

# PAKISTAN

## Imminent execution of Mir Aimal Kasi raises fears for others taken into US custody without human rights safeguards

### INTRODUCTION

A man taken into US custody from Pakistan in circumvention of human rights guarantees is due to be executed on 14 November 2002. Amnesty International fears that this case may be the first of several such cases. The organization has called on US authorities to commute the death sentence. **Amnesty International urges the Government of Pakistan not to hand over people including those alleged to be members of a ‘terrorist’ organizations to another country without adhering to the requirements of Pakistan’s laws relating to extradition and respecting the international prohibition of *non-refoulement* to a country where detainees may suffer human rights abuses.<sup>1</sup> The organization also urges the Government of Pakistan not to extradite anyone to a country where they may be sentenced to death.**

### THE TRANSFER OF MIR AIMAL KANSI AND OTHERS TO US CUSTODY

Amnesty International is concerned that Mir Aimal Kasi is scheduled to be executed on 14 November 2002. He was abducted by US agents from Pakistan with the collusion of the Government of Pakistan in disregard of human rights protection standards guaranteed by the Constitution of Pakistan and statutory law.<sup>2</sup>

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<sup>1</sup> 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; failed to facilitate prompt communication with or grant of 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*. 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.

<sup>2</sup> At the time of Mir Aimal Kasi’s abduction, Mian Nawaz Sharif was prime minister of Pakistan; similar arbitrary arrests and transfers were reported from the period when Benazir Bhutto was prime minister and in the last three years during which General Pervez Musharraf has been the Chief Executive of Pakistan.

Mir Aimal Kasi was abducted by Federal Bureau of Investigation (FBI) personnel from a hotel in Dera Ghazi Khan on 15 June 1997, hooded, shackled and transported by vehicle and air to an undisclosed location in Pakistan. From there he was flown to the USA in a military aircraft two days later. In Fairfax, Virginia, USA, he was charged with the murder of two staff members of the CIA in 1993 and sentenced to death; all appeals were rejected. (For details see case summary in appendix 1.)

Amnesty International opposes the execution of Mir Aimal Kasi, as it does all executions as a denial of the right to life and the ultimate cruel, inhuman and degrading punishment. Amnesty International has appealed to the Governor of Virginia to commute the death sentence. The organization also appeals to other relevant US authorities to refrain from imposing the death penalty in all current and future trials, including of those suspected of violent political actions.

The organization fears that other people handed over by the Pakistani authorities to the USA without regard to human rights protection, including extradition protection, may also be tried and convicted by US courts and sentenced to death. In the case of Mir Aimal Kasi his extradition was initially sought by the US authorities but eventually the process was bypassed and he was abducted. However, in several other cases no attempts were made at all to fulfil legal requirements of the extradition law. (For details of Pakistan's extradition law see Appendix 2)

The USA has in a number of instances not sought extradition of suspects but taken them into US custody in circumvention of domestic extradition requirements of the countries where suspects were found; for its part the Government of Pakistan has not insisted on adherence to its own legal requirements. Such instances have been reported in the past but have become more frequent since Pakistan began to support the efforts made by the US-led coalition to curb 'terrorist' activities.

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 recently raised concerns about the handing over of people suspected to have links to the Taliban or al Qa'ida by Pakistan to US custody in circumvention of Pakistan's extradition protection. The issue and specific cases were highlighted in its report *Pakistan: Transfers to US custody without human rights guarantees* published in June 2002 which illustrates how several hundred people, including Afghans, Pakistanis and people of Middle Eastern origin were arbitrarily handed over to US custody.<sup>3</sup> Amongst them were Abdul Salam Zaef, the former Taliban ambassador to Pakistan who was arrested and handed over in January 2002; dual national (with Pakistani and British nationality) Moazzem Beg who was picked up in Islamabad and handed over to US custody in February 2002; and Palestinian Abu Zubaydah<sup>4</sup> and at least 21 other suspects who were arrested in Faisalabad and Lahore and transferred to US custody in March 2002. Scores of other men of Middle Eastern origin were arrested in the border areas of Pakistan and Afghanistan and transferred to US custody in circumvention of domestic human rights safeguards.

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<sup>3</sup> AI Index: ASA 33/014/2002.

<sup>4</sup> Abu Zubaydah is currently being interrogated at a secret location outside the USA.

