

# PAKISTAN

## Transfers to US custody without human rights guarantees

*"I am particularly concerned that counter-terrorism strategies pursued after September 11 have sometimes undermined efforts to enhance respect for human rights."* United Nations High Commissioner for Human Rights Mary Robinson, 20 March 2002.

### 1. Introduction

Following the attacks on the United States of America (USA) on 11 September 2001, Pakistan has supported in numerous ways the efforts made by the coalition led by the USA to curb 'terrorist' activities. In this process Pakistan has violated the right to fair trial and the right of detainees to be treated in accordance with law and enjoy equal protection of the law.

While acknowledging the obligation of states to uphold law and order and to protect their populations from violent criminal acts, Amnesty International is concerned that in this context human rights protection is all too often relegated to second place. Measures to curb violent criminal acts must be placed strictly in a framework of protection for human rights.

Amnesty International notes that the United Nations (UN) Commission on Human Rights in its Resolution on Human Rights and Terrorism<sup>1</sup> reiterated that "all States have an obligation to promote and protect all human rights and fundamental freedoms and to ensure effective implementation of their obligations under international humanitarian law". The resolution also emphasised "the need to intensify the fight against terrorism in all its forms and manifestations at the national level and to enhance effective international cooperation in combating terrorism in conformity with international law, including relevant State obligations under international human rights and international humanitarian law ... ." It urged "States to fulfil their obligations under the Charter in strict conformity with international law, including human rights standards and obligations and international humanitarian law, to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever, whenever and by whomever committed, and calls upon States to strengthen, where appropriate, their legislation to combat terrorism in all its forms and manifestations."

In its report *Rights at Risk*, published in January 2002, Amnesty International describes its concerns regarding security legislation and law enforcement measures adopted by some states since the 11 September attacks in the USA to protect their populations from violent criminal acts.<sup>2</sup>

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<sup>1</sup>Commission on Human Rights resolution 2002/35, 22 April 2002.

<sup>2</sup>*Rights at risk: Amnesty International's concerns regarding security legislation and law enforcement measures*, January 2002, AI Index: ACT 30/001/2002.

The report points out that the protection of human rights and compliance with international humanitarian law have been falsely described as being in opposition to effective action against 'terrorism'. In fact, security and human rights are not conflicting aims but complementary goals. International humanitarian law and human rights laws and standards constitute the bare minimum necessary to protect the safety and integrity of individuals from abuse of power. International human rights law and standards are not simply legal niceties - they oblige states to protect the public against abuses by state and non-state actors: they must be prevented, investigated and punished. The rights enshrined in human rights treaties, such as the right to life, the right not to be subjected to torture and the right to freedom from arbitrary detention, are just another way of describing the idea of security that people expect their governments to ensure. The challenge to states, therefore, is not to promote security at the expense of human rights, but rather to ensure that all people enjoy respect for the full range of rights.

There is clear evidence that Pakistan has in the context of its current cooperation with the US-led coalition violated a range of human rights and obligations under international humanitarian law. It has arbitrarily arrested Pakistani and non-Pakistani people suspected of membership in *al-Qa'ida* and the Taleban. Pakistan has handed over an unknown number of detainees to the US-led coalition without reference to any legal requirements, including Pakistan's domestic legislation governing extradition.

Moreover, Pakistan has handed such detainees over to countries where they are likely to suffer further human rights violations. The prohibition of *non-refoulement* of a person to a country where he or she would be at risk of human rights violation is a principle of customary international law which is binding even on countries like Pakistan which have not ratified relevant international human rights treaties. In some cases, detainees have also been handed over to other countries in circumvention of extradition protection and irrespective of the risk of human rights abuses they may face there.

For its part, the USA has denied, or threatened to deny, internationally recognized rights to people taken into its custody in Afghanistan and elsewhere, including those transferred to Camp X-Ray and Camp Delta in Guantánamo Bay (see below).<sup>3</sup>

Amnesty International calls on the Government of Pakistan to strictly adhere to its own constitutional human rights safeguards and international humanitarian law and human rights law

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<sup>3</sup>For a detailed analysis see: *United States of America: Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay*, AI Index: AMR 51/053/2002, April 2002 and the decision of the Inter-American Commission on Human Rights on 13 March 2002 requesting the USA to take urgent measures necessary to have the legal status of the prisoners at Guantánamo Bay determined by a competent tribunal. Juan E. Mendez, President of the Inter-American Commission on Human Rights, 13 March 2002.

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and standards. They require that all people against whom there is a suspicion of involvement in criminal activities be treated strictly in accordance with law. To discriminate against those suspected of 'terrorist' offences by arbitrarily arresting them and handing them over while circumventing formal extradition proceedings violates the principle of equality before law and equal protection of law which are fundamental rights recognised in the Constitution of Pakistan.

This report summarizes the context in which arbitrary arrests and arbitrary transfers to US custody have taken place and then describes specific instances of such human rights violations. It ends with a set of recommendations.

## **2. The political context**

Pakistan joined the US-led alliance against 'terrorism' shortly after the attacks in the United States, putting its airspace and some of its airports at the disposal of the coalition and providing intelligence assistance for its operations. Thousands of Pakistanis who had earlier gone to Afghanistan to join the Taleban were arrested in Afghanistan where they remained in the custody of the state or individual warlords. Beginning in late April 2002, over 600 Pakistani detainees were released and returned to Pakistan. In early May, Afghan deputy Defence Minister General Abdul Rashid Dostum announced that hundreds of Pakistani prisoners held in Shibergan prison would be released and taken to the Pakistan border by representatives of the Interim Administration.

Though Pakistan closed its western borders in the wake of the events of 11 September and more specifically after the beginning of the military action in Afghanistan initiated by the US-led coalition on 7 October 2001, hundreds if not thousands of members of *al-Qa'ida* and the Taleban, including Afghans, Pakistanis and other nationals, are widely believed to have slipped through the long and porous border. For instance, when in mid-March 2002 coalition troops overran *al-Qa'ida* forces at Shahi Kot area in Afghanistan, some 400 *al-Qa'ida* and Taleban members were believed to have crossed into Pakistan despite a tightening of border control by Pakistani forces. International media quoted Pakistan officials as estimating that as many as 1,800 *al-Qa'ida* members and more than 3,000 Taleban came to Pakistan after November 2001.<sup>4</sup>

Several hundred of those who slipped into Pakistan were arrested either by tribal groups, who either retained them in their custody or handed them over to provincial or federal custody (see below). Others are assumed to be hiding with associates in the designated tribal areas or to be in hiding in large cities of Pakistan sheltered by Islamist groups. Many observers believe that *al-Qa'ida* and Taleban members are beginning to regroup in Pakistan. The *New York Times*

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<sup>4</sup>*The New York Times*, 8 March 2002.

reported that new websites and internet communications recently intercepted indicate that *al-Qa'ida* members may be trying to regroup in Pakistan near the Afghan border as at least some of the communications could be traced back to Pakistan.<sup>5</sup>

Afghan sources have asserted that people are fleeing to Pakistan to escape military action but also to regroup in order to resume their action. Commander Ziauddin, a Northern Alliance officer in Gardez was quoted in *The Times* as saying: "They are coming across from Pakistan in groups of five to ten with new hit-and-run guerilla tactics."<sup>6</sup> The paper adds, "The problem has been compounded by Pakistan's inability to clear out *al-Qa'ida* bases within its tribal provinces, affording the fighters the essential asset of a safe haven to train and recuperate." Mohammad Khan Golboz, spokesman of the Tribal Council at Khost, Eastern Afghanistan, said US and Pakistani forces would have been unable to patrol the entire long border: "According to my information and on the basis of my conversation with the people, there are no Taliban or *al-Qa'ida* members here [in Khost]. They have all escaped and it is possible that they have succeeded in reaching Pakistan .... we have a very long border here, no one is able to control the whole length of the border. They [the Americans] can only watch the roads, [but] the members of *al-Qa'ida* are able to use mountains and heights and find routes for their escape. The Pakistani forces are unable to block the whole length of the border."<sup>7</sup>

Pakistani authorities have vehemently denied this saying that border security is extremely tight and does not allow suspects to slip through.<sup>8</sup> Interior Minister Moinuddin Haider on 27 March reiterated that Pakistan had good control of its Western border and enjoyed full cooperation with the semi autonomous tribes living there: "The Pakistani tribesmen living on this side of the Pakistan/Afghanistan border are very clear. They are co-operating with us and they are acting in a very responsible manner. They will not like to take the risk of harbouring anyone, not at all."<sup>9</sup> In mid-April 2002, the Government of Pakistan took additional measures to tighten control

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<sup>5</sup>*The New York Times*, 6 March 2002.

<sup>6</sup>*The Times*, London, 17 April 2002. The paper also quotes an alliance intelligence commander in Gardez, Colonel Zihrat Gul Mangal, as saying: "Small *al-Qa'ida* groups have begun shooting there after crossing back from Pakistan. They can never be 100 per cent removed from Afghanistan as long as they have sanctuary in Pakistan."

<sup>7</sup>*BBC*, 15 March 2002, monitoring *Radio Voice of Afghanistan*, 14 March 2002.

<sup>8</sup>For instance, Pakistan's Defence Secretary Hamid Nawazkhan during a visit to Azerbaijan in mid April 2002 said he thought it impossible that Bin Laden should be in Pakistan as the border was effectively sealed. Similarly Foreign Minister Sattar was quoted in *The Washington Times* of 26 March 2002 as asserting the effective closure of the entire border.

<sup>9</sup>*Reuters*, 27 March 2002.

over its Western border; it resolved to restructure the Frontier Constabulary and the Frontier Corps to conduct security operations in the border areas of the North West Frontier Province (NWFP) and Balochistan as well as in the Federally Administered Tribal Areas (FATA).<sup>10</sup>

Joint US-Pakistani raids and arrests in late March 2002 (see below) of high ranking *al-Qa'ida* members, including many non-Pakistanis, in the Punjab heartland where they had found sanctuary with sympathisers, shows that Pakistan's borders have not been effectively sealed as had been officially claimed. "What we have here is a large number of people from *al-Qa'ida* and the Taleban who have travelled through Pakistan and through the central Punjab without anyone informing the authorities. ... There are obviously certain channels of support, certain groups and maybe certain institutions willing to escort them and give them safe passage."<sup>11</sup> Indirectly acknowledging the likely presence of *al-Qa'ida* members in Punjab province following the arrests of some 65 suspected *al-Qa'ida* members in late March 2002, officials in Faisalabad said in early April 2002 that three special teams had been set up to collect detailed information about *al-Qa'ida* members, including local members of banned Islamist groups suspected of links with *al-Qa'ida*.

