

PAKISTAN
WOMEN IN PAKISTAN
DISADVANTAGED AND DENIED THEIR RIGHTS

1. INTRODUCTION	1
2. BACKGROUND: WOMEN IN PAKISTAN	3
2.1 Political participation by women	4
2.2 Achievements of women's groups	5
2.3 Discrimination in law: the <i>Zina</i> Ordinance	5
3. HUMAN RIGHTS VIOLATIONS	7
3.1 Torture, including rape, in police custody	
3.2 The <i>Zina</i> Ordinance: imprisonment on grounds of gender	9
3.3 Rape victims charged with <i>zina</i>	10
3.4 Cruel, inhuman and degrading punishments	10
3.5 Death by stoning	12
3.6 Girls sentenced to cruel, inhuman and degrading punishments	12
3.7 Political arrests	13
4. GOVERNMENT ACTION AND INACTION ON WOMEN'S HUMAN RIGHTS	14
4.1 The tribal system of retribution	15
4.2 Village councils	16
4.3 Bonded labour	16
5. AMNESTY INTERNATIONAL'S RECOMMENDATIONS	18
5.1 Prisoners of conscience	18
5.2 Torture, including rape, and ill-treatment	18
5.3 Laws allowing cruel, inhuman and degrading punishments	19
5.4 The death penalty	19
5.5 Ratification of and adherence to international standards	21

1. INTRODUCTION

Women in Pakistan suffer widespread human rights violations. Police officers torture and rape women in their custody with impunity. If the victims bring complaints of rape before the courts, unless they can prove that they did not give their consent they may be punished for unlawful sexual intercourse under laws which explicitly discriminate against women. Women face cruel, inhuman and degrading punishments such as floggings and stoning to death. The discrimination against women in law reinforces their vulnerability to other human rights violations. Women's rights are seen as being of secondary importance and women are in a particularly weak position if they try to gain redress.

It is always difficult to prosecute law enforcement personnel who have raped women in their custody. In Pakistan the law relating to rape creates an additional hurdle. Despite the number of women who have been beaten and raped in police custody, few police officers have ever been prosecuted for such violations of women's basic human rights. In the rare cases in which police officers have been convicted of abusing women in their custody, the convictions have always been overturned on appeal.

Women who have been raped are at risk of being convicted of unlawful sexual intercourse. The victim's testimony is not taken into account in rape trials when maximum penalties are at stake. So a woman who has been raped can be sentenced to imprisonment, flogging in public or death by stoning after a trial in which she was given no chance to testify.

The law under which a victim of rape may herself be punished is the *Zina* Ordinance which punishes sexual offences. So far the harshest punishments that can be passed under this law have not been carried out, but they remain on the statute book and could be imposed at any time. Hundreds of women