Since the publication of Amnesty International's report in June 2002, several other people are reported to have been arrested in Pakistan and transferred to US custody without any reference to Pakistan's extradition law. They include Kenyan national Sheikh Ahmed Salim who was arrested in July 2002 in Karachi along with several others; and Yemeni Ramzi bin al-Shaibah and at least four, but possibly nine other men of Middle Eastern origin. (For details see case outlines in appendix 1.)

As already observed in the earlier cases of transfer to US custody which circumvented human rights protection, the recent cases were also shrouded in secrecy. In some cases, high Pakistani government officials were still giving public assurances that the due process of law would be fully adhered to and Pakistan's extradition requirements fulfilled, when the persons concerned had already been taken out of the country and the law had already been circumvented. Given the high level of secrecy surrounding such operations, it is possible that there may have been other cases of such transfer to US custody which have not come to light.

President Musharraf has said on several occasions that any foreign 'terrorist' suspect captured in Pakistan would be extradited. "We have captured them in Karachi, Lahore, Faisalabad and other parts of the country and those originating abroad will have to be extradited."<sup>5</sup> He said about Ramzi bin al-Shaibah when he had just been arrested, "whatever he has committed, he has committed abroad and thus we have nothing to do with him".<sup>6</sup>

During the most recent case of arbitrary arrest and transfer to US custody in circumvention of extradition protection, Interior Minister Moinuddin Haider publicly stated that Pakistan was under an international obligation to hand over suspects to the states where they were wanted and that Pakistan would fulfil this obligation. Referring to the arrest of Ramzi bin al-Shaibah and others a few days earlier, Interior Minister Moinuddin Haider said on Pakistan's state television channel on 14 September 2002: "Many of these people, if they are wanted by the US government, there is international law that we have to share information...; if someone requires those people for crimes against their country, we are supposed to hand over those people to them through international agencies under UN convention that Pakistan has signed on terrorism. We are obliged to cooperate."<sup>7</sup>

This perception ignores the general obligation to uphold human rights even when addressing 'terrorist' threats. Though the Security Council has called "on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism",<sup>8</sup> this should not be at the expense of the obligation to uphold human rights – which is a basic requirement of the UN Charter.<sup>9</sup>

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<sup>5</sup> AFP, 17 September 2002.

<sup>6</sup> AFP, 17 September 2002.

<sup>7</sup> BBC, citing PTV of 14 September 2002.

<sup>8</sup> Security Council Resolution 1373, 28 September 2001.

<sup>9</sup> The Office of the High Commissioner on Human Rights has issued 'Proposals for "Further Guidance" for the submission of reports pursuant to paragraph 6 of Security Council Resolution 1373 (2001)' which raises *inter alia* concern about the issues of *refoulement* to countries where the death penalty can be imposed and the circumvention of domestic extradition procedures.

Amnesty International is also concerned that Pakistan has handed such detainees over to countries where they are likely to suffer 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. Those transferred to US custody are at risk of being tried by military commissions which can be set up under an Order signed by President George W. Bush on 13 November 2001 to try non-US citizens suspected of involvement in 'international terrorism';<sup>10</sup> The Order has been widely criticised as contravening a whole range of human rights.<sup>11</sup>

## **RECOMMENDATIONS TO THE NEW GOVERNMENT OF PAKISTAN**

Amnesty International appeals to the new Government of Pakistan<sup>12</sup> to make the promotion and protection of the human rights of all people in Pakistan a firm and non-negotiable part of the government's program. This should include strict adherence to laws relating to arrest, detention and extradition with regard to anyone, including those suspected of membership in 'terrorist' organizations. The Government of Pakistan should maintain the rule of law in all circumstances and without discrimination.

Amnesty International does not in any way condone the crimes for which the individuals concerned are wanted but it believes that the process in which they are apprehended and tried must strictly conform to international human rights standards and not lead to the imposition of the death penalty.

The organization is deeply concerned about the manner in which Mir Aimal Kasi was abducted from Pakistan with the collusion of the Government of Pakistan. In 1993, the UN Working Group on Arbitrary Detention concluded in a case of abduction of a Mexican national to the US for trial that the abduction had been an arbitrary detention – a violation of international law which forbids arbitrary detention. Amnesty International calls on the Government of Pakistan to abide by domestic and international law which prohibit arbitrary detention. Such arbitrary detention calls in question the integrity of the entire proceedings that follow.

