

Pakistan

Human rights ignored in the 'war on terror'

Executive Summary

The Pakistani government has committed numerous human rights violations as a result of its cooperation in the US-led "war on terror". Hundreds of people have been arbitrarily detained. Many have been subjected to enforced disappearance - held secretly, incommunicado and in undisclosed locations, with the government refusing to provide information about their fate and whereabouts. Many have been tortured or ill-treated. Their families, distressed about lack of information about fate or whereabouts of their loved ones, have been harassed and threatened when seeking information. The right to habeas corpus¹ has been systematically undermined: state agents have refused to comply with court directions to provide information about the whereabouts of detainees or have denied any knowledge in court. Many detainees have been unlawfully transferred to the custody of other countries, notably the USA.

Moazzam Begg, a British national, was abducted on 31 January 2002 from his home in Islamabad by Pakistani and US agents: *"the first thing I knew was a gun at my head...my peaceful evening had just ended in shock and rising fear... They put a cloth hood over my head,... handcuffed me and ...carried [me] to the vehicle ...I'd been kidnapped with full government approval."* He was transferred to US detention in Kandahar (Afghanistan), Bagram (Afghanistan) and Guantánamo Bay (Cuba) where he suffered long periods of solitary confinement and torture. He was returned to the UK in January 2005. At no stage was he charged with an offence.

In the "war on terror", Pakistan has violated a wide array of human rights, including the right to life, to the security of the person, to freedom from arbitrary arrest and detention, to freedom from torture, other ill-treatment and enforced disappearance, and to legal remedies and reparations. All these rights are protected in the Constitution of Pakistan and international human rights law.

Victims of human rights violations in the "war on terror" include Pakistani and non-Pakistani terror suspects, men, women, and children, journalists who have reported on the "war on terror" and medical personnel who allegedly treated terror suspects.

A few detainees, some held for prolonged periods, have simply been released without charge, reportedly after being warned to keep quiet about their experience. Others have been charged with criminal offences unrelated to terrorism. Many have been unlawfully transferred to other countries, without any legal procedures, and in violation of the principle of *non-refoulement*, which prohibits people being sent to countries where they are at risk of serious human rights violations. Hundreds have been transferred to US custody and ended up in Guantánamo Bay, Bagram Airbase or secret detention centres elsewhere. However, many detainees remain unaccounted for – their fate and whereabouts are unknown.

The clandestine nature of the "war on terror" makes it impossible to ascertain exactly how many people have been arbitrarily arrested and detained, forcibly disappeared, tortured or ill-

treated, or extrajudicially executed. Pakistani military spokesman Major-General Shaukat Sultan said in June 2006 that since 2001 some 500 “terrorists” had been killed, and over 1,000 had been arrested, including both foreign fighters and their local facilitators.ⁱⁱ

Mamdouh Habib, an Australian national, told Amnesty International that on 5 October 2001 he was travelling on the same bus as two German men who were ordered off the bus by several men in civilian clothing. He volunteered to stay with them as they had little English. The three men were handcuffed, blindfolded and driven to a house where they were held for three days, then to a detention centre. After 12 days Mamdouh Habib was flown to Islamabad where he was threatened and beaten. About two weeks later, he was shackled, blindfolded and taken to the airport with the promise of being flown home. Instead, he was handed over to US officials, stripped of his clothes, sedated and flown to Egypt. In a Cairo prison he was hung from hooks in the ceiling, given electric shocks and threatened with electrocution. After six months he was taken to Afghanistan, then Guantánamo Bay. He was released without charge in January 2005.

Amnesty International is concerned that there has been very limited protest in Pakistan against the hundreds of enforced disappearances and other violations in the “war on terror”. Civil society, political parties and the media have by and large ignored the issue. Meanwhile the practice of enforced disappearance, rare before 2001, has become common even outside the context of the “war on terror”. People from different backgrounds have been subjected to enforced disappearance including Baloch nationalists and Sindhi leaders.

Dealing with terrorism lawfully

Amnesty International has consistently denounced indiscriminate attacks and attacks targeting civilians carried out by armed groups such as al-Qai'da. Specifically, the organisation has condemned the attacks on the USA on 11 September 2001 as crimes against humanity. All those responsible for these and similar crimes must be brought to justice.

Pakistan has the duty to prevent and punish crimes, especially violent crimes such as acts of terrorism. At the same time, measures taken to combat terrorism must respect national and international human rights law. Secret detention, enforced disappearance, torture and ill-treatment, indefinite detention without charge and unlawful transfers to other countries are all prohibited under national and international law.