The presence of *al-Qa'ida* and Taleban members in different parts of Pakistan has raised the question of 'hot pursuit' of suspected *al-Qa'ida* members by US armed forces on Pakistan territory. On 26 March 2002, two US senators visiting soldiers in Afghanistan raised the possibility of widened US involvement in tracking them down. Senator Richard Shelby, a Republican from Alabama and Vice Chairman of the US Senate Select Committee on Intelligence told a news conference at Bagram, Afghanistan, that some *al-Qa'ida* and Taleban had crossed into Pakistan and added, "I am hoping that the government of Pakistan is going to join us in a big way to rid the border of ... the *al-Qa'ida* who use Pakistan as a sanctuary."<sup>12</sup> Senator Bill Nelson, a Democrat from Florida similarly said, "If we have to work out something with President Musharraf where we can have troops along that border in Pakistan to rid the *al-Qa'ida* and the other terrorists from going across that porous border, then so be it."<sup>13</sup> Around the same time, the commander of US forces in Afghanistan, Maj. Gen. Franklin L. Hagenbeck of the 10<sup>th</sup> Mountain Division said that crossing the border to capture or kill *al-Qa'ida* members

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<sup>10</sup>The Federally Administered Tribal Areas (FATA), also known as tribal agencies, have a quasi-autonomous status; they are governed by a Political Agent who works directly under the control of the Federal Government. FATA areas do not fall within the jurisdiction of Pakistan's criminal justice system but have their own system laid down in the Frontier Crimes Regulation of 1901.

<sup>11</sup>Analyst M.A. Niazi, quoted in *AFP*, 3 April 2002.

<sup>12</sup>*Reuters*, 26 and 27 March 2002.

<sup>13</sup>*Reuters*, 26 March 2002.

and Taleban fighters would be a 'last resort' carried out with the approval of Pakistani leaders.<sup>14</sup> US Secretary of Defence, Donald Rumsfeld on 25 April 2002 asserted that there were no plans to send US troops across the border to flush out *al-Qa'ida* members fleeing Afghanistan. In late April, however, US advisers were reportedly given permission to accompany Pakistani troops into tribal areas in search of *al-Qa'ida* and Taleban members hiding there.<sup>15</sup>

Pakistani authorities have issued inconsistent statements as to whether or not they would permit US troops to follow opponents in 'hot pursuit' into Pakistan. *The Washington Times* reported Foreign Minister Abdul Sattar as saying that Pakistan was open to discussions on lifting its policy that prevents US troops from crossing into Pakistan territory. "US forces can cross the border into Pakistan if necessary -- we should discuss it. ... There is great US-Pakistani cooperation in the border area." He said that Pakistani forces are already deployed in the area "but if American forces are closer, then through communications between US and Pakistani forces, we can arrive at an understanding."<sup>16</sup> Clarifying this statement to the press in Pakistan he later said that there was no need for US forces to pursue *al-Qa'ida* men escaping into Pakistan: "Pakistan and US forces have cooperated in preventing *al-Qa'ida* cadres from escaping into Pakistan. There has been no need for US forces to cross from the Afghanistan side into Pakistan territory to chase those who escaped from Tora Bora or Gardez area. In response to your question whether US forces would be allowed to cross into Pakistan, I said that such a theoretical contingency had not arisen. If necessity arose, an appropriate strategy could be discussed in the spirit of cooperation between the two countries..."<sup>17</sup>

Responding to whether Christina Rocca, US Assistant Secretary of State for South Asia, had raised the issue during her visit to Islamabad on mid-April 2002, Aziz Ahmed Khan, spokesperson of the Pakistani foreign ministry, said before the press: "No such request was made. We have a record of apprehending terrorists that cross over from Afghanistan. We would continue to chase the terrorists who might try and seek refuge here. On several occasions the US at the highest level has expressed its satisfaction with the government of Pakistan and the

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<sup>14</sup>*The New York Times*, 20 March 2002. US Commander of Central Command, Gen. Tomy Franks said he had never spoken to President Musharraf about the possibility of US troops crossing into Pakistan in search of *al-Qa'ida* fighters but added that the "relationship we have with Pakistan has not foreclosed the possibility of anything." *The News*, 30 March 2002.

<sup>15</sup>*The New York Times*, 24 April 2002.

<sup>16</sup>*The Washington Times*, 26 March 2002.

<sup>17</sup>*Dawn*, 29 March 2002.

way Pakistan is cooperating in countering terrorism. There is no need for outside forces. We are sharing information and intelligence only.”<sup>18</sup>

Amidst unconfirmed press reports in late April 2002<sup>19</sup> that key *al-Qa’ida* leaders had been sighted on Pakistan territory in South Waziristan, US Secretary of Defence Donald Rumsfeld admitted the presence of *al-Qa’ida* and Taleban forces active on both sides of the border: “There is no question that ... in the country [Afghanistan] and over the border, there still is a non-trivial number of those folks that would very much like to take back the country ...”.<sup>20</sup> The Pentagon reportedly confirmed in late April that small numbers of US military personnel were present in the tribal areas of Pakistan alongside Pakistani military, relaying information on *al-Qa’ida* movements and helping coordinate with US-led forces in eastern Afghanistan.<sup>21</sup> President Musharraf said on 28 April that US communications experts - but not fighting units - were providing support for Pakistani troops while US officials reportedly admitted that the introduction of US armed forces in Pakistan was a very sensitive issue and followed a ‘very loose, informal’ arrangement with Pakistan.<sup>22</sup> International media were more explicit: *The New York Times* quoted Pakistani officials as saying in interviews that on 26 April 2002, 24 US commandos including Special Operations forces and about 200 Pakistani paramilitary troops had stormed a religious school operated by Jalaluddin Haqqani, a wanted Taleban leader, in Drapa Khel, on the outskirts of Miran Shah, the capital of South Waziristan tribal area, some 20 miles from the Afghan border, leading to the arrest of five Afghans suspected of *al-Qa’ida* or Taleban links.<sup>23</sup>

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<sup>18</sup>*The News*, 16 April and *AFP*, 15 April 2002; Khan also said that no such request had been received from the US, “nor will we allow it”, *Reuters*, 27 March 2002.

<sup>19</sup>Mentioned in *AFP*, 1 May 2002.

<sup>20</sup>*AFP*, 1 May 2002.

<sup>21</sup>A missile attack on a government compound in Miran Shah on 1 May may have targeted dozens of US personnel allegedly then staying there; no organization claimed responsibility and the local administration denied any US presence in the locality. Local residents were, however, reported to have said that US personnel had been present for a few weeks. They also said they had received pamphlets from a hitherto unknown group, the Mujahideen of North Waziristan, which threatened local people with dire consequences if they cooperated with US-led operations in the area (*AFP*, 1 May 2002).

<sup>22</sup>*Reuters*, 1 May 2002.

<sup>23</sup>*The New York Times*, 27 April 2002.

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### **3. Arbitrary arrest and detention of people suspected of *al-Qa'ida* links or Taleban membership**

A large number of Pakistanis and non-Pakistanis appear to have been arbitrarily arrested and detained since the events of 11 September for their suspected connection with these events or an assumed connection with the Taleban or *al-Qa'ida*. In March 2002, Interior Minister Moinuddin Haider said Pakistan had rounded up hundreds of Pakistanis who had fought alongside the Taleban and had come home, and that they were being thoroughly investigated.<sup>24</sup> He did not clarify under what legal provision such investigation was being carried out. While the minister's statement only referred to Pakistani detainees, dozens of Arabs have also been arrested in areas along Pakistan's border with Afghanistan and in other provinces.

No official figures for such arrests of *al-Qa'ida* or Taleban suspects or details of their identity and nationality are available. Newspaper coverage is scant and anecdotal, hampered by lack of official acknowledgement and lack of transparency, but also by the fact that many of the detainees uses aliases and conceal their identity and country of origin.

#### **A. Arbitrary detention without reference to any law**

To Amnesty International's knowledge, the persons picked up for their alleged links to *al-Qa'ida* or the Taleban have not been charged with offences under Pakistan law. Many detainees appear to be held in order to be interrogated by Pakistani intelligence agencies who are increasingly being assisted by personnel of the US Federal Bureau of Investigations (FBI) - for which there is no provision in Pakistan law. Some, including several Pakistanis arrested in Punjab in March 2002, were released after a few days but of most little is known subsequent to their arrest. The current whereabouts of those still in detention are unknown; they are cut off from all communication with the outside world including family members or lawyers. Several detainees transferred to US custody have informed their families of their whereabouts through the office of the International Committee of the Red Cross (ICRC) and their fates have thus become known.

The Constitution of Pakistan lays down safeguards relating to arrest and detention in Article 10 which the Code of Criminal Procedure, 1898 spells out in greater detail. Under these provisions, a detainee has to be brought before a magistrate within 24 hours of arrest to ascertain if there are grounds for arrest and investigation<sup>25</sup>; the magistrate then decides if further remand to police

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<sup>24</sup>Reuters, 27 March 2002.

<sup>25</sup>Article 10 of the Constitution says that: "(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. (2) Every person

custody should be granted. Criminal suspects can be held in police custody pending police investigation for up to 14 days<sup>26</sup>. Once the police conclude their investigation and submit a police report, a detainee may be remanded to judicial custody or be released. The detainee has the right to access a lawyer of his or her choice<sup>27</sup>, to meet with family and be seen by a doctor.

The persons recently detained on suspicion of *al-Qa'ida* or Taleban membership have apparently been denied all these rights which are guaranteed to anyone in Pakistan, irrespective of nationality, under the Constitution of Pakistan<sup>28</sup>.

International media and Pakistani newspapers have reported the following arrests in 2002; in all of these cases, legal requirements relating to arrest and detention appear to have been ignored and the detainees' whereabouts remained unknown at the time of writing:

-- The Urdu daily *Nawa-i-Waqt* of 5 January 2002 reported that 34 suspected *al-Qa'ida* members, including Egyptian, Sudanese, Iraqi and Libyan nationals, were arrested in two separate operations in or near Paharpur and handed over to Dera Ismail Khan police from where they were reportedly transferred to Peshawar.

-- On 17 January 2002, seven suspected *al-Qa'ida* members, including one Saudi Arabian, one Yemeni, a UK national of Middle Eastern origin, two Afghans and two Pakistanis were arrested at a checkpoint near Daudkhel town in Mianwali district; they were reportedly taken to a police interrogation centre on the outskirts of Lahore and interrogated by a joint team of Pakistani and US intelligence. *AFP* quoted police and security forces as saying their fate would be decided after a full investigation and that they could be handed over to their home countries or the US for further investigation.

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*who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no person shall be detained in custody beyond the said period without the authority of a magistrate."*

<sup>26</sup>Section 167(2) of the Code of Criminal Procedure regulates powers of the magistrate to grant remand: "*The Magistrate to whom an accused person is forwarded ... may ... from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole.*"

<sup>27</sup>See Article 10 of the Constitution of Pakistan.

<sup>28</sup>Article 4(1) of the Constitution of Pakistan says: "*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 in Pakistan.*"

-- In the last week of January 2002, two further Arabs were arrested in Lahore; they included a Saudi Arabian national working with a Saudi-based Islamist organisation and a Palestinian, identified as Hurraira and believed to have acted as a link between the *al-Qa'ida* leadership and Islamist activists operating in Pakistan. Hurraira was reportedly hiding in a hostel of King Edward Medical College.

-- In the last week of January 2002, a Yemeni man was arrested in Peshawar and two British nationals were arrested near the Afghan border on Pakistan territory. It is not known where they were taken subsequently.

-- On 17 March, a Jordanian, Husni Amin, was arrested by police in Baharabad for his alleged involvement with *al-Qa'ida*. Nothing further is known at present about his whereabouts or if he has been charged with any offence.

