years of experience in court will be able as a judge of a special court to adequately protect all the rights of defendants. As a commentator has pointed out, “any such graduate who may have never even attended a court for a day may impose the death penalty after a trial of seven days”¹⁴. Further, the Act does not contain any reference to length and security of tenure of judges.

The Act does not state if the new courts are placed under the supervision of the superior judiciary. Section 31 of the Act explicitly says: “A judgment or order passed, or sentence awarded, by a Special Court, subject to the result of an appeal under this Act shall be final and shall not be called in question in any Court.” This appears to exclude the possibility of appealing to the regular high courts and the country’s apex court, the Supreme Court of Pakistan and to place the judgments of special courts outside the scrutiny of the Supreme Court.

It further appears that the executive in so far as it may determine the place of hearing and the place of execution of sentence exerts an undue influence on the judicial process. Further, the Act appears to restrict the judges’ exercise of discretion. The Act directs judges to impose the maximum sentence and lays down strict guidelines when judges of the special courts may grant bail. Judges of appellate tribunals may not grant bail at all.

b. The right to equality before the law

The Constitution of Pakistan guarantees the fundamental rights of every citizen to be treated in accordance with the law and to equality before the law. Article 4 lays down: “To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.” Article 25(1) stipulates: “All citizens are equal before law and are entitled to equal protection of law.” These constitutional guarantees are violated by the setting up of special courts whose procedures differ significantly from those of regular courts and curtail important fair trial safeguards which are enjoyed by people tried in regular courts.

The right to be tried by the established procedures of one’s country is laid down in Principle 5 of the United Nations Basic Principles on the Independence of the Judiciary: “Everyone has the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”

c. Confessions to police made admissible in court

¹⁴*Dawn*, Karachi, 22 August 1997

Under the Qanun-e Shahadat Order, 1984, a confession made before a police officer cannot be used in court as valid evidence against the accused. This provision is suspended in the Act in section 26 but a proviso is added that “the Special Court may, for admission of the confession in evidence, require the police officer to produce a video tape together with the devices used for recording the confession”.

Given the propensity of police in Pakistan to use torture to extract confessions, the Act, by lending greater legal weight to confessions and by putting pressure on police to speedily resolve crime, may indirectly contribute to the continued, and perhaps increased use of torture. Article 14(2) of the Constitution of Pakistan prohibits the use of torture, though only in the limited context of extraction of confessions: “No person shall be subjected to torture for the purpose of extracting evidence.” International standards including the Universal Declaration of Human Rights and the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture) unconditionally prohibit torture and other forms of cruel, inhuman or degrading treatment or punishment. Article 12 of the Declaration against Torture states that “Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.”

Judges clearly have an important responsibility in the prevention of torture. The Special Rapporteur on torture in his 1992 report to the UN Commission on Human Rights noted: “It is the judiciary which can provide in various ways immediate relief and redress in individual cases. If the judiciary takes upon it this responsibility it will actually make the use of torture unrewarding and will thereby effectively contribute to its disappearance.”¹⁵

Furthermore, the UN Basic Principles on the Independence of the Judiciary establish: “The Principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.” It is hard to see how judges of the special courts can honour this requirement given the little time in which to conclude the trial. It will not permit judges to seek investigation of torture allegations so as to assess if confessions should be admissible.

d. The right to a fair hearing in the context of transfer of cases

Section 28 of the Anti-Terrorism Act specifies that an Appellate Tribunal may transfer any case from one special court to another “if it considers it expedient to do so in the interest of justice, or where the convenience or safety of witnesses or the safety of the accused so requires”. In such cases the special court to which the case has been transferred is to “proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to recall and re-hear any witness who has given evidence and may act on the evidence already recorded”. Similarly if the composition of a special court is altered, the new court is to

¹⁵ Oral Statement to the Commission on Human Rights, 11 February 1992, introducing report E/CN.4/1992/17.

continue the trial where the previous court stopped hearing it without recalling and re-hearing witnesses (section 19(9)).

Judges who may not have heard all the evidence if a case has been transferred will not be able to provide a fair trial in accordance with Article 10 of the Universal Declaration of Human Rights which lays down the right of every person to a fair trial.