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<sup>10</sup> At a briefing on 16 September 2002, Defence Secretary Donald Rumsfeld said that it was up to President Bush to decide whether Ramzi bin al-Shaibah who had on the morning of that day been transferred to US custody outside Pakistan, would face a US military commission and that to his knowledge this decision had not been made yet. [Department of Defense News Briefing, 16 September 2002.]

<sup>11</sup> For a detailed discussion see: *Rights at risk: Amnesty International's concerns regarding security legislation and law enforcement measures*, AI Index: ACT, 30/001/2002, published in January 2002 and *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.

<sup>12</sup> At the time of writing this report, elections had taken place on 10 October 2002 but a new government had not yet been formed. Amnesty International's appeals are directed to the new government which is expected to assume office in November 2002.

Amnesty International calls on the new Government of Pakistan to refrain from handing over suspected members of militant organizations to other states in circumvention of domestic safeguards relating to extradition and the international prohibition of *non-refoulement*.

Amnesty International also recommends to the new Government of Pakistan to demonstrate its commitment to the protection of human rights by ratifying the main international 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.

## **APPENDIX 1: CASES OF PEOPLE TRANSFERRED TO US CUSTODY WITHOUT HUMAN RIGHTS SAFEGUARDS**

### **The case of Mir Aimal Kasi**

Two employees of the Central Intelligence Agency (CIA) were shot and killed outside the CIA headquarters in Fairfax County, Virginia, on 25 January 1993, three other employees were injured. Mir Aimal Kasi, a Pakistan national who was living and working in Virginia at the time, was identified as the suspect. He had returned to his native country the day after the shootings.

Mir Aimal Kasi was indicted in the USA for the crime in February 1993. In April 1993, the USA reportedly made a formal extradition request to Pakistan, citing the 1931 Extradition Treaty between the US and the United Kingdom, Pakistan's former colonial sovereign, as the authority for this request. Agents of the CIA and Federal Bureau of Investigation (FBI) continued to investigate the case, acting for the Fairfax County prosecutor.

At 4am on 15 June 1997, FBI agents, reportedly accompanied by Pakistani intelligence personnel, forcibly abducted Mir Aimal Kasi from a hotel room in Dera Ghazi Khan, Pakistan. He had allegedly been lured there by unidentified individuals who were paid over two million dollars for their assistance. The FBI agents took Kasi - handcuffed, shackled, gagged, and hooded - by car to an airfield and flew him to a secret location, where he was held for about 48 hours before being flown out of Pakistan in an US Air Force plane. During the 12-hour flight to the USA, Mir Aimal Kasi signed a written waiver of his rights and confessed to the 1993 shootings. He allegedly said that he had shot the CIA agents because, among other things, he was "upset" that the USA had bombed Iraq, and "upset with the CIA because of their involvement in Muslim countries". On 17 June 1997, US officials announced his capture and said, "no one can escape from us".

Mir Aimal Kasi's abduction was greeted with anger in Pakistan. The Interior Ministry's assertion that he had been arrested in Afghanistan and that Pakistani authorities had not been informed was not believed as domestic media covered the abduction in Dera Ghazi Khan in detail. Constitutional lawyer Khalid Jawed Khan was quoted as saying: "Regardless of one's political sympathies, terrorism simply cannot be condoned and its perpetrators must be

brought to justice. Yet in facilitating the arrest of such offenders, the government of Pakistan has violated specific provisions of our own law. Violations of the law by criminals is understandable but what is hard to stomach is when governments deliberately flout the law of the land.”<sup>13</sup>

Mir Aimal Kasi was handed over to the Virginia authorities, and brought to trial in November 1997. He was sentenced to death for the capital murder of Frank Darling, and to life imprisonment for the first-degree murder of Lansing Bennett. The appeal courts have upheld Kasi’s conviction and death sentence, rejecting the argument that the trial court did not have jurisdiction over him because he had been illegally abducted from Pakistan. The courts have applied US Supreme Court precedent, including the 1992 decision *US v Álvarez-Machain*, allowing the trial in the USA of foreign nationals forcibly abducted abroad by US agents.<sup>14</sup> In 1993, the UN Working Group on Arbitrary Detention concluded that the abduction of Álvarez-Machain had been an arbitrary detention - a violation of international law.