-- On 19 March, seven suspected *al-Qa'ida* members were reportedly arrested in Kurram Agency; they included two men from Sudan, one from Uganda, one from Mauritania and three from Pakistan. The non-Pakistanis reportedly wore burqas to conceal themselves. It is not clear if they were fleeing Afghanistan or seeking to enter the country. The detainees are believed to have been transferred to Kohat Jail but it is not known if they are still there.

-- On 30 March, five Sudanese men were arrested in Peshawar on suspected links to "terrorist" organizations (see below).

-- On 2 April, 16 men, including three Saudi Arabians, three Libyans, one Yemeni and two other unidentified Arabs and several Pakistani members of a banned Islamist organisation, were arrested in Lahore on suspicion of being *al-Qa'ida* members. Lahore police senior official Javed Noor said they had been apprehended without US assistance. It is not known if they have been charged or handed over to the US led coalition.

-- On 4 April, two suspected *al-Qa'ida* members of unknown nationality were arrested near Lahore and taken to Lahore for interrogation. Nothing is known about their whereabouts.

-- On 16 April, an Iraqi suspect, Shakir Bin Abdul Hadi, was reportedly arrested at Naal in Balochistan about a week after he had arrived in Peshawar from Afghanistan. He was reportedly handed over to the custody of the Inter-Services Intelligence (ISI) for interrogation.

-- On 17 April 2002, the Urdu daily *Jang* reported that five Bahraini citizens were arrested in Pakistan upon arrival from Afghanistan and that Bahraini authorities had "sought clarification" about these men.

The case of five Sudanese detainees shows the ease with which legal safeguards are bypassed in the avowed fight against 'terrorism'. The five men were arrested from their homes in Peshawar on 30 March 2002; they had come to Pakistan to begin or continue their pilot training courses in a private flying club and were suspected of links to 'terrorist' organisations. The government of Sudan clarified that the men had legally entered the country and legally pursued their training courses. On 14 April the men were released. According to local human rights organisations, they were at no stage charged with a recognizably criminal offence or held with reference to any law in force in Pakistan.

At least 30 Pakistanis who had fought alongside the Taleban, been detained and interrogated by Afghan and US personnel in Afghanistan and who were returned to Pakistan after interrogation in Afghanistan, were also arrested on arrival in Pakistan on 25 April 2002 without any criminal charges against them. They are believed to be held in Peshawar Central Jail where officials reportedly said they would be detained for an 'indefinite' period. According to reports at the time of writing, altogether 659 Pakistani detainees were released in Afghanistan and Amnesty International fears that these men may be detained without charge or trial in Pakistan as well. Amnesty International expressed these concerns to Pakistan government authorities on 30 April 2002. In a letter, dated 10 May 2002, the Pakistan High Commission in London informed Amnesty International that "... these persons may have invaluable information on matters which are of national security [relevance] and also affecting [the] law and order situation inside Pakistan. It is for these reasons that some returning Pakistanis are being kept separately purely for information gathering purposes. The purpose is not to detain them unnecessarily or unjustly. Interrogation, if any, will be done in line with international standards. It is also important to debrief these Pakistanis on their return to Pakistan prior to their rejoining their families and mingling with the local population." Amnesty International in response reminded the Government of Pakistan that Pakistan law does not permit arbitrary detention of anyone for whichever purpose.

### **B. Arbitrary detention after serving sentence**

Five Palestinians continued to be held in Adiala Jail in Rawalpindi after having served their entire sentences relating to the hijacking of an aircraft in 1986 despite High Court orders for their release and repatriation. One member of this group of detainees was arbitrarily transferred to US custody and faces the death penalty once again; the others fear that they may be transferred to US custody without safeguards to protect their rights. (For details see below.)

### **C. Arbitrary detention using inappropriate and inapplicable law**

At least 358 Pakistani detainees in Haripur jail, who were arrested for alleged links to the Taleban, were initially held in administrative detention for up to three months under the Maintenance of Public Order Ordinance and are currently held under section 40 of the Frontier Crimes Regulation (FCR) of 1901; this law is not applicable to their cases according to the lawyer defending the detainees. Section 40 lays down that the administrative authorities in the designated tribal areas may require a person to execute a bond for 'good behaviour or for keeping the peace' if there is apprehension that he may commit murder, homicide or sedition; in default, he may be imprisoned for up to three years<sup>29</sup>.

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<sup>29</sup>Section 40 FCR reads: (1) *Where the Commissioner or the Deputy Commissioner are of the opinion that it is necessary for the purpose of preventing murder, or culpable homicide not amounting to murder, or the dissemination of sedition, to require a person to execute a bond, for good behaviour or for keeping the peace, as the case may be, he may order the person to execute a*

Former member of the National Assembly Javed Ibrahim Paracha on 16 January 2002 filed a writ petition in the Peshawar High Court challenging the detention of 145 of the Pakistani detainees<sup>30</sup> who had been arrested in the first week of January 2002 in the tribal areas on their return from Afghanistan and are now held in Haripur Jail under section 40 of the FCR. He argued that the men's detention was unlawful as the detainees do not belong to the tribal areas, had not committed any offence there and hence cannot be tried under the FCR. Moreover, he argued that they are not being held in the tribal area in the custody of tribal authorities under the FCR but are in detention in the settled area of Pakistan where the FCR is inapplicable; at the same time they have not been charged under the regular criminal code applicable in the area where they are held. He requested that since their detention was unlawful and as they had not committed any offence in Pakistan, they should be released. He also requested that the high court give direction that the detainees should not be handed over to the US-led coalition.

On 5 April, the Peshawar High Court dismissed the petition (along with the petition relating to the detainees in Kohat, see below); it said that the petitioner Javed Ibrahim Paracha was not related to any of the detainees and hence not an aggrieved person and as such not entitled to file the petition under article 199 of the Constitution of Pakistan under which the high courts exercise their writ jurisdiction.<sup>31</sup>

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*bond with or without sureties, for his good behaviour or for keeping the peace, as the case may be, during such period not exceeding three years, as the Commissioner or the Deputy Commissioner ... may fix. Section 44 provides for imprisonment in default of security: "(1) Where a person ordered to give security under section 40 ... does not give security on or before the date on which the period for which the security is to be given commences, he shall be committed to prison ...". Section 45 provides that a person imprisoned for failure to give security shall be released after three years but under section 46 imprisonment may be extended by a further three years.*

<sup>30</sup>Amnesty International has not been able to find out why the petition only relates to 145 of 358 Pakistani detainees all of whom were arrested in similar situations.

<sup>31</sup>Subsequently, some 358 Pakistani detainees in Peshawar Central Jail wrote a petition to President Musharraf explaining that they had gone to Afghanistan after the US had begun their military action in Afghanistan in order to fight alongside the Taleban. They stated that they were captured by Northern Alliance troops in Afghanistan and tortured in custody in different parts of the country. On 14 December 2001, 110 Pakistani prisoners were handed over to the Political Agent at Torkham and 90 other detainees were later shifted from Bagram to Kandahar and then transferred to Peshawar and finally to Haripur. Many others were arrested individually or in small groups by the Political Agents in the tribal areas and handed over to Haripur Jail. The petition says that they were initially held for three months under the Maintenance of Public Order Ordinance which allows for administrative detention and subsequently declared detained under the FCR. The 358 men, who include children as young as 13 and old men of 90 years of age, argue in their petition that "before the fall of the Taleban, Pakistan ... extended all sorts of moral and diplomatic cooperation to the Taleban"

The detainees at Haripur have had visits from their families; they are held together in barracks separate from other detainees but have not been able to see a lawyer. News reports said that about a dozen of these detainees were shifted to Peshawar Central Jail to be moved to US custody in Guantánamo Bay, Cuba.<sup>32</sup>

#### **4. Handing over of detainees while circumventing extradition protection**

Since such transactions are carried out clandestinely, there are no official numbers for persons whom Pakistan has handed over to US custody while circumventing extradition protection. On the basis of cases that have come to Amnesty International's notice, the organisation believes that the number could well be as high as one hundred but, given the secrecy, it could also be much higher. International media have mentioned the figure of 280 people.<sup>33</sup> The Saudi Arabian newspaper *Okaz* said on 6 January 2002 that Pakistan was holding more than 200 Arabs caught fleeing Afghanistan and that any of them with links to *al-Qa'ida* would be handed over to the US. It quoted Interior Minister Moinuddin Haider as saying: "If it is proven that any of them are members of *al-Qa'ida* organisation, they will be handed over to the US Federal Bureau of Investigation."

The secrecy surrounding arrest, detention and transfer of people suspected to be involved in 'terrorism' has made it very difficult for families to track their missing relatives, for human rights organizations to press for the observance of the detainees' human rights and for the general public to know about human rights violations of detainees that are hidden behind a curtain of secrecy. In some cases, details of arrest and transfer to US custody only came to light when detainees contacted their families through the office of the International Committee of the Red Cross.

US statements have on a number of occasions indicated that Pakistan has indeed handed over detainees to US custody. Asked about expansion plans for Guantánamo Bay and plans to fly

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and for the men, inspired by calls in the media and issued by religious and political leaders, "defence of the Taleban government was in fact defence of Pakistan". The men wished to give assurances that they did not and would not work for any Islamist organization and pleaded that they be granted amnesty and be released. On 21 May, *Jang* reported that President Musharraf had issued directions to the Ministry of the Interior that 270 of these detainees should be released 'soon' while the remaining detainees would be interrogated. The newspaper quoted sources in the federal government as saying that once the interrogation was completed and if the interrogators were satisfied, they would be released as well.

<sup>32</sup>*Dawn*, 23 January 2002.

<sup>33</sup>*The New York Times*, 8 March 2002.

over detainees from Afghanistan, US defence ministry spokesperson Victoria Clarke said about future movements of detainees, “we’ll take some here, move them there, give some back to the Pakistanis”.<sup>34</sup>

While some alleged ‘terrorists’ have already been handed over to the United States in circumvention of extradition protection, many other detainees in Pakistan have approached the courts to prevent this happening to them (see below).

#### 4.1 Legal requirements of extradition in Pakistan

The Extradition Act, 1972 which governs extradition procedures from Pakistan to any country - whether Pakistan has an extradition treaty with it or not - provides that people can only be extradited if they have committed offences which would constitute an offence in Pakistan, are listed in the schedule of offences appended to the act and are not political in character (sections 2 and 5). Once another country submits a request for the surrender of a fugitive offender (section 6), Pakistan is to select a magistrate whose task it is to inquire whether there is substance in the allegation of the extradition offence. The magistrate’s inquiry looks at evidence submitted by the requesting country (section 6) and has to provide full opportunities to the defence to disprove the validity of the request (sections 7-9). If the magistrate is of the opinion that no *prima facie* case has been made for the requisition of the suspect, he can discharge him or her. If there is *prima facie* evidence for the requisition offence, the magistrate remands the suspect to judicial custody, subject to provisions relating to bail, and submits his report to the Federal Government, which retains full discretion as to whether to extradite the suspect or not (section 10). If the government decides to extradite the suspect, “*it may issue a warrant for the custody and removal of the fugitive offender and for his delivery at a place and to a person to be named in the warrant: provided that the fugitive offender shall not be so delivered until after the expiration of fifteen days from the date he has been taken into custody under such warrant*” (section 11). The person to be extradited has the right to appeal to the higher judiciary against an extradition order.<sup>35</sup>

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<sup>34</sup>Department of Defense News Briefings, 9 April 2002.