The provision of the Act regarding the transfer of cases also contains an inherent unfairness in that judges presiding over a transferred case have to decide the case partially on the basis of a written transcript of evidence, if available. One of the fundamental principles of the judicial system of Pakistan is that justice is secured by presentation, wherever possible, of oral evidence directly to the court.

e. The right to be tried in a public place without prejudice to the defendant

The federal government is empowered to determine the place of sitting of the court (section 15) as also of the appellate tribunal (section 25(6)): "The Government may direct that for the trial of a particular case, the Court shall sit at such place including the place of occurrence as it may specify"(section 15). Only if the place of sitting has not been indicated by the government may the court decide to hold the trial "at any place including a mosque other than the ordinary place of sitting" (section 15(3)).

Holding a trial in a mosque or the place of the incident appears to be intended to expose the defendant to public expressions of outrage, anger or even violence for his deeds, to humiliate him and to deter others by the spectre of public exposure -- it does not appear to serve the purpose of helping the judiciary establish the truth and do justice in a detached circumspect manner and in calm circumstances.

The probable intention to expose the defendant to public expressions of outrage may severely infringe the presumption of innocence contained in Article 11 of the Universal Declaration of Human Rights. Further, it may place the defendant in degrading circumstances in contravention of Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which says: "No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."

While the place of trial should not be such as to expose the defendant to public humiliation it should not be a place inaccessible to the public as this would contravene Article 10 of the Universal Declaration of Human Rights which says that everyone is entitled to a fair and public hearing. As under the Act, the government may determine the place of sitting, it may

also direct the court to hold the trial in camera or de facto in camera, such as when trials are held inside prisons which are generally inaccessible for the public. The openness of a trial is an important safeguard in the interest of the defendant and a guarantee for a fair trial.

f. The right to a full defence

Police must complete their investigation under the Act within seven days. Once the police report is submitted and the special court takes cognizance of it, the court shall “proceed with the trial from day to day and shall decide the case within seven working days”. The court may adjourn hearings only “if necessary in the interest of justice” and only for two working days (section 19(7) and (8)). Similarly an appeal to the Appellate Tribunal has to be heard and decided within seven days.

The rigid time frame within which cases have to be heard and decided makes it highly unlikely that the special courts will be able to provide a fair trial. It is prejudicial to the defendant’s ability to present a full defence. In complex cases it may take longer for the defendant to locate important witnesses, to subpoena relevant evidence and to have all the witnesses adequately heard in court. Amnesty International fears that the inflexible time limit of the hearing and the appeal will contribute to defendants being convicted and sentenced, including sentenced to death, without having had an opportunity to present a full defence.

Curtailing the right of defendants to a full defence is particularly grave when the death penalty is at stake. The UN Safeguards guaranteeing protection of the rights of those facing the death penalty in Safeguard 5 lays down: “Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights ...”. One of the important principles contained in article 14 of the International Covenant on Civil and Political Rights is contained in section 3(b), according to which every accused shall be entitled “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”.

Under international law, every defendant has the right to be tried without undue delay, but also without undue haste. Regular courts in Pakistan have no time limits imposed upon them for disposal of cases. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly Resolution 43/173 on 9 December 1988, without a vote, lays down in Principle 18(2): “A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.” Further, Principle 33 lays down the right of every defendant to make a complaint about torture or other forms of cruel, inhuman or degrading treatment or punishment which must be investigated. Article 12 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that no statement made as a result of torture may be used as evidence against the person concerned or any other person. None of these requirements can conceivably be fulfilled in a trial lasting only seven days, with a maximum two days’ extension.

g. The right to be presumed innocent

The Act lays down that only special courts may grant bail to people tried for offences under the Act but they may not release a defendant on bail “if there are reasonable grounds for believing that he has been guilty of the offence with which he has been charged” and unless the prosecution has been given an opportunity to “show cause why he should not be released”. This provision involves an assumption of prima facie guilt which violates the defendant’s right to be presumed innocent until proved guilty according to law, a fundamental principle recognized in Pakistan criminal jurisprudence and enshrined in Article 11(1) of the Universal Declaration of Human Rights: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

Appellate Tribunals are not empowered to grant bail while the appeal is pending (section 25(8)); the Act does not give reasons for this stipulation.

h. The right to appeal

Appeals against sentences passed by the new courts can be filed with the Appellate Tribunal; one or more Appellate Tribunals are to be set up in each province. The federal government, after consultation with the high court is to appoint one or two high court judges to the Appellate Tribunals. An Appellate Tribunal is to hear and decide an appeal within seven days.