### **Arrest and transfer to US custody of Sheikh Ahmed Salim and several others in July 2002**

In July 2002, the Kenyan national Sheikh Ahmed Salim alias Swedan, (33) was arrested in a joint US-Pakistani operation in Kharadar, a poor area of Karachi where he was believed to have run a cell of al Qa’ida fugitives.<sup>15</sup> Sheikh Ahmed Salim is one of the men wanted by the FBI for the bombing of the US embassies in East Africa in 1998. He was indicted in December 1998 by a New York court for buying the trucks used in the attack and \$25 million were offered as reward for information leading to his arrest. According to reports, he admitted to Pakistani intelligence that before the attacks on US targets on 11 September 2001, he worked as a financier for al Qa’ida in Pakistan; after the attacks he reportedly worked in Karachi with two other fugitives in a cell which raised and distributed funds for the

<sup>13</sup> Zahid Hussain: “The great cover-up”, in: *Newsline*, July 1997.

<sup>14</sup> In 1990, Mexican national Humberto Álvarez-Machain, wanted in the USA for his alleged involvement in the murder of a federal agent, was abducted from Mexico by agents working for the US. Two federal courts ruled that he could not be tried in the USA because his abduction had violated the US/Mexico extradition treaty. However, in 1992, the US Supreme Court ruled that the extradition treaty “says nothing about either country refraining from forcibly abducting people from the other’s territory...”. The Court acknowledged that the abduction may have violated “general international law principles”, but was nevertheless not a violation of the extradition treaty because the latter had not been invoked. It concluded that Álvarez-Machain’s trial in the USA was therefore not prohibited. Three Justices dissented. One wrote: “I suspect most courts throughout the civilized world will be deeply disturbed by the monstrous decision the Court announces today. For every nation that has an interest in preserving the Rule of Law is affected, directly or indirectly, by a decision of this character.” Álvarez-Machain, was acquitted at his 1992 US trial and returned to Mexico. He subsequently pursued a civil lawsuit against the US. On 11 September 2001, the Ninth Circuit Court of Appeals ruled that he could claim damages from the US Government. In its decision, the Court stated that his abduction had been a violation of customary international law because it violated his rights to freedom of movement, to remain in his country, to security of his person, as well as the right to freedom from arbitrary detention. The government’s position had been that various of the country’s laws envision US agents engaged in foreign law enforcement activity and that for this to be effective, their arrest authority must be able to override international law. The Ninth Circuit stated: “If this assertion is an accurate statement of United States law, then it reinforces the critics of American imperialism in the international community”.

<sup>15</sup> *The Guardian*, 4 September 2002.

organization. According to some reports, he maintained contact with Lashkar-e-Jhangvi, a militant Sunni organization banned since August 2001, and persuaded the organization to focus on Westerners rather than Shi'a professionals which the group had targeted for some time. He was apparently traced by satellite phone intercepts provided by the FBI which reportedly led Pakistani intelligence first to a Saudi national, Riyadh or Riaz who in turn led intelligence to Sheikh Ahmed Salim.

Several other men whose names and nationality were not revealed by Pakistani authorities were reportedly arrested along with Sheikh Ahmed Salim and transferred with him to US custody, apparently without reference to any legal requirement relating to the extradition law.

Pakistani officials have denied that the arrest and transfer took place but on 9 September 2002 a senior police official was quoted in the media as admitting Sheikh Ahmed Salim's arrest and transfer to US custody.<sup>16</sup>

### **Arrest and transfer to US custody of Ramzi bin al-Shaibah and several others in September 2002**

Yemen-born Ramzi bin al-Shaibah and Kuwait-born Khaled al-Sheikh Mohammad who is apparently of Iranian origin and holds a Pakistani passport, were reportedly interviewed by a journalist of Qatar based television station al Jazeera at a secret location in Karachi at an undisclosed date, possibly in June 2002. Al Jazeera reported on 5 September 2002 that it had confessions of the two men who it identified as members of al Qa'ida, claiming that the group was responsible for the attacks on US targets on 11 September 2001.<sup>17</sup> Both men were wanted by the FBI and large rewards had been offered for information leading to their arrest. Mohammad was reportedly identified by US agencies as the possible mastermind behind the attacks on 11 September 2001 and its new chief of operations; he is on the FBI's list of most wanted terrorists with a \$25 million reward for information leading to his arrest.