<sup>35</sup>British born Ahmed Omar Sheikh, suspected of the murder and kidnapping of US journalist Daniel Pearl in early 2002 is the only person whose extradition the United States has recently publicly sought. The Pakistan government has declined the request for an immediate handing over of Omar Sheikh but has agreed in principle to surrender him after the completion of the investigation and trial in a Pakistani court. US authorities asked for the surrender of Ahmed Omar Sheikh in late November 2001 after he was indicted by a grand jury for his role in the 1994 kidnapping of three Britons and an American in India. He was arrested by Indian authorities but freed in a hostage-prisoner swap during the 1999 hijacking of an Indian Airlines plane. It is not known if others connected with the hijacking have been indicted in the US.

Pakistan did not conclude an extradition treaty with the USA but in 1973 reaffirmed the extradition treaty dating from the colonial period signed on 22 December 1931 between Great Britain and the USA which came into force on 24 June 1935. It allows for extradition of a suspect to the USA only if the offence was committed on Pakistani territory.<sup>36</sup> The procedure of extradition is governed by the Extradition Act of 1972.

Pakistan is also bound by rules of customary international law which prohibit the handing over of anyone in any manner whatsoever to a country where they would be at risk of serious human rights violations. The principle of *non-refoulement* is binding on all countries irrespective of specific treaty obligations.

#### **4.2 Recent cases of handing over detainees to the US**

The Pakistan authorities are known to have repeatedly circumvented legal requirements of extradition when they handed over people to US custody<sup>37</sup>. In all the cases reported here, no

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<sup>36</sup>Section 9 of the treaty says: “An extradition shall take place only if the evidence be found sufficient, according to the laws of the high contracting party applied to either to justify committal of the prisoner for trial, in case a criminal offence has been committed in the territory of such high contracting party ... .”

<sup>37</sup>The US government has colluded in the circumvention of extradition protection with several other countries besides Pakistan. Six Algerian nationals were seized by US officials in Bosnia-Herzegovina on 18 January 2002 in violation of an order by the Human Rights Chamber for Bosnia and Herzegovina. The Chamber, which makes up part of the Bosnian Human Rights Commission, had ordered that four of the men should not be removed by force from Bosnia pending a final decision on the case. Their detention by the USA appears to have taken place outside both Bosnian and international law. Under the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), the Human Rights Chamber is vested with the authority to issue decisions binding upon both entities as well as the state authorities of Bosnia-Herzegovina. The decision of the Bosnian authorities to hand the men over to US custody ignores the Chamber’s order and undermines respect for this institution as well as adherence to international human rights law. See: *Bosnia-Herzegovina: Letter to the US Ambassador regarding six Algerian men*. 18 January 2002, AI Index: EUR 63/003/2002; *Bosnia-Herzegovina: Transfer of six Algerian men to US custody puts them at risk*, AI Index: EUR, 63/001/2002, 17 January 2002.

At a press conference in Sarajevo on 22 January 2002, Madelaine Rees, representative in Bosnia-Herzegovina of the United Nations High Commissioner for Human Rights, described the case of the Algerians as one of “extrajudicial removal from sovereign territory”. She said: “In brief, our concern is that the rule of law was clearly circumvented in this process. There was no legal basis upon which the Ministry of the Interior could have taken these individuals from the prison. Consequently it would appear that this was an arbitrary arrest and detention. The same charge, therefore, would apply to those who received them from the Bosnian authorities ... .” NATO/SFOT joint press conference, 22 January 2002, Sarajevo.

official request for extradition is believed to have been sent by the USA or any other country to the Government of Pakistan, which is believed to have agreed to hand over the men to the US authorities without regard to domestic extradition requirements and the rights of the detained men.

Pakistan has also violated the principle of *non-refoulement* as those handed over to US custody may face a range of violations of human rights and international humanitarian law. The USA has denied or threatened to deny internationally recognized rights to people taken into their custody in Afghanistan and elsewhere, including those transferred to Camp X-Ray in Guantánamo Bay. Amnesty International is concerned that the US government has:

- transferred and held people in conditions that may amount to cruel, inhuman or degrading treatment, and that violate minimum standards relating to detention;
- refused to inform people in its custody of all their rights;
- refused to grant people in its custody access to legal counsel, including during questioning by US and other authorities;
- refused to grant people in its custody access to the courts to challenge the lawfulness of their detention;
- undermined the presumption of innocence through a pattern of public commentary on the presumed guilt of the people in its custody in Guantánamo Bay;
- failed to facilitate prompt communication with or grant access to family members;
- threatened to select foreign nationals for trial before military commissions - executive bodies lacking independence from the executive and with the power to hand down death sentences, and without the right to appeal to an independent and impartial court;
- raised the prospect of indefinite detention without charge or trial, or continued detention after acquittal, or repatriation in breach of the principle of *non-refoulement*.<sup>38</sup>

#### 4.2.1. Afghans

An unknown number of Afghans, including prominent members of the previous Taliban government have been arrested by Pakistan authorities and handed over to the US-led coalition in violation of their rights under Pakistan's extradition law. They include former Taliban ambassador to Pakistan, Abdul Salam Zaeef (34) who for some time was the only representative of the Taliban government abroad and in this capacity rose to international media prominence. He was handed over to the US-led coalition in January 2002. Pakistani security forces in

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For an examination of the USA's past record of undermining the rule of law by subverting extradition protection see: *No return to execution - The US death penalty as a barrier to extradition*, AMR 51/171/2001, November 2001.

<sup>38</sup>See footnote 3.

January 2002 also arrested the senior Taleban spokesperson Abdul Hai Mutmaen; in mid-February 2002, the former governor of Herat province, Mullah Khairullah Khairkawah was reportedly arrested in Hasan Kalay village, near Chaman in Balochistan province. Amnesty International has not been able to ascertain the fate and whereabouts of these men but fears that they may also have been arbitrarily handed over to face possible human rights violations. Pakistan security forces also said they captured two former Taleban ministers, Chief Justice Maulawi Noor Mohammad Saqib and deputy foreign minister Maulvi Abdul Rehman Zahid, near Quetta in late January 2002, but relatives and local residents later reported that the two men merely shared the same names with the former officials. It is not known what happened to the two men.

On 7 November 2001, the Foreign Ministry in Islamabad summoned the then Taleban ambassador to Pakistan, Abdul Salam Zaeef, and told him to stop giving media interviews and to “observe diplomatic norms”.<sup>39</sup> The Taleban consulate in Karachi was closed on orders from the federal government on the following day, 8 November, and the consulates in Quetta and Peshawar were shut on 20 November. On 11 November, Zaeef was told that he would have to seek permission from the Government of Pakistan before meeting anyone who was not an Afghan national; national media reported the surveillance of the Islamabad residence of Zaeef. On 14 November the Taleban embassy in Islamabad was virtually empty as all embassy staff drove away in minivans and other vehicles. Finally, on 22 November, Pakistan decided to close the Taleban embassy in Islamabad thus severing the last diplomatic ties of the Taleban with the outside world, weeks after Saudi Arabia and the United Arab Emirates had cut their links in October.

Pakistan foreign ministry spokesperson Aziz Ahmad Khan stated that “after the termination of diplomatic relations with the Taleban government, Mullah Zaeef ceased to hold diplomatic status” but added that Zaeef had been allowed to remain for a ‘short while’ to wind up his affairs before returning home. In mid-December, Zaeef sought political asylum in Pakistan; he confirmed this to the media on 23 December and the Pakistan Foreign Ministry on 24 December acknowledged before international media that it had received the application in which Zaeef had apparently said that the situation in Afghanistan was not conducive to his return. A government official later said that Zaeef had asked for asylum but had later “withdrawn his application”.<sup>40</sup>

Pakistani newspapers and the non-governmental Human Rights Commission of Pakistan (HRCP), however, reported that Zaeef’s asylum request had been rejected. *The Frontier Post*

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<sup>39</sup>AFP, 7 November 2001. Foreign Ministry spokesperson Aziz Ahmed Khan said at the time: “Any host country can ask a mission to stop statements or propaganda against a third country which has friendly relations with the host country.” AFP, 7 November 2001.

<sup>40</sup>AFP, 5 January 2002.

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quoted an unnamed official of the interior ministry as saying: “The government of Pakistan has formally informed some of Taleban senior leaders and diplomats including former Taleban ambassador to Pakistan Mola Abdossalam [Zayif] that they and their families would not be entertained for political asylum.”<sup>41</sup>

On 3 January 2002, Zaeef was arrested by four security officials from his residence and taken for questioning, possibly in Peshawar. Zaeef was apparently handed over to the US-led coalition, possibly in Afghanistan, on the following day. According to reports, he was immediately taken to the amphibious assault ship *USS Bataan* in the Arabian Sea for interrogation. On 6 January 2002, the US announced that they had Zaeef in their control for interrogation. A US official said on 6 January that Pakistan had detained Zaeef on 3 January and released him into the custody of the US forces on the night of 4 January.<sup>42</sup> A US official was at the time quoted as saying: “The US military wanted Zaeef under custody to determine what he knows, what intelligence he might be able to provide -- names, locations -- any information he might have in his head that might be helpful in understanding the relationship between the Taleban and al-Qa’ida. ... He will be treated like any other prisoner.”<sup>43</sup>

Statements by the Pakistani government on Zaeef’s whereabouts were vague and concealed the fact that Zaeef had been handed over to the US without any legal formalities. Pakistani foreign ministry spokesperson Aziz Ahmad Khan said on 6 January that Zaeef had returned to Afghanistan after being refused permission to stay in Pakistan. “He crossed the border into Afghanistan ... since he did not have any longer a valid visa to stay in Pakistan. He was asked to leave the country which he did. ... The decision about not granting a visa or extending his stay was taken by the Government of Pakistan, as a consequence of which Mullah Zaeef returned to Afghanistan.”<sup>44</sup> He did not explain how the journey had been made or when exactly Zaeef had left. Asked by the press whether Zaeef had been handed over to the US-led coalition fighting in Afghanistan, Aziz Ahmed Khan said, “he crossed the border into Afghanistan as far as the government of Pakistan is concerned.”<sup>45</sup>

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<sup>41</sup>*The Frontier Post*, 1 January 2002. The newspaper also claimed that the Taleban leader’s application for asylum had been rejected on account of US pressure and to avoid a wave of asylum applications from other Afghan Pashtun leaders who had supported the Taleban .

<sup>42</sup>*AFP*, 6 and 7 January 2002.

<sup>43</sup>*AFP*, 6 January 2002.

<sup>44</sup>*AFP*, 6 January 2002.

<sup>45</sup>*Reuters*, 5 January 2002.

On 5 January, *The Washington Post* quoted an unnamed US defence official as saying earlier that Pakistan was set to hand over Zaef to US forces: “The arrangements are being made now as to where, when and how he’ll be taken into custody, but the basic deal is done.”

Zaef’s current whereabouts are not known. In late February 2002, the *Afghan Islamic Press* said, without identifying sources, that Zaef was expected to be released soon.<sup>46</sup> His fate came into the limelight again for a brief period of time when the kidnappers of US journalist Daniel Pearl in February 2002 demanded *inter alia* that Zaef be released. Members of his family immediately distanced themselves and Zaef from this demand saying they had nothing to do with the kidnappers and urged them to release the journalist.