Section 31 of the Act clearly states: “A judgement or order passed, or sentence awarded, by a Special Court, subject to the result of an appeal under this Act shall be final and shall not be called in question by any Court.” Hence, there is no possibility of the defendant to appeal to a court in the regular judicial system, either to the provincial high court or the Supreme Court of Pakistan. People convicted and sentenced by the special courts are clearly disadvantaged in so far as their legal remedies are restricted: they have only one possibility of appeal, whereas people convicted by regular courts may also appeal to the Supreme Court. This provision violates the principle of equality before law laid down in the Constitution of Pakistan. It is one of the fundamental principles of international human rights law. Moreover, as noted earlier, the right to appeal is restricted in so far as it is subject to severe time limitations. The defendant may not in seven days be able to present an adequate appeal.

Defence and prosecution do not enjoy the same rights with respect to appeal and review: While the defendant has to appeal to the appellate tribunal within seven days after the sentence is announced, the state prosecution may file an appeal against an acquittal or sentence within fifteen days of the court’s decision. This clearly contravenes the principle of equality of arms available to defence and prosecution.

The rights to appeal of those facing the death penalty also appear to be seriously infringed under the Act. Under regular law of Pakistan, death sentences by lower courts are

automatically referred to the provincial high court for confirmation, regardless of whether the prisoner appeals. If the death sentence is confirmed, the prisoner may then appeal to the Supreme Court but the Supreme Court may decide not to hear the case. Persons sentenced to death also have the possibility to appeal for commutation of their sentence by seeking clemency or pardon of the provincial or federal government or the President of Pakistan.¹⁶

The Act omits the automatic confirmation of death sentences by a higher court and the possibility of appeal to the Supreme Court. In so far as it does not specify if the possibility of seeking pardon is retained, the Act contravenes the UN Safeguards guaranteeing protection of the rights of those facing the death penalty which in Safeguard 7 says: “Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.” The Special Rapporteur on extrajudicial, summary or arbitrary executions in December 1996 observed with respect to the appeal against death sentences: “States should provide in their national legislation a period of at least six months so as to allow a reasonable amount of time for the preparation of appeals to courts of higher jurisdiction and petitions for clemency before a death sentence is executed. Such a measure would prevent hasty executions while affording defendants the opportunity to exercise all their rights...”¹⁷

i. The right not to be subjected to degrading punishment

The Act does not significantly alter the punishments to be imposed for specific offences. It, however, specifies that for “terrorist acts” resulting in death, courts have to mandatorily impose the death penalty. The Act directs the judge to impose the maximum penalty: “A person convicted for an offence by the Special Court shall be awarded the maximum punishment prescribed by law for the offence unless for reasons to be recorded the Court decides to award a lesser punishment” (section 20).

The intention of the Act appears to be not primarily to provide justice and to punish a person for acts committed but to deter future offenders by harsh punishments; this may limit the defendant’s right to be presumed innocent and to a fair trial. The motivation of deterrence becomes particularly clear when the Acts refers to the place of punishments: “The [federal] Government may specify the manner, mode and place of execution of any sentence passed under this act, having regard to the deterrent effect which such execution is likely to have” (section 22).

Section 22 opens the possibility for public executions of the death penalty which Prime Minister Nawaz Sharif had favoured during his first term in office and made part of the Special Court for Speedy Trial Act. Again, when the death penalty was extended to gang rape in March 1997, Nawaz Sharif announced that gang rape would come to an end if convicted rapists were hanged by the lamp post nearest the place of crime. On 13 August 1997, he said to foreign

¹⁶On restricted possibilities of commutation of death sentences following the introduction of Islamic laws into the Pakistan Penal Code, see: [Pakistan: The death penalty](#), AI Index ASA 33/10/96.