This report and many similar ones in national and international media about a presence of al Qa'ida in Pakistan, particularly in Karachi, met with official denial by Interior Minister Moinuddin Haider and others. Foreign Ministry spokesperson Aziz Ahmad Khan during a press briefing on 9 September 2002 called such reports 'fabricated, fictitious and baseless' and said Pakistan would not allow any fugitives to find a safe haven on its territory.<sup>18</sup> However, a police intelligence official reportedly said Khalid al-Sheikh Mohammad and

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<sup>16</sup> *AFP*, 9 September 2002.

<sup>17</sup> Ramzi bin al-Shaibah reportedly said in the al Jazeera interview that he was meant to be the 20th hijacker in the attack on 11 September but had failed to obtain a visa to enter the USA. According to US sources, he was a roommate of Mohammad Atta and member of an al Qa'ida cell in Hamburg. He has also been linked to the bombing of the USS *Cole* in Yemen in 2000 and an attack on a synagogue in Tunisia in April 2002, in which several German tourists and others were killed. The German weekly *Der Spiegel* quoted US investigators as saying that Ramzi bin al-Shaibah acknowledged that a videotape broadcast by al Jazeera satellite television channel in which he admitted involvement in the 11 September attack was authentic. [*AFP*, 20 September 2002.]

<sup>18</sup> *APP*, 10 September 2002.

Ramzi bin al-Shaibah could well be hiding in Karachi as al Qai'da fugitives were hiding in Karachi and they could be amongst them.<sup>19</sup>

On the night of 9 September and on 11 September 2002 morning, at least three raids were conducted by Pakistani intelligence, police and the paramilitary Rangers in Karachi with US technical and intelligence support but reportedly without direct FBI involvement. Ramzi bin al-Shaibah alias Ramzi Mohamed Abdellah Omar, was apparently arrested in the first of these raids, perhaps along with others. Possibly later on the same day, two other men including a man of Middle Eastern origin who was described as a 'senior al Qa'ida operative' but whose name and nationality were not revealed, were arrested. On the morning of 11 September, a flat in a prosperous area of Karachi was raided. After a three hour gun battle, in which two men were shot dead, five suspected al Qa'ida members were arrested. Five police officers were injured and a young girl living in the neighbourhood was hurt in the crossfire. Pakistani intelligence also took the wife and two adopted children of Khalid Sheikh Mohammad into custody whereas Mohammad himself was apparently not arrested. On 12 September 2002, nine more suspects were arrested from two different locations according to Karachi police; they may have been linked to the men arrested two days earlier but no further information about the men has been released.

President Musharraf said in an interview with CNN on 13 September that the men arrested on 10 September included eight Yemenis, one Egyptian and one Saudi national.<sup>20</sup> The Interior Ministry issued a press release on 14 September which said that Sindh police in raids between 9 and 10 September and on 11 September morning arrested 12 foreigners and killed two. "Two of those arrested are suspected to be high level al Qa'ida men and their identity is being confirmed."<sup>21</sup> Interior Minister Moinuddin Haider later denied that a second important al Qa'ida suspect was being held in custody; asked about the identity of the other men arrested between 9 and 11 September, he said: "None of them are significantly mentioned in the wanted list of terrorists. In fact they were guards of Ramzi, having Yemeni nationality. ... There is no high profile suspect in our custody except for bin al-Shaibah."<sup>22</sup> The identity of the other detainees was not made public. Similarly the name and nationality of the two dead fugitives have not been revealed.

As in earlier cases of clandestine transfers of detainees to US custody, the handing over of Ramzi bin al-Shaibah and at least four others to US custody was shrouded in secrecy and riddled with official contradictions. Like earlier transfers, it did not appear to have conformed to Pakistan's legal safeguards for the extradition of criminal suspects.

US authorities made it clear from the beginning that they wanted the US custody of Ramzi bin al Shaibah. White House National Security Adviser Condoleezza Rice said, "We certainly want custody of him .. We certainly want to be able to find out what he knows."<sup>23</sup>

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<sup>19</sup> *AFP*, 9 September 2002.

<sup>20</sup> *The New York Times*, 13 September 2002.

<sup>21</sup> *The News*, 15 September 2002.

<sup>22</sup> *AFP*, 16 September 2002.

<sup>23</sup> *Fox News*, 15 September 2002.