The HRCP said on 7 January that Pakistani authorities were “fully aware of the hostile conditions he [Zaef] would have to face there [in Afghanistan]” and stated that the Pakistani government’s action violated international law. “The treatment meted out to him [Zaef] is similar to the manner chosen to deal with hundreds of Afghans after September 11 who were pushed back across the border by the administration without permission from courts and without completing any legal procedure. Specific formalities exist to deal with the matter of deportation of persons. These formalities must be followed before taking summary decisions that endanger the welfare of individuals or result in dangerous precedents set in place.”

#### **4.2.2. Pakistanis**

Pakistanis suspected of links to *al-Qa’ida* or the Taleban leadership have also been detained, screened and turned over to the US-led coalition in violation of their rights under Pakistan’s extradition law. At the time of writing, Amnesty International is aware of at least 358 Pakistani detainees in Haripur Jail who fear being handed over to US custody. An unknown number of Pakistani detainees appear to have been handed over during the recent wave of raids and arrests in Punjab province (see below).<sup>47</sup>

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<sup>46</sup>AFP, 26 February 2002.

<sup>47</sup>Pakistani detainees have been handed to the United States in the past without recourse to extradition procedures. On 15 June 1997, three agents of the US Federal Bureau of Investigations (FBI) apprehended Mir Aimal Kasi in a hotel room in Dera Ghazi Khan, Punjab province. He was wanted in connection with the murder of two employees of the US Central Intelligence Agency (CIA) who had been shot outside CIA headquarters in Virginia in 1993. The FBI agents took Kasi away in handcuffs, gagged and with a hood over his head. He was flown to another location in Pakistan where he was detained for the next 48 hours in a ‘holding facility’ - technically in Pakistani custody but always in the presence of the FBI. On 17 June, he was ‘released’ into the custody of the FBI and flown to Virginia. During the 12-hour flight, without being advised of his right to seek consular assistance as required under international law, Mir Aimal Kasi signed a statement admitting the 1993 shooting. He was convicted and sentenced to death by an all-white jury in February 1998. In November 1998, the

Moazzem Begg (35) who holds UK and Pakistani passports, was reported to be working as a translator in Britain and in August 2001 moved to Kabul with his family to set up a school; he fled Afghanistan with his wife and three children after the beginning of the US bombardment. The family moved to a rented house in Islamabad. In the first week of February 2002, Moazzem Begg was reportedly detained by Pakistani intelligence. Associates of Moazzem Begg said he was bundled into the boot of a car and taken away. His family filed a *habeas corpus* petition in the Rawalpindi High Court bench where a judge in early March ordered that he should be brought before the court on 14 March. On that date all state agencies made respondents in the petition denied holding Moazzem Beg in their custody. The case has now come to a virtual standstill. Family members have stated that Moazzem Begg is a religious man but not a fanatic and that he has nothing to do with *al-Qa'ida* or any other extremist organisation. In early April his father received a letter from his son through the ICRC which informed him that Moazzem Begg was being held in US custody in Kandahar. Earlier attempts by relatives in the UK and a lawyer in Pakistan to obtain confirmation from the US embassies in London and Pakistan that Moazzem Begg was in US custody had been unsuccessful. Amnesty International requested further information on his case from the US authorities but as of May 2002 had not received a reply.

#### **4.2.3. Persons from Middle Eastern countries**

Among the first detainees from Middle Eastern countries known to have been transferred to US custody in violation of Pakistan's extradition law shortly after the 11 September 2001 attacks in the USA, were two men, a Palestinian and a Yemeni national, who were wanted for offences they had allegedly committed earlier; four other Palestinian men fear that they will be transferred to US custody as well (see below). Other persons from Middle Eastern countries who were arrested after crossing into Pakistan's tribal areas from Afghanistan or who were arrested during raids mostly in Punjab province, appear to have already been handed over to US custody while some may still be in Pakistani custody pending transfer to US custody.

##### **1. Safarini and four others**

In June 1988, five Palestinian men of the Abu Nidal group, Zayn Hassan Abd Al-Latif Masud Al Safarini, Wadud Hafez al-Turk, alias Suleiman Ali al-Turk, Jamal Sa'id 'Abd al-Rahim al-Saad, Mansoor al-Rashid and Muhammad Id Khalil Hassan were convicted by a special court

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Virginia Supreme Court upheld Kasi's death sentence. It noted that the Virginia prosecutor has admitted that the FBI agents did "not have any jurisdiction in the nation of Pakistan" and that Kasi "was not taken before a judicial officer ... until he returned to the United States". However, it rejected the argument that the abduction had violated the relevant extradition treaty; it argued that in the absence of a bilateral extradition treaty, a treaty between the US and the former colonial power, Britain, applied to this case.

which conducted the trial *in camera* inside Adiala Jail, Rawalpindi, for hijacking a Pan Am plane on 5 September 1986 on its flight to New York and killing 22 people, including two US citizens, in the course of the hijacking. The men had reportedly disguised themselves as security staff and boarded the aircraft at Karachi airport; they demanded to be flown to Cyprus and for a group of Palestinians detained there, to be released. Pakistani security stormed the aircraft at Karachi airport after 16 hours of negotiations and ended the hijacking. The five men were arrested and charged with several offences.<sup>48</sup> On 6 July 1988, the five men were sentenced to death on several counts.

In December 1988, the government of Benazir Bhutto issued a general amnesty commuting all death sentences to life imprisonment; the detainees' sentences arising from convictions under different sections of the penal code amounted to 307 years' imprisonment each. They filed an appeal (Criminal Appeal 102/1988) in the Lahore High Court at the Rawalpindi bench requesting to have their sentences run concurrently, rather than consecutively. Their petition was not heard for over 10 years; they then filed an application for early hearing; by this time the record of their case had been shifted to the principal seat of the High Court in Lahore. Returning the record to the Rawalpindi bench of the High Court took another two years. Finally a Division bench of the High Court in Rawalpindi in early 2000 converted the consecutive sentences into a single life term of 25 years for each prisoner; four were also given substantive fines or one year additional imprisonment in lieu of payment of fine. The appellants were also given entitlement to obtain remissions of sentence under section 382B Criminal Procedure Code. The High Court further directed that the detainees be deported from the country forthwith as soon as they completed their sentences.

On 23 May 2000, one of the detainees, Wadud Hafez al-Turk alias Suleiman Ali al-Turk completed his full sentence after gaining various remissions, but he was not released on account of an internment order of the government of Punjab issued on the same day under the Foreigners Act of 1946 for the purpose of detention pending completion of the deportation of the detainee by the concerned embassy. When he was not released, he filed a petition against his continued detention (CM No 526/2000); in mid-2001, a division bench of the Lahore High Court said: "The Federal Government in the Ministry of Interior is expected to take expeditious steps to ensure that the said convict namely Salman Ali Al Tarakai [Suleiman Ali al-Turk] is deported without any further loss of time and positively within two months from today."

To date, he is being held in Adiala Jail. On 11 June 2001, the other detainees completed their entire sentences on account of remissions (i.e. substantive sentence and imprisonment in lieu of paying fines); they too are being held under internment orders of the Punjab government. There are no further charges pending against the detainees and their detention during the period since

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<sup>48</sup>Sections 302, 307, 324, 323, 335, 402 (B) and (C) Pakistan Penal Code, sections 12A and 12D West Pakistan Arms Ordinance, 1965 and sections 4 and 5 of the Explosive Substances Act, 1908

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their completion of sentence appears arbitrary and unlawful since it ignores court orders that they be deported forthwith after completion of sentence.

The government of the United States has apparently been demanding the extradition of the five men since their arrest in 1986. According to the petition of the detainees, the government of Zia ul-Haq resisted this demand in the mid-1980s by stating that justice would be done in accordance with law in Pakistan and that in the absence of a bilateral extradition treaty there was no obligation to hand the detainees over. After the completion of the Palestinians' sentences, the US authorities are apparently renewing their efforts to obtain the custody of the men. It is not known if the US government has formally sought their extradition.

The five men, including Safarini, were charged on 28 August 1991 in the US District Court for the district of Columbia in a 126 count indictment relating to the crimes committed during the hijacking. The charges included murder of US nationals outside the US; conspiracy to murder US citizens outside the country; attempted murder of US citizens outside the country; causing bodily harm to US nationals; hostage taking; weapons offences and damage to US aircraft.

A press release of 23 April 2001 by the London-based Arabic Islamic Observation Centre (IOC) reported that US sought extradition of the convicts. In early August 2001, one of the men, Wadud Hafez al-Turk, alias Suleiman Ali al-Turk, appealed to the President of Pakistan to extradite him on humanitarian grounds to an Arab country, not to the US.

On 21 September 2001, a team of agents of the Federal Bureau of Investigation, accompanied by Salman Silayyem, First Secretary of the Palestinian Embassy in Islamabad, reportedly visited Adiala Jail in Rawalpindi where the men are detained and took their pictures and fingerprints. Under the Prisoners Act of Pakistan, 1920, only a magistrate can direct a police officer to take photographs or other identification of a prisoner.

According to US Justice Department officials, one of the men, Zayn Hassan Safarini was on 28 September 2001 arrested by FBI agents. Upon his release Safarini was given a Jordanian passport. It appears that his family had obtained a direct flight to Jordan for him but that Pakistani and/or Jordanian authorities arranged for him to fly via Bangkok where he was arrested at the airport. He was then flown to Anchorage, Alaska, where he was made to appear on 1 October in the Anchorage district court for a hearing. The judge ordered that he should be taken to be tried in the District Court for the district of Columbia where he had been charged. If convicted, Safarini may face the death penalty.

On 1 October 2001, President Bush publicly stated that US authorities had arrested Safarini and cited Safarini's extradition as progress in the 'war on terrorism' and that it showed that *al-*

*Qa'ida* terrorists were not the only militants being sought by the US administration.<sup>49</sup> Attorney General John Ashcroft confirmed that Safarini had been brought to the US in the custody of special agents of the FBI and added: "This arrest demonstrates the commitment of the United States to track down persons charged with having committed terrorist acts against Americans, no matter how long it takes." FBI director Robert Mueller said that countering terrorism required a global reach and strong international cooperation among law enforcement and prosecutors worldwide. "Today demonstrates the benefit of that principle." The five Palestinians are not believed to be linked to the events of 11 September 2001.

On 2 October 2001, in an attempt to prevent being handed over to the US, the remaining four detainees, who continue to be held in Adiala Central Jail, Rawalpindi, filed a petition in the Lahore High Court seeking their release from jail and asked the High Court to direct the Federal Government to arrange a place for their internment if necessary other than a jail and provide a subsistence allowance up to the time of their deportation to their home country. On 5 October 2001, a judge of the Lahore High Court bench in Rawalpindi asked the Government of Pakistan to explain the 'circumstances under which the Palestinian hijacker left Islamabad and landed in the United States'. On 18 March 2002, the Lahore High Court, Rawalpindi bench ordered the release of the four Palestinians and directed the federal government to make arrangements for their deportation.<sup>50</sup>

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<sup>49</sup>He said: "he [Safarini] was convicted and sentenced to death. Yet he only served 14 years. Well, we arrested him; we got him; we brought him into Alaska. And today the United States of America will charge him with murder."