¹⁷E/CN.4/1997/60

correspondents in Islamabad when the anti-terrorism bill was under discussion: “If such people [terrorists] are given the death penalty, that will certainly act as deterrent”.¹⁸

Amnesty International unconditionally opposes the death penalty as it is a violation of the most fundamental right, the right to life. While many people in Pakistan assume that the death penalty has a deterrent effect, the death penalty has not been shown to have a uniquely deterrent effect. The Special Rapporteur on extrajudicial, summary or arbitrary executions in December 1996 noted: “A wide range of experts in sciences such as criminology, sociology and psychology have expressed doubts concerning the deterrent effect of capital punishment. Therefore, Governments of countries in which the death penalty is still enforced are urged to deploy every effort that could lead to its abolition, the desirability of which has repeatedly been affirmed by the General Assembly.”¹⁹ Crime figures published in Pakistan speak for themselves: The rate of serious crime has been shown to be continually rising despite the fact that successive governments have extended the range of offences for which the death penalty may be imposed.

While Amnesty International opposes all death sentences and appeals to all governments the world over to suspend the execution of all death sentences with a view to abolishing this punishment, the organization considers the public execution of the death sentence to have a particularly brutalizing effect on society and urgently appeals to the Government of Pakistan to refrain from public executions. Although Pakistan is not a party to the International Covenant on Civil and Political Rights, it is important to note that the Human Rights Committee has stated that “Public executions are ... incompatible with human dignity.”²⁰

3.3. The implementation of the Act

Opposition parties, particularly the Pakistan People’s Party, have attacked the new law as a “black” law which could be abused to harass political opponents of the government. Chief of Army Staff, General Jahangir Karamat on 14 August termed the Act a “good thing” but warned against its misuse.

¹⁸ The Supreme Court of Pakistan stayed public executions in late 1992 pending a decision on whether public executions are compatible with the dignity of man protected by Article 14 of the Constitution of Pakistan. In 1994 when the government of Benazir Bhutto had banned public executions as a matter of policy, the Supreme Court of Pakistan disposed of the question and said, “no further action by this court now appears to be necessary”. See: Pakistan: The death penalty, AI Index: ASA 33/10/97.

¹⁹E/CN.4/1997/60

²⁰Concluding observations of the Human Rights Committee on the initial Report of Nigeria, UN Doc. No. CCRP/C/79/Add.65, 24 July 1996, para 16.

The Human Rights Commission of Pakistan called the Act an instrument which would “strike terror in the heart of the common citizens far more than it is likely to petrify the terrorists or would-be terrorists”. Lawyers in Punjab, Sindh and Balochistan went on strike in protest following the passing of the Act. A broad alliance of human rights bodies in Karachi on 17 August demanded the unconditional abolition of the Act: “We believe that the present Anti-Terrorism Bill in its very spirit violates the dignity and worth of human life. ... by enacting laws that would sanction the state machinery to threaten the life and property of innocent citizens, it violates the fundamental rights enshrined in the Constitution.”

Several petitions challenging the constitutionality of the Act have been filed in the Peshawar High Court, the Lahore High Court and in the Supreme Court of Pakistan. They have not yet been heard.

The Government of Pakistan has on various occasions defended the adoption of the Act: Minister for Information Mushahid Hussain said on 18 August in Karachi, “the Act is intended to protect the life of every Pakistani, which is also a fundamental right. ... This right cannot be compromised in any situation nor can this right be allowed to be misused by any group of terrorists”. He also pointed out that the Government had eschewed the alternative adopted by the previous government, namely to resort to extrajudicial killings: “we preferred to adopt the course of law...”. Federal Law Minister Khalid Anwar on 21 August stated that the law was not “perfect” and would be phased out within three to six months when it had achieved its objective of helping to restore law and order.