In May 2006, Pakistan was elected to the newly established UN Human Rights Council which, in June, unanimously adopted the draft International Convention for the Protection of All Persons from Enforced Disappearances.ⁱⁱⁱ The draft Convention bans enforced disappearances and declares widespread or systematic practice of enforced disappearances a crime against humanity. Amnesty International calls on the Pakistani government to uphold the standard that it has contributed to developing.

Under international law, torture and other ill-treatment are prohibited absolutely and under all circumstances, without exception. They are morally abhorrent and in addition to the pain inflicted on the victim, demean the perpetrator. They are not only unlawful but also, ultimately, counterproductive. Confessions extracted under torture have often proved unreliable, as detainees may “confess” to anything to end their suffering. International law

prohibits the use of statements obtained through torture or ill-treatment in any proceedings therefore forcibly extracted “confessions” can not in a fair trial contribute to criminal convictions of terror suspects. Amnesty International’s research over many years has shown that human rights violations sanctioned by the state in “exceptional circumstances” have also led to more pervasive repression and disregard for the rule of law.

While recognizing that some of the human rights violations perpetrated in the context of the “war on terror” may have been carried out at the behest of US officials, as a sovereign state Pakistan bears full responsibility for all human rights violations committed on its territory and with its knowledge and consent.

Arbitrary arrests and detentions

People held in Pakistan for alleged links to al-Qa’ida or the Taleban have been arrested and detained without reference to national or international human rights law. Custodial safeguards have been blatantly ignored and the protection of law has been routinely denied.

Pakistani law requires arrests to be carried out, in most cases, by police presenting a valid arrest warrant; most of the terror suspects were not arrested in this way. Few were charged with a recognizable criminal offence. In most cases, no official record of detention was kept. They were not given access to a lawyer or to their family. They were not brought promptly before a magistrate.

Terror suspects have been captured in a range of circumstances. A large number were seized and subjected to arbitrary detention and even enforced disappearance when fleeing Afghanistan after the US-led invasion in October 2001. Many terror suspects were detained in mass arrests after bomb attacks in Pakistan and abroad. A few Pakistani terror suspects were arrested by Pakistani officials in other countries and have since been subjected to enforced disappearance.

While information is scarce about all arrests in the “war on terror”, even less is known about arrests in the designated tribal areas. As threats and violence by tribal fighters and government agents increased, journalists have withdrawn and ceased to report events there and no independent human rights investigators have been allowed to visit the area.

The routine practice of offering large rewards for unidentified terror suspects has facilitated arbitrary detention and enforced disappearance. Many individuals were arrested by Pakistani police or border officials, army personnel, or captured by local people, and handed over to US law enforcement or intelligence personnel in exchange for a reward.

Adel Kamil Abdallah a Bahraini national, fled Afghanistan in December 2001. He reported: *“we saw from afar a border post of the Pakistani army. ... we had valid and legal travel documents... The Pakistani officials received us rather well ... Whilst waiting for the car in the morning, we were surprised to see, instead of a car, a military helicopter...[It] landed at the Peshawar airport. ... From the airport we were taken in trucks with a number of escort soldiers to a police station ... They put us in prison cells ... located somewhere underground with doors made of steel. The cell was very dirty ... We stayed in this cell for about a week. The treatment in this prison was awful.”* Adel Kamil Abdallah further reported that US

guards later told him that “*we got you cheap, for only \$5,000*”. He was flown by US forces to Kandahar and then to Guantánamo Bay. He was released after four years in detention in November 2005 and returned to Bahrain.

More than 85 per cent of detainees at Guantánamo Bay were arrested, not on the battlefield by US forces, but by the Afghan Northern Alliance and in Pakistan at a time when rewards of up to US\$5,000 were paid for every “terrorist” turned over to the USA.^{iv} Often, the only grounds for keeping them in detention as “enemy combatants” were the scant and unreliable evidence provided by their captors.

Many detainees do not know where they were held as they were routinely blind-folded or hooded during detention and transferred to different places, apparently for the purpose of interrogation. Some have reported that they were held in private houses, others that they were detained in prisons. Journalists and human rights activists have told Amnesty International that most terror suspects deemed important by Pakistani intelligence were held in “safe houses” run by “the agencies” – Pakistan’s intelligence agencies including the Inter-Services Intelligence (ISI) and Military Intelligence (MI).

Children

Several children of varying ages have been detained in the “war on terror” and denied necessary safeguards contained in international and national law. Some were arrested alongside their adult relatives, some were themselves alleged to be terror suspects and some were held as hostages to make relatives give themselves up or confess.