<sup>50</sup>The Supreme Court Review Board which reviews their internment is reportedly at present considering different options for the four detainees who have served their sentence and should be released. The options considered include: granting Pakistan citizenship to the four men -- but having entered Pakistan illegally, this option appears inapplicable; requesting UNHCR assistance for resettlement -- but the UNHCR's brief does not include such cases; or granting residence and work permits to the men under the Foreigners Act as amended in July 2000 by ordinance (Ordinance 25 of 2000). The nationality of the detainees has meanwhile become an issue of contention, with the Palestinian authorities apparently failing to recognize the detainees as their nationals and to issue them with travel documents to enable them to return to their homes. The constitutional petition filed on the detainees' behalf argues that the fact of a staff member of the Palestinian embassy in Pakistan, accompanying FBI personnel to Adiala Jail in September 2001 when the latter took finger prints and photographs of the detainees, indicates that they are considered by both the Palestinian representative and US authorities to be Palestinians. But the Palestinian ambassador to Pakistan, Ahmad Abdul Razzaq, has reportedly stated that the detainees did not have Palestinian citizenship as they had slipped into Pakistan on Jordanian and Syrian passports; moreover, the embassy could not issue travel documents to anyone outside the territorial jurisdiction of the Palestinian Authority. The men themselves have repeatedly asserted that they are Palestinians and the original trial court, too, treated them as Palestinians "fighting for the cause to liberate their territory from ... the Israelis" and to liberate other Palestinians from jails. The men submitted a 17-page statement to the trial court which is

Safarini is not the only person of Middle Eastern origin who has come to be in US custody in violation of extradition protection in connection with offences allegedly committed earlier. On 26 October 2001, a Yemeni national, Jamil Qasim Saeed Mohammed, was reportedly handed over to US authorities by Pakistani agents, in secret and without any formal deportation or extradition proceedings. He was wanted in the US in connection with the bombing of the US destroyer *USS Cole*, in Yemen in October 2000, in which 17 US servicemen were killed and some 40 others injured. According to *The Washington Post*, Mohammed was handed over by masked agents of the Inter Services Intelligence (ISI, one of the intelligence organizations of the military) to US agents who arrived at Karachi International Airport 'under highly secretive circumstances'. It has subsequently been reported that he has been taken to Jordan but Amnesty International has not been able to confirm this; the organisation has requested the US authorities to inform it about the current whereabouts and legal status of Jamil Qasim Saeed Mohammed. As of late May 2002, it has received no reply.

## **2. Handing over of Middle East nationals and others arrested in the border areas of Pakistan**

Between October and December 2001, a large group of persons from Middle Eastern countries, possibly up to 150 persons, were reportedly arrested by the Pakistan army and members of the tribal agencies in the tribal areas of Pakistan along its border with Afghanistan, and further such arrests were reported in the first week of January 2002. Foreign detainees initially arrested by members of the tribal agencies were reportedly handed over to the army. Most of these were apparently transferred to Kohat District Jail.

According to reports from local observers, Kohat District Jail is a new small jail outside Kohat town. Before the arrival of the mostly Middle Eastern detainees, regular detainees were transferred to other parts of the jail and other jails to make room for the new arrivals. The vacated part of the jail was placed under the command of an army official. Regular staff were removed from the areas where the foreign detainees were held to ensure maximum security and block any information about the detainees reaching the outside world.

The detainees come from a range of Middle Eastern and other countries. According to a petition filed on behalf of 57 of these detainees [see below], they included 16 Saudi Arabians, 17 Yemenis, six Moroccans, four Kuwaitis, two Bahrainis, two men from Al Jazair<sup>51</sup>, and one each from Afghanistan, Egypt, Iraq, Spain, Bangladesh, Sudan and an unspecified African country. It is difficult to ascertain the exact number and nationality of foreign detainees held at Kohat. The petition mentions in its introductory paragraph the "unlawful and illegal arrest of **hundreds**

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included in paragraphs 76 and 77 of the judgment in which they asserted their identity as Palestinians.

<sup>51</sup>Al Jazair could refer to Algeria. The petition is not clear in this regard.

of foreigners (Arabs) in Kohat district and their confinement in District Jail, Kohat" [emphasis added]. Amnesty International has obtained some information regarding the Middle Eastern nationals and other foreign nationals in Kohat from family members who have approached the organisation with their concern about their relatives' detention. Identities of those arrested for their alleged links to *al-Qa'ida* are difficult to ascertain; they themselves often use aliases and the authorities in Pakistan are notoriously secretive about the identities of detainees.

Amnesty International is concerned that the conditions of detention of the foreign detainees at Kohat may be no better than those of other detainees in Pakistan: torture and ill-treatment are rife in all places of detention in Pakistan and often linked to attempts by prison staff to extract money or to harass or humiliate the detainees. As no independent visitors have been permitted access to the detainees at Kohat, definite information about the state of the detainees and conditions of detention is not available. However, prison staff working in other parts of Kohat jail have reported hearing loud cries emanating from the areas where the Middle Eastern and other foreign detainees were held. There are also reports that Pakistani army staff have interrogated the detainees accompanied by 'others' presumed to be Pakistani and US intelligence staff. Kohat has a small airport and according to local observers aeroplanes were seen landing with greater frequency after the arrival of the foreign detainees probably flying in intelligence personnel. No Pakistani civilian agency is believed to have participated in the interrogation.

On 7 January 2002, Javed Ibrahim Paracha, former Member of National Assembly from Kohat filed a writ petition in the Peshawar High Court in which he stated that 57 named detainees of Middle Eastern and other foreign nationality in Kohat District Jail had not been brought before any court of law, had not been charged with any criminal offence and had not been allowed access to legal counsel, family or anyone outside the jail. As they had not committed any offence on Pakistani soil, their detention was unlawful. Moreover, the petitioner said he had reasons to believe that the detainees were at risk of being handed over to the US-led coalition without legal process. He therefore asked the court to order the release of the detainees forthwith and that they be allowed to proceed to a country of their choice. He also sought the direction of the court that the detainees should not be forcibly handed over to any other country. If the entry of the men into Pakistan was treated as illegal, the petitioner asked that they be charged and tried under relevant Pakistani laws.

The lawyer representing the detainees in Kohat and Haripur pointed out that the federal government delayed the conclusion of the hearings by not responding to the High Court's repeated directions to file comments to specific questions. The court did not at any stage order the production of the detainees in court nor did it hear the petition expeditiously.

Meanwhile, between the filing of the petition in January 2002 and its dismissal in April 2002, an unknown number of foreign detainees were reportedly removed from Kohat, apparently first to Peshawar Central Jail and then to US custody, reportedly in Kandahar from where some may

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have been flown to the detention centre in Guantánamo Bay. Amnesty International has been informed by some families in Middle Eastern countries that they received letters through the ICRC from relatives who were held in Kohat and subsequently transferred to Guantánamo Bay.

On 5 April 2002, the Peshawar High Court dismissed the petition; though the court had earlier heard substantive arguments about the lawfulness of the detention of the foreigners at Kohat Jail<sup>52</sup>, the order said that the petitioner Javed Ibrahim Paracha was not related to any of the detainees and hence not an aggrieved person and as such not entitled to file the petition under article 199 of the Constitution of Pakistan under which high courts exercise their writ jurisdiction.

Several local observers told Amnesty International that some foreign detainees may still be held in Kohat District Jail as regular prisoners have not been returned to their original cells and high security is still being maintained. They said this may be in anticipation of new detainees.

### **3. Handing over of Pakistani and Arab suspects arrested in Punjab province**

Amnesty International fears that some of the Pakistani and foreign detainees arrested in the first two months of 2002 in Punjab (see above) were handed over clandestinely to US custody in violation of Pakistan's extradition law similar to those known to have been handed over in March 2002. Asked at a press conference in Islamabad about whether the men arrested in early January would be handed over to the USA, Foreign Minister Abdul Sattar on 19 January 2002 said: "Pakistan is cooperating with the United States with regard to the entry into Pakistan of *al-Qa'ida* members but I do not have an answer to your specific question."<sup>53</sup>

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<sup>52</sup>During several hearings in the Peshawar High Court, substantive arguments about the lawfulness of the detention were discussed; the provincial Advocate General reportedly argued that the 57 men had been caught by the Pakistan army after trespassing into Pakistani territory. The army had reportedly wanted to send them back to Afghanistan but in an ensuing encounter with security forces, six soldiers of the tribal levies and an army soldier as well as some 10 men from Arab countries had been killed. The army had then reportedly arrested the other foreigners and buried the dead near Parachinar. Pakistan media have not reported such encounter and neither date nor time or place of the event have been ascertained. Moreover, no charges relating to the killing of seven people have been brought by anyone nor again have the detainees at Kohat been prosecuted for the killings. The Advocate General also reportedly argued that the detainees were in the custody of the army as they had violated the security of Pakistan and had intended to commit 'terrorist' acts in Pakistan; as such the court had no jurisdiction to challenge their detention. In its hearing on 28 March 2002, the lawyer representing the case in court argued that if the detainees had entered Pakistan unlawfully they should be charged and tried under the Foreigners Act; he also questioned whether the detainees were still in the custody of the army. The Advocate General then reportedly said that they had been deported and were no longer in army custody.

<sup>53</sup>AFP, 20 January 2002.

Local media coverage has thrown some light on arrests and handing over of detainees to US custody in March 2002. On 28 and 29 March 2002, some 65 alleged members of *al-Qa'ida* were reportedly arrested during simultaneous raids in Faisalabad, Lahore, Multan and Karachi undertaken by what appears to have been a joint operation of Pakistan police and the FBI. Local newspapers reported that no charges were brought against any of the arrested men nor were the arrests entered into the diaries of local police stations. Names and whereabouts of the arrested men were kept secret. Pakistani newspapers<sup>54</sup> claimed that among the 24 foreigners arrested in Faisalabad, there were two Moroccans, six Sudanese, seven Palestinians, nine Saudi Arabians in addition to 21 Pakistanis. Other papers claim there were 27 foreigners and provide different nationalities. According to press reports, within days, at least 22, but perhaps as many as 29 of the detainees were transferred to US custody without undergoing any legal process.

In the early morning of 28 March 2002, nine simultaneous raids were carried out in Faisalabad in which 45 of the 65 people were arrested. During a shootout in one house in Faisalabad in which a person later identified as Abu Zubaydah tried to escape, was fired at and arrested, at least one Syrian, Abu al-Hasnat, was killed and at least two other Arab men, besides Abu Zubaydah, and three Pakistani police officers were injured. Some reports mention a further Syrian man, Dawood, as killed in the shootout.

The detainees were reportedly taken to local police stations in Faisalabad and then to Lahore where some of the Pakistani detainees were released. The injured persons were taken to Faisalabad's Allied Hospital and transferred to Lahore on the following day. During the crackdown computers and other communication equipment, which the group had apparently used in maintaining its communication network, was seized. A cyber café in Faisalabad was also raided and those running it arrested and their equipment confiscated. At least 16 more people, mostly men of Middle Eastern origin, were arrested in three simultaneous raids in Lahore and Multan during the same night and the following day.

Sixteen of the Pakistani suspects, including a professor of a government college in Faisalabad from among 45 men arrested in that city, were released three days later. According to these men's reports, they were dropped blindfolded outside their homes by commandos on 31 March 2002. Some of those released reported that foreigners who had covered their faces had been amongst the raiding party. They also reported being interrogated in the local police lines by masked police officers.