Responding to widespread criticism of the Act by national and international human rights organizations, Prime Minister Nawaz Sharif on 15 August declared that his government would “bring about ideal conditions of law and order in the country within a matter of months by publicly hanging terrorists -- without caring about the objections of the so-called human rights organizations”. He said he did not recognize the “so-called human rights”, did “not care about the noise in the West about whatever we do” and instead subscribed to those mentioned in the Holy Qur’an (*Dawn, The News*, 16 August 1997).

As a member of the United Nations, Pakistan is obligated by the Charter of the United Nations to promote “universal respect for, and observance of, human rights”. The UN General Assembly adopted by consensus the Universal Declaration of Human Rights on 10 December 1948. Its preamble states: “... Member States have pledged themselves to achieve ... the promotion of universal respect for and observance of human rights and fundamental freedoms”. The preamble further contains the proclamation by the General Assembly of “this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance ...”.

Special courts began to operate in Punjab province on 22 August and the first judgments have been reported. On 20 August Punjab Chief Minister Shahbaz Sharif said that some 15 to 16 courts would be set up immediately in Punjab which would hear cases in jails, mosques or

places of occurrence of the crime and that about 5,000 pending cases from the STA courts would be transferred to the new courts. On the following day, the federal government set up 11 courts under the Act in Punjab and appointed presiding judges for these after consultation with the chief justice of the Lahore High Court.²¹ The establishment of courts in other provinces was also announced in late August but it is not clear if they have started functioning.

On 23 August, the federal government announced the setting up of cells in the provinces to transmit and co-ordinate sensitive information obtained by various state agencies and other bodies to monitor the progress of investigation, prosecution and disposal of cases relating to “terrorists” and “sectarian militants”. According to a report in the *Daily Jang*, London, of 11 September 1997, the Additional Advocate General, Punjab province, said that cases under section 295C of the Pakistan Penal Code which relate to the offence of blasphemy, are also be heard by the special courts. Amnesty International has not yet verified this statement.

Several sentences, including death sentences have meanwhile been passed. On 28 August 1997, six days after the courts began to operate, Mohammad Sarwar was sentenced to death by a special court in Faisalabad for kidnapping, molesting and killing a boy. On 15 September 1997, a Shia man, Muharram Ali, was sentenced to death by a special court in Lahore for allegedly causing a bomb blast which killed 23 people in Lahore in January. Details of the trial are not known at present. The sentences have not been carried out yet.

4. Amnesty International’s concerns and recommendations

While Amnesty International acknowledges that it is the duty of every government to bring to justice perpetrators of recognizably criminal offences, this goal may never be pursued at the cost of suspending or restricting important fundamental rights. Amnesty International is concerned that the adoption of the Anti-terrorism Act, 1997 violates fundamental rights and legal safeguards available under Pakistan law and may contribute to a wide range of human rights violations. **Amnesty International urges the Government of Pakistan to immediately and without replacement repeal the Act.** The organization urges the Government of Pakistan to take the following measures while the Act is in force:

- instruct police in clear and unambiguous language that lethal force may not be used except in genuine life-threatening circumstances;

²¹Three special courts were set up in Lahore, two in Multan, two in Faisalabad, one each in Rawalpindi, Dera Ghazi Khan, Gujranwala and Bahawalpur.

- instruct all police personnel that torture may never be used. It is prohibited under the Constitution of Pakistan and constitutes a criminal offence under the Pakistan Penal Code;
- suspend the execution of all sentences, especially all death sentences, imposed by the special courts as the trials on which the sentences are based do not conform to international standards for fair trial and ignore vital legal safeguards provided by Pakistan law;
- retry all persons convicted by special courts, especially those sentenced to death, before regular courts affording them all the legal safeguards available under Pakistan law;
- to transfer all cases presently pending before the special courts to regular courts which should rehear all evidence presented to the special courts prior to the transfer;
- implement all the safeguards set out in the Code of Conduct for Law Enforcement Personnel, the Basic Principles in the Use of Force and Firearms by Law Enforcement Personnel and the Basic Principles on the Independence of the Judiciary;
- ratify or accede to fundamental international human rights instruments, in particular the International Covenant on Civil and Political Rights which, among other provisions, sets out the prohibition of torture and the minimum guarantees essential for a fair trial.