On 13 September 2002, US government sources were reported as saying that Ramzi bin al-Shaibah was in US custody<sup>24</sup> at an undisclosed location. Pakistani intelligence officials reportedly said the detainees were being held at a military facility close to Karachi airport.<sup>25</sup> On 15 September, a Pakistani intelligence officer reportedly said that Pakistani intelligence and FBI interrogations were almost completed and that Ramzi would be extradited to the US at any time.<sup>26</sup>

On the morning of 16 September 2002, five of the arrested men, including Ramzi bin al-Shaibah were reportedly flown out of Pakistan; Pakistani officials said they did not know to what destination. US officials stated that the detainees had not been taken to the USA.<sup>27</sup> Later reports indicate that Ramzi bin al-Shaibah is in detention in Guantánamo Bay.<sup>28</sup> It is not known if the other men are there as well.

On the same day, 16 September 2002, Interior Minister Moinuddin Haider was quoted as telling journalists that Ramzi bin al-Shaibah and the other suspects were in Pakistan and in Pakistani custody and that they would be tried in a local court of law. When asked about the possibility of their extradition, he said that Pakistan was a signatory to the UN Convention [not specified which one] under which any criminal wanted by a third country could be handed over after completing the legal course at the place of arrest.<sup>29</sup> “Pakistan is obliged under international law to hand over suspects to the countries where they are wanted ... Be it the US or Germany, whosoever approaches, we will extradite him under international law as Pakistan is obliged to. ... But they [the suspects] have to be produced before a magistrate and if he is satisfied with the legalities, the extradition would take place.”<sup>30</sup> Also on 16 September, Foreign Office spokesperson Aziz Ahmed Khan reportedly said that the interrogation of Ramzi bin al-Shaibah was ongoing and that once it was completed, the question of extradition would be considered in case the issue should arise.<sup>31</sup> Pakistani newspapers commented that the transfer was apparently kept secret even from top Pakistani officials.<sup>32</sup>

Pakistani authorities said the other detainees would be flown out soon as well but Inspector General of Police Sindh, Syed Kamal Shah said on 17 September 2002 that the detainees were still being interrogated by intelligence agencies and had not been handed over to police yet. “Intelligence officials are sharing with us information relevant to terrorist activities in Karachi ... they [the suspects] will be produced before a court once they are handed over to us.”<sup>33</sup> The Pakistani authorities have not revealed if any other detainees have been transferred to US custody outside Pakistan after 16 September 2002.

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<sup>24</sup> *New York Times*, 14 September 2002.

<sup>25</sup> *AFP*, 15 September 2002

<sup>26</sup> *AFP*, 15 September 2002.

<sup>27</sup> *Dawn* and *AFP*, 17 September 2002.

<sup>28</sup> *AFP*, 26 October 2002.

<sup>29</sup> *Associated Press of Pakistan*, 16 September 2002.

<sup>30</sup> *AFP* and *Reuters*, 16 September 2002.

<sup>31</sup> *The Frontier Post*, 17 September 2002.

<sup>32</sup> *Dawn*, 17 September 2002.

<sup>33</sup> *AFP*, 17 September 2002.

It is not clear if any formal extradition requests for Ramzi bin al-Shaibah and the other suspects were made by the USA; however, on 16 September 2002, the day Ramzi bin al-Shaibah was transferred to US custody outside Pakistan, an Interior Ministry spokesperson in Islamabad was reported as saying that no formal request for extradition of Ramzi had been received from the USA by then.<sup>34</sup> Interior Ministry officials were, however, quoted earlier as saying that they had received an extradition request from Germany.<sup>35</sup>

German authorities issued an international warrant of arrest in September 2001 for Ramzi bin al-Shaibah for his alleged membership of a terrorist organization; he had lived in Germany for several years and reportedly shared a room in Hamburg with Muhammad Atta who is alleged to have been involved in the attack on 11 September 2001. After his arrest in Karachi, German authorities initially said that they would seek the extradition of Ramzi bin al-Shaibah. However, on 15 September 2002, German Interior Minister Otto Schily said that the USA had priority in seeking the extradition of Ramzi bin al-Shaibah: "If, as it appears, the USA seeks his extradition, then they have the priority over us. ... Naturally the US is most strongly affected by the terrible attacks. It goes without saying that they must have first access." He also said that Germany would try to have him extradited if Washington did not go ahead.<sup>36</sup>

## **APPENDIX 2: 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.

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<sup>34</sup> AFP, 16 September 2002.

<sup>35</sup> Reuters, 15 September 2002.

<sup>36</sup> AFP, 15 September 2002.

Pakistan and the USA do not have a bilateral extradition treaty. However, in 1973 Pakistan reaffirmed that 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 would be applicable. 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.