The reported positive identification of *al-Qa'ida* leader Abu Zubaydah, a 32-year old Palestinian born in the Kingdom of Saudi Arabia, who was also known under the aliases Zayn al-Abidin Muhammad Husayn, Al Wahab, Abd al-Hadi and Tariq, among those arrested took some time

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<sup>54</sup>Eg the Urdu daily *Jang*, 30 March 2002.

due to the fact that he had received three bullet injuries while trying to escape. Finally, on 2 April, White House spokesperson Ari Fleisher stated that there was 'overwhelmingly strong' evidence that the captured man was Abu Zubaydah. A positive identification of Abu Zubaydah was made by electronic voice imprints and later by the suspect's own admission.

Media reports suggested that Abu Zubaydah had left Afghanistan to reactivate group members and other Islamist groups around the world. In 2000, a Jordanian military court had reportedly sentenced Abu Zubaydah to death *in absentia* for conspiracy to carry out terrorist attacks. According to reports Pakistan had received several requests since 1998 to track down Abu Zubaydah but Pakistan agencies had not succeeded earlier.

News agencies and local Pakistani media concur that the arrest of around 65 suspects had been facilitated by US officials, belonging to different agencies who had interrogated Pakistani detainees in Afghanistan<sup>55</sup> and obtained relevant information. Pakistani officials also admitted that the raids were carried out on the basis of information of the FBI. But many local media reports also suggested a more direct role of US agencies in the operation: according to eyewitnesses of the arrests in Faisalabad quoted in local papers, FBI personnel supervised the operation and entered the premises after suspected *al-Qa'ida* and Taleban members had been overpowered and handcuffed to begin their investigation of the identity of the detainees. During the raids, FBI members were reported to have carried photographs of wanted men. Some of the released detainees also stated that their belongings taken during the raid were returned to them with FBI markings on them.<sup>56</sup> Pakistani newspapers concluded that the operations were planned and handled by US agents and commandos whereas local intelligence and police helped secure suspects for the US to interrogate.<sup>57</sup> Senior US administration officials confirmed that the raids

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<sup>55</sup>There are reportedly some 6,000 Pakistani detainees in Afghan detention; according to some reports there are several dozen members of Pakistan's military intelligence, the Inter Services Intelligence (ISI) amongst the detainees. The Pakistan government has denied such reports.

<sup>56</sup>*Associated Press*, 12 April 2002.

<sup>57</sup>The presence and involvement of the FBI have been negatively commented on in some national newspapers and by different political groups. For instance, on 31 March 2002, the *Pakistan Tehrik-e-Insaf* criticised the growing operational involvement of US security personnel in domestic affairs which it called unprecedented. In the editorial of its April edition, the News magazine *Herald* said, "No one can dispute the need to move decisively against terrorism and Pakistan's allegiance to the U.S. for that purpose is not in question. However, it is a fine line that separates allegiance from subservience." Punjab Governor Khalid Maqbool told the press in Lahore after the arrests in late March that the traditional meaning of sovereignty had undergone change: Humanity was dealing with problems such as terrorism that transcended national boundaries and in this open interdependent world information had to be shared and action had to be taken jointly to check it. This did not affect national sovereignty, he said.

in Faisalabad had been carried out with information supplied by US intelligence and that FBI and CIA officers were present.<sup>58</sup> Commander in Chief of US Central Command, Gen. Tommy Franks said on 29 March 2002 that “US assets” had been involved in the raids but not US military troops: “I think there was cooperation between assets of our government and assets of the [Pakistan] government.”<sup>59</sup>

Despite the statement by FBI director Robert Mueller that the FBI had been involved in Abu Zubaydah’s arrest in a ‘support capacity’<sup>60</sup>, Pakistani authorities denied this. On 29 March 2002, Punjab Inspector General of Police, Asif Hayat, stated that no foreign agency had been involved in the 28 March raid in Faisalabad: “No foreign force or foreign personnel were involved in this. The entire operation was conducted by the Punjab police, Punjab Elite Police, CID [Criminal Investigation Department] and one of our national agencies. They built up the information jointly and police conducted the raid.”<sup>61</sup>

Official statements about the handing over of Abu Zubaydah and other detainees into US authorities were contradictory and confusing as well. Some Pakistani observers believe that Abu Zubaydah was handed over to US custody immediately after his arrest in the early hours of 28 March and was transported out of Pakistan via Lahore airport in the early morning of 31 March as soon as Zubaydah’s condition had sufficiently stabilized. At least 21 other *al-Qa’ida* suspects, including 19 Arabs and two Pakistanis were also handed over along with Abu Zubaydah and left Pakistan in the same manner. According to local reports, the detainees were escorted by a 16-member FBI team and taken to Lahore airport in armed personnel carriers from Chuhng sub-jail in Lahore and channelled through the special terminal set up for pilgrims.<sup>62</sup> The location of those still in Pakistan is not known. Local journalists believe them to be in police detention centres in or near Lahore.

First indications that Abu Zubaydah was in US custody came early on 31 March when *AFP* reported a senior US official as saying that US authorities were holding a man believed to be

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<sup>58</sup>*Reuters*, 2 April 2002.

<sup>59</sup>*Reuters*, 29 March 2002.

<sup>60</sup>*Reuters*, 3 April 2002.

<sup>61</sup>*Pakistan TV*, 29 March 2002, also *Dawn*, 30 March 2002.

<sup>62</sup>*Dawn*, 8 April, *The News* of 30 March and 3 April 2002. *The News* of 1 April quoted unnamed intelligence officials as saying that 20 Arab *al-Qa’ida* suspects had been handed over to US authorities and were likely to be transferred to Guantánamo Bay shortly.

Abu Zubaydah: "The individual is now in US custody."<sup>63</sup> On 1 April, US officials stated that some 29 Middle Eastern and Afghan detainees were in US custody without disclosing the location. On 2 April, the White House spokesperson confirmed that Abu Zubaydah had been captured: "We believe that one of the individuals captured by Pakistani authorities in a recent raid is Abu Zubaydah .... He is currently receiving medical attention. For security reasons we are not going to discuss his location. He will be interrogated about his knowledge of ongoing plans to conduct terrorist activities ... ." <sup>64</sup> The Pentagon in mid-April said that Abu Zubaydah was held and treated for injuries suffered during his arrest at an undisclosed location but not under military surveillance. Interrogation had reportedly begun by 12 April 2002 according to US Secretary of Defence Donald Rumsfeld.<sup>65</sup>

On 31 March 2002, Interior Ministry official Brigadier Javed Iqbal Cheema said that Pakistani investigators were interrogating the detainees and that the FBI was collaborating with Pakistani intelligence to establish the identity of the men: "We keep sharing information with the FBI agents." On 1 April 2002, foreign ministry spokesperson denied reports that the Arab detainees had been handed over to the US.<sup>66</sup> "At the moment they are in custody", Aziz Ahmed Khan said on 1 April 2002. When President Musharraf was in Kabul to discuss the 'prevention of sanctuaries for terrorists on both sides' of the border with Afghan interim leader Hamid Karzai, he admitted before the press on 2 April 2002 that the *al-Qa'ida* suspects arrested in the Punjab had been handed over to the US. Official denials of the handing over were reported for several more days.<sup>67</sup>

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<sup>63</sup>AFP, 31 March 2002.

<sup>64</sup>The News, 3 April 2002.

<sup>65</sup>Reuters, 12 April 2002. The issue of transferring detainees to other countries where torture might be used to extract information - against which there exist more stringent safeguards in the USA - came up in this context again. Earlier, allegations had been made that "Egyptian and Jordanian jails recently received scores of Arab prisoners affiliated with the *al-Qa'ida* organization after the United States had decided to transfer them from Afghanistan" (BBC, citing text of a report carried in the Jordanian weekly *Al-Majd* on 1 April 2002. Asked if he excluded the possibility that Abu Zubaydah, "even if he's under the control of the US", could be interrogated in a country other than Afghanistan, Pakistan or the USA, the Secretary of Defence said, "I am not going to systematically rule out this, this, this and this". (Department of Defense news briefing, 3 April 2002)

<sup>66</sup>"These reports are wrong," Foreign Ministry spokesperson Aziz Ahmed Khan told the press on 1 April, "when some action in that regard is to take place we will let you know about it". He added that the men were then in Pakistani custody and were being interrogated by Pakistani authorities. Reuters and AFP, 1 April 2002.

<sup>67</sup>For instance, on 3 April 2002, Brigadier Cheema asserted that none of the arrested men had been handed over to the US, indeed they were all still in Pakistan and undergoing investigation. On 9

### 4.3 Arbitrary transfer of foreigners to the custody of their countries of origin

In the context of Pakistan's participation in the US-led initiative against 'terrorism', the Pakistan government has also handed over foreigners present in Pakistan to their respective home countries irrespective of the human rights violations they may face there and in violation of the extradition law. These aliens include Uighurs from China's Xinjiang Uighur Autonomous Regions (XUAR) and people from a range of Middle Eastern countries many of whom currently study in Pakistan's *madrassas*.

#### 1. Uighurs

Amnesty International has been informed of at least two Uighurs who have been handed over to China in recent months and at least seven more Uighurs, including one Uighur from Kazakhstan, and one Kyrgyz from China who were recently arrested in Pakistan and may be at risk of being handed over to China without protection under Pakistan's extradition law and in contravention of the *non-refoulement* principle. Amnesty International believes that alleged 'ethnic separatists' or 'terrorists' forcibly returned to China are at risk of torture and possibly summary or extrajudicial execution.

Human rights violations in the Xinjiang Uighur Autonomous Region (XUAR) have increased sharply in the last year. Uighurs have faced an increasing curtailment of their rights. Following the 11 September 2001 attacks on the USA, China has intensified its political crackdown in the XUAR, arresting suspected opponents and supporters of independence for the region and branding them as 'ethnic separatists' or 'terrorists'.<sup>68</sup>

China is reported to have called on the international community to include Uighur ethnic separatist groups in the list of organisations to be targeted in the international campaign against 'terrorism' and to return Chinese nationals captured during the US-led military campaign in Afghanistan. It has claimed that Uighur 'ethnic separatists' are linked with international 'terrorism' and called for international support in its crackdown on domestic 'terrorism'.

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April, Interior Minister Moinuddin Haider also said that Pakistan had not handed over suspected *al Qa'ida* members to the US; he said those arrested in recent weeks were under investigation and that the government had not yet decided if they should be handed over to the US. Asked by pressmen about the fate of Abu Zubaydah, he said he did not know the details as he had been outside the country. (*The Frontier Post*, 9 April 2002)

<sup>68</sup>See: *People's Republic of China: China's anti-terrorism legislation and repression in the Xinjiang Uighur Autonomous Region*, AI Index: ASA 17/010/2002.

However, the United States have so far not agreed to classify the ethnic separatists as 'terrorists' or to extradite Uighurs captured during military operations in Afghanistan to China. There are unconfirmed reports that China in December 2001 also put significant political pressure on neighbouring countries including Nepal and Pakistan, to return those it suspects of being involved in 'ethnic separatist' or 'terrorist' activities.