When Tanzanian terror suspect Ahmed Khalfan Ghailani was arrested in Gujrat, Punjab province on 25 July 2004, three women and five children were also arrested. They reportedly included a baby and a 13-year-old Saudi boy, Talha. Nothing is known about the fate and whereabouts of the women and children.

Involvement of US personnel

There have been numerous reports from former detainees, journalists, human rights activists and others that US intelligence agents have interrogated or were present at the interrogation of terror suspects held in secret places of detention in Pakistan.

The USA is alleged to have maintained secret detention facilities in Pakistan at Kohat and Alizai.^v US intelligence agents are also alleged to have held and interrogated detainees in private houses and regular detention centres. They are alleged to have been aware of or have actually participated in torture or other ill-treatment, and to have moved detainees to other undeclared detention centres, including in Afghanistan.

Torture

Torture and other ill-treatment of persons deprived of their liberty are endemic^{vi} in Pakistan. Lacking training and forensic and other facilities, law enforcement and security services rely almost exclusively on confessions, routinely extracted through torture. Torture is also used to intimidate, humiliate, frighten and punish detainees and prisoners.

The secrecy surrounding the detention of terror suspects provides conditions in which torture and ill-treatment flourish. Forms of torture reported by detainees include: being beaten; being hung upside down and beaten, including on the soles of the feet; sleep and food deprivation; hooding; prolonged solitary confinement; and threats to the detainee and their families. These methods are often used in combination. Torture was reportedly inflicted in many places of detention; some former detainees reported seeing rooms apparently specifically set up for torture.

Benyam Mohamed al-Habashi, an Ethiopian arrested in April 2002 at Karachi airport and held until mid-July in Karachi, reported that he was hung up by his wrists, allowed to go to the toilet only twice a day, given food only every other day, beaten with a leather strap and subjected to a mock execution by a guard holding a loaded gun to his chest. He said in his testimony, *"I knew I was going to die ... I looked into his eyes and saw my own fear reflected there."*

Enforced disappearances

Hundreds of people have been subjected to enforced disappearance since Pakistan joined the "war on terror" in late 2001. The government has failed to acknowledge that enforced disappearances have occurred. In habeas corpus proceedings before provincial high courts, state representatives have consistently denied knowledge of the fate and whereabouts of detainees, despite eyewitness accounts of arrests and even in cases where the individuals have subsequently reappeared.

In some instances of enforced disappearance, the individuals have been released after a period of weeks or months in detention.

Sisters Arifa and Saba Baloch, and Arifa's mother-in-law Gul Hamdana, were reportedly arrested with other terror suspects on 4 June 2005 in Swat. The two young women were widely described as potential suicide bombers. When all state agents denied knowledge of their whereabouts, the habeas corpus petition filed on their behalf, was dismissed. In September 2005 Gul Hamdana was left at a bus stop in Peshawar but was too frightened to reveal where she had been held. In January 2006, the sisters were released.

Several other persons subjected to enforced disappearance have subsequently been charged with criminal offences under a variety of laws. At least one person has been discovered dead.

The body of journalist Hayatullah Khan, a 32-year-old father of four, was found on 16 June 2006 near Mirali, North Waziristan, more than six months after he had been forcibly disappeared. His body was reportedly emaciated, he was hand-cuffed and had apparently been shot in the back of the head. He had reportedly been abducted by armed men in civilian clothing on 5 December 2005 after photographing evidence of US involvement in a missile attack on 1 December 2005. Family members told reporters that Hayatullah Khan had received anonymous threats for several months. After the body was found, his brother said that officials had previously been assured him that the family would soon get "good news" about Hayatullah. Official inquiries have been conducted after widespread protests but their findings have not been made public.

Unlawful transfers to the USA

Pakistani officials have stated that some 700 terror suspects have been arrested and handed over to the USA. Many were not formally handed over after due legal process, but were sold into US custody, sometimes by local police or border officials. Pakistani authorities have not only failed to take measures to stop such transfers in return for money but have also denied that they have taken place.

Swedish national Mehdi Ghezali told Amnesty International: *“I was captured in a village near Peshawar. The villagers sold me to the Pakistani army who in turn sold me to the Americans in December 2001. ... As we were about to take off, the Americans hooded the prisoners. The hood was made of some kind of sackcloth and it was compact. It was hard to breathe through it. One prisoner was asthmatic and the Americans pulled down his hood even further and tightened it.”* Mehdi Ghezali was held in Guantánamo from January 2002 until July 2004.

Most of the detainees unlawfully transferred to US custody were taken to Guantánamo Bay. Of over 750 detainees held there, only 10 have so far been charged and face a trial. Of these four were arrested in Pakistan.

Abdur Sayed Rahman was arrested in January 2002 from his village home near the Afghan border. During 36 days in Pakistani detention, he was asked by Pakistani officials if there was anyone in his village with the same name. He answered that he was not aware of anyone by the same name and was told that police “were looking for someone else, but now they had me. So they were going to throw me in jail to make the report look right.” He was transferred to Kandahar and then to Guantánamo Bay where he was told that he was Abdur Rahman Zahid, Taliban Deputy Foreign Minister. He was subsequently accused of being a military judge under the Taliban, responsible for torturing, maiming and killing Afghan nationals. Abdur Sayed Rahman said he was a poor and uneducated Pakistani chicken farmer and concluded: *“I have no idea why someone would make this accusation as it is not true. I can only speculate that it was someone from a rival village close to my village in Pakistan. However, I have no proof because I am here at Guantánamo Bay.”*

Many of the detainees in Guantánamo Bay face an uncertain fate once released from detention. In April 2006, 141 men were cleared for release but a number of them would be at risk of human rights violations if they were returned to their home countries.

An unknown number of persons handed over by Pakistan to US custody continue to be held in secret places of detention where they have had no access to legal counsel, to visits by their families or to the courts. While the International Committee of the Red Cross (ICRC) has had access to detainees in Guantánamo Bay and Bagram airbase, it has no access to those held in secret detention in so-called “black sites” run by the USA’s CIA.

On 16 September 2006, US President Bush acknowledged the existence of secret CIA detention centres. He announced the transfer of 14 detainees so far held in secret CIA custody to military custody at Guantánamo Bay. He said that they would be tried by military tribunals if the US Congress passes relevant legislation. Of the 14 detainees, the majority has been arrested in Pakistan.

Unlawful transfers to other countries

Some individuals were transferred to their home countries – Indonesia, Malaysia, and Afghanistan – in circumvention of Pakistan's Extradition Act and often in violation of the principle of *non-refoulement*. Some became the subject of "rendition" – they were unlawfully transferred by the US from Pakistan to third countries where they were at risk of torture and other ill-treatment.

Effects on families

The enforced disappearance of hundreds of people has taken a heavy toll on their families, friends and associates. Relatives of those subjected to enforced disappearance have told Amnesty International that they experienced extreme anxiety about their loved ones, frustration in the face of official denials and contradictions, harassment when pursuing their search, social exclusion because of their association with alleged terror suspects and economic hardship.

To be unaware of the fate or whereabouts of a family member for a prolonged period of time and to fear for his or her life and safety has been found by human rights monitoring bodies to amount to cruel, inhuman or degrading treatment or punishment. The knowledge that torture is routinely used in Pakistan adds to the fear of those whose loved ones have disappeared in custody. The families of the disappeared are therefore also victims of enforced disappearance.

An elderly cleric in a village near Peshawar told Amnesty International that he now has to provide for the two wives and nine children of his sons-in-law, Mauritanian nationals Mustafa Abu Abdullah and Adil Amin. The men were arrested in late 2001/early 2002, subjected to enforced disappearance and are now in Guantánamo Bay. He said, "I am too old now to do any other work in addition to my work in the mosque. How will I look after the children once all of them go to school?"

Ineffective remedies

Relatives of persons subjected to enforced disappearance can either file a complaint with the police, who are then obliged to investigate, or assert their right to habeas corpus by filing petitions in provincial high courts. In the context of Pakistan's cooperation with the "war on terror", both options have proved ineffective in tackling the violations. Many relatives have turned to informal mechanisms for tracing victims of enforced disappearances, usually without success.

Police have in virtually all the cases monitored by Amnesty International refused to register First Information Reports (FIR) on the basis of which a police investigation begins. In some cases police have said that they have no competence to do so as the individuals were reportedly captured by intelligence agencies.

Samiullah Khan approached the local police station after his sons, Faisal and Fahad Sami, and a friend were seized on 10 November 2005 from a shop in Karachi by plain clothes intelligence personnel. He was told that police could not register a criminal complaint if the

young men had been picked up by an intelligence agency. While two of the young men were released the next day, Faisal Sami remains missing.

The right to be brought before a court and be able to challenge the legality of one's detention (habeas corpus) is crucial to the rule of law and the prohibition of arbitrary detention. The right to habeas corpus has been gravely undermined both by state agencies and by the unwillingness of high courts to insist on the realization of that right. While many relatives seeking information on the whereabouts of detainees in the "war on terror" have filed habeas corpus petitions in the provincial high courts, Amnesty International is not aware of a single case in which this process has led to the recovery of a person.

Mohammed Naeem Noor Khan, a computer specialist, left his home in Lahore on 13 July 2004, telling his wife that he was going to collect an air conditioning unit sent by his father and would return shortly. He has not been seen since. On 17 August 2004, his father filed a habeas corpus petition in the Lahore High Court. The petition remains pending; the respondents did not appear in the first two hearings and then requested more time to respond. His family told Amnesty International in March 2006 that no date for another hearing had been set.

State agencies called by provincial high courts to provide information have routinely denied holding the person or knowing of his or her whereabouts. As a result, habeas corpus petitions have been dismissed in dozens of cases. In some cases in which state agents have denied detaining a person, senior government officials have acknowledged their detention. In other cases, people whose detention had been denied by state agents in the high court were later released.

Shafiq Ahmed was seized by intelligence personnel and police in the crowded market of Swat on 28 September 2004. Over a dozen witnesses testified in court, but when the officials of the concerned agency denied the arrest, the habeas corpus petition was dismissed.

In many instances the judiciary has failed to enforce the right to habeas corpus, and appear reluctant to use more compelling methods to obtain the truth, such as ordering state agents to make their statements in the form of sworn affidavits, or using contempt of court legislation in case of refusal to obey the writ of habeas corpus.

Extrajudicial executions

Amnesty International is also concerned that the clandestine nature of the conduct of the "war on terror", particularly in the tribal areas of Pakistan, may conceal widespread and systematic human rights violations. In particular, the organization is concerned about reports that Pakistani and US law enforcement and security forces may have used force, including lethal force, unnecessarily and excessively, and have extrajudicially executed a number of individuals, some suspected of links with al Qa'ida and others unconnected with any terrorist activities. Under international law, extrajudicial executions are prohibited at all times. In none of the cases reported do Pakistani or US forces appear to have made any attempt to arrest the suspects before using lethal force.

Military spokesman Major-General Shaukat Sultan told the press in April 2006 that since July 2005, some 324 militants, including 76 foreigners and “a small number of civilians” had been killed in 39 major operations in North Waziristan where 31,000 regular troops and 14,000 paramilitary soldiers were deployed. Local people have challenged the official characterization of victims as “militants”, often claiming that they were in fact tribal people, including women and children, unconnected to any terrorist activities or groups.

Recently, there has been an increase in the use of missiles fired from helicopter gunships by Pakistani security forces against terror suspects in the tribal areas, which appears to suggest that resort to intentional lethal force has been made in these cases without consideration as to whether it was unavoidable and less extreme measures could be applied in the circumstances. Hundreds of families from the tribal areas have left the area in fear of the shelling by security forces.

Although Pakistani officials have consistently denied that foreign forces are allowed to operate in Pakistan either in “hot pursuit” or in planned operations, there is evidence that US forces have on several occasions conducted armed operations in the tribal areas of Pakistan, at times using lethal force as a first resort, and possibly carrying out extrajudicial executions. Missiles fired from unmanned US Predator aircraft have on several occasions killed and injured people in the border areas of Pakistan.

Recommendations

Amnesty International calls on the Government of Pakistan to apply its constitutional and domestic legal safeguards and to honour its international commitments by urgently addressing human rights violations committed in the “war on terror”. In particular it calls on the Government of Pakistan to:

- End the practice of arbitrary arrests and detention; incommunicado detention, detention in secret locations and enforced disappearances;
- Stop the use of torture and other ill-treatment;
- End extrajudicial executions and excessive use of force;
- Stop unlawful transfers of detainees to other countries in violation of the principle of *non-refoulement* and in circumvention of Pakistan’s extradition law;
- Stop undermining the rule of law, in particular by failing to obey court orders in habeas corpus cases and by refusing to reveal information to courts;
- Bring to justice in a fair trial all those responsible for committing, ordering or authorizing torture and ill-treatment or enforced disappearance;
- Ensure reparations for all victims of human rights violations.

ⁱ Habeas corpus is the right to be brought before a court and to be able to challenge the legality of one's detention.

ⁱⁱ Talk at Chatham House, London, by Major-General Shaukat Sultan, 28 June 2006.

ⁱⁱⁱ Due to be adopted by the UN General Assembly later this year.

^{iv} Mark Denbeaux and Joshua Denbeaux, *Report of Guantánamo detainees: A profile of 517 detainees through analysis of Department of Defense data*, 2006.

^v Human Rights First, *Ending Secret Detentions*, June 2004.

^{vi} The non-governmental Human Rights Commission of Pakistan said in a February 2006 press release accompanying the release of its annual report for 2005, "Torture was endemic, with many deaths caused by brutality ..."