Both countries appear to have complied: Nepal reportedly handed over two Uighurs to China after they were arrested in January 2002<sup>69</sup>. At least two but possibly more Uighurs are believed to have been arrested by Pakistani police in early February 2002 in Rawalpindi on allegations of being members of separatist groups. According to some reports, Pakistani police were accompanied by Chinese officials in plain clothes when they arrested two men from their home on 2 February. The arrested men include Ismayil Abdusemed Haji alias Ilham, who had been in Pakistan since 1997, and Abdulhakim. According to unconfirmed reports, the two men were handed over to the Chinese authorities immediately and without any legal process. Amnesty International fears for the two men's safety. The arrests were made shortly after President Pervez Musharraf, during a visit to China in December 2001, assured China of Pakistan's support in its campaign against Islamist separatists in Xinjiang. "Pakistan will make full efforts to support China in its fight against East Turkestan terrorism forces", President Musharraf reportedly said on Chinese state television.<sup>70</sup>

On 22 April 2002, Elham Tohtam (30), Ablitip Abdul Kadir (30) and four other Uighurs were arrested by police in Rawalpindi. Elham Tohtam was picked up by police from his home at 6.30am and, according to eye-witnesses, blind-folded and led away to an unknown destination. He is originally from Gulja city, Xinjiang Uighur Autonomous Region (XUAR), China, and was arrested and tortured there in 1996 and 1999 for his suspected political activities. In April 1999, fearing further persecution, Elham Tohtam fled first to Kyrgystan and then to Kazakhstan. In November 2000 he went to Pakistan, where he lived with his wife and four children in Rawalpindi. He had approached the UNHCR in Islamabad and the Australian government for emergency visas to Australia, where he has family members. Ablitip Abdul Kadir was also arrested on 22 April 2002 in Rawalpindi. He is also from Gulja in the XUAR and is married; three of his children are in Pakistan. Their family members and friends have searched police stations and detention centers in Rawalpindi for them without success.

Four other Uighurs from Gulja are reported to have been arrested at around the same time on 22 April 2002 in Rawalpindi/Islamabad. They are Enver Tohti (a.k.a. Enver Davut), Golamjan Yasin, Tilivaldi and Ablikim Turahun. Enver Tohti's wife, Aynuz, and their son Ihsan were also detained by Pakistani police on 22 April but released on 1 May 2002. One Uighur from

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<sup>69</sup>See: Urgent Action AI Index: ASA 31/033/2002.

<sup>70</sup>*AFP*, 22 December 2001.

Kazakstan, identified as Ezizhan, and one Kyrgyz from Gulja in China, identified as Zayir or Zaher, are also reported to have been arrested on 22 April 2002 in Rawalpindi/Islamabad.

Amnesty International issued urgent appeals to the Government of Pakistan not to deport the detainees to China but had not received any response by end the end of May.<sup>71</sup>

In 1997, a group of some 14 Uighur religious students were arrested in Gilgit and neither charged nor tried in Pakistan; they were handed over to Chinese authorities without any legal process and reportedly summarily executed on the Chinese side soon after being driven across the border.

## **2. Persons of Middle Eastern origin**

Pakistan has also violated the extradition law when it handed over an unknown number of people of Middle Eastern origin to their presumed countries of origin irrespective of the human rights violations to which they may be subjected there.

Mamdouh Habib (46), an Australian born in Egypt who had migrated to Australia in 1982 and acquired Australian citizenship, had reportedly left for Pakistan in August 2001; he was arrested by Pakistani authorities on 5 October 2001, before the US-led military action in Afghanistan began, near Khuzdar in Balochistan. Pakistani authorities claimed that he was arrested while attempting to cross the border to Afghanistan.<sup>72</sup> Mamdouh Habib's family, who live in Sydney, say that he was in Pakistan in order to find a suitable school for his sons to allow them to grow up in a Muslim environment. On 29 October 2002, Mamdouh Habib's family was informed by the Australian High Commission in Islamabad that Mamdouh Habib was in Pakistani custody and had not been charged with any criminal offence.

A further communication from the High Commission informed the family on 20 December that Mamdouh Habib was believed to be detained in Egypt. Nothing is known of any legal process prior to Pakistan's handing over of the detainee to Egyptian authorities. Egypt, which apparently did not allow Australian officials access to Habib, in turn handed him over to the US military authorities on 16 April. According to Australian Prime Minister John Howard, Habib may be transferred to Guantánamo. The Australian Prime Minister announced on 19 April 2002 that Australia would investigate whether Habib had broken any domestic laws. The lawyer for the Habib family in Sydney, Australia, said they were 'highly traumatised' as they had had no contact with Habib for some six months as he was being held incommunicado. On 2 May 2002, Australian Attorney-General Daryl Williams announced that US officials had agreed to

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<sup>71</sup>See: Urgent Action AI Index: ASA 33/011/2002.

<sup>72</sup>Khuzdar is about 250 kilometres from the Afghan border.

Australian officials meeting suspected Australian Taliban fighter David Hicks but offered no information about the fate and location of Mamdouh Habib. Williams said that US officials had advised him that Habib was 'in good health and is being treated appropriately'. He said that Australia had reiterated its request to the USA that Hicks and Habib be given access to their families and lawyers but added that it was unlikely that the USA would give approval for access to lawyers. On 6 May, the Australian government announced that Habib had been transferred to the US detention facility at Guantánamo Bay, Cuba and that US officials have agreed to give Australian officials access to him there. On 23 May 2002, Attorney-General Daryl Williams and Foreign Minister Alexander Downer said in a joint statement following a visit by Australian officials to the two detainees in Guantánamo Bay the week before: "The investigation team has confirmed that both men are being detained in safe and humane conditions". No further details of the interviews were released. The government said it passed on letters from the two men to their families in Australia. Lawyers for the two men have not been allowed access to their clients despite requests.

In January 2002, President Musharraf announced that all foreign students in Pakistan would have to obtain official clearance for their stay in Pakistan by end-March; those that failed to procure it would be deported to their countries of origin.

There may be as many as 20,000 foreign students studying in thousands of *madrassas* [religious schools] in Pakistan who have no permission to stay in Pakistan. The government has announced that they will be expelled in the first week of April if they fail to register by end-March. By late May, no concrete steps were known to have been taken to begin deportation.

Although Amnesty International recognizes the duty of the government of Pakistan to protect its citizens from attack, the organization is concerned that many of the foreigners currently studying in Pakistani religious institutions may be at risk of human rights violation if they are forcibly returned either to their home countries or to the US. These human rights violations may include arbitrary arrest, unfair trials in special courts, torture and ill-treatment in detention, the death penalty or unlawful killings.

## **5. Amnesty International's recommendations**

Amnesty International acknowledges the duty of the Government of Pakistan to protect its citizens from violent crime. However, in carrying out this duty the Government of Pakistan has to abide by its own constitutionally secured fundamental rights, its legal framework and by international human rights laws and standards relating to arrest, detention and extradition. It should also fully respect obligations under international humanitarian law. Short term gains in fighting militancy at the cost of curtailing fundamental rights will in the long term serve to weaken the rule of law. Amnesty International urges the Government of Pakistan to fully implement legal provisions relating to arrest, detention and extradition with regard to everyone,

including those suspected of membership in ‘terrorist’ organisations. It should maintain the rule of law in all circumstances, and without discrimination.

Amnesty International urges the Government of Pakistan to take the following measures:

**Ratify international human rights treaties**

Amnesty International recommends to the Government of Pakistan to demonstrate its commitment to the protection of human rights by ratifying the main human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In the absence of international human rights treaties, Pakistan ought to abide by domestic legal safeguards, international customary law, and resolutions and principles adopted by international bodies and recommendation of UN special rapporteurs and working groups.

**Ensure full compliance with domestic legal safeguards**

The Government of Pakistan should ensure the full compliance of all law enforcement personnel with legal safeguards contained in the Constitution of Pakistan and statutory law. Article 10 of the Constitution of Pakistan provides legal safeguards in respect of arrest and detention; these include the right to be “informed, as soon as may be, of the grounds for such arrest” and the “right to consult and be defended by a legal practitioner of his choice”, and to be “produced before a magistrate within a period of twenty-four hours of arrest”. Further legal safeguards are contained in the Code of Criminal Procedure and other acts, including the Extradition Act, 1972 (see above).

In particular, the Government of Pakistan should ensure that detainees arrested for alleged membership in a “terrorist” organisation are not discriminated against but can enjoy the full range of rights available under the Constitution of Pakistan. The right to be treated in accordance with law without discrimination is explicitly recognised in the Constitution as “*the inalienable right of every citizen, wherever he might be, and of every other person for the time being within Pakistan*”<sup>73</sup>.

**Abide by internationally agreed principles of protection of human rights**

Amnesty International urges the Government of Pakistan to abide by several internationally agreed principles of protection of human rights of detainees including those contained in the Body of Principles for the Protection of All Persons under Any Form of Detention or

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<sup>73</sup>Article 4(1)

Imprisonment<sup>74</sup>, the Standard Minimum Rules for the Treatment of Prisoners<sup>75</sup> and the Basic Principles on the Role of Lawyers<sup>76</sup>.

According to these principles, the system of detention should subject to international human rights standards including:

- the fact and location of detention must not be secret;
- a detained person must be notified of the reasons for their detention and of their rights, in a language that they understand;
- incommunicado detention must be prohibited: a detained person must without delay be given access to and assistance of a lawyer, assigned free of charge if necessary;
- a detained person must have the right to confidential communication with their lawyer;
- a detained person must be brought before a judicial authority to determine necessity for and lawfulness of detention, and this must be subject to periodic review;
- a detained person must be entitled to challenge the lawfulness of detention;
- a detained person's family must be notified and be permitted to have access;
- foreign nationals must be given all reasonable facilities to communicate with and receive visits from representatives of their governments or an appropriate international organisation;
- a detained person must have the right to be examined by a doctor and, when necessary, to receive medical treatment;
- the conditions of detention must comply with international standards;
- a detained person must have an enforceable and effective right to redress and reparation if unlawfully detained;
- people who are detained without charge should not be detained with people convicted of criminal offences.

Pakistan is also bound by principles of customary international law. These include the principle of *non-refoulement*<sup>77</sup> which prohibits states from returning anyone to a territory where they

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<sup>74</sup>Adopted by the UN General Assembly in Resolution 43/173 on 9 December 1988.

<sup>75</sup>Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 March 1977.

<sup>76</sup>Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>77</sup>The principle of *non-refoulement* was recently confirmed to be part of customary international law in the Declaration of the Ministerial Meeting of State Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees on 13 December 2001 which says in paragraph 4 of the preamble: "We ... acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of *non-refoulement*,

would be at risk of human rights abuses. In cases where people risk torture or cruel, inhuman or degrading treatment or punishment, extrajudicial execution or “disappearance” or arbitrary deprivation of the right to life, the prohibition of *refoulement* is absolute.

**Investigate all reports of human rights violation with a view to bringing perpetrators to justice**

Amnesty International urges the Government of Pakistan to ensure that every allegation of human rights abuses is investigated fully, promptly and by an independent and impartial tribunal with a view to holding the perpetrators to account.

**Do not deport people to countries where they may be sentenced to death**

Amnesty International unconditionally opposes the death penalty as the denial of the right to life and as the ultimate cruel, inhuman and degrading punishment. The organization appeals to the Government of Pakistan not to hand over detainees to jurisdictions where the detainees may be sentenced to death.

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whose applicability is embedded in customary international law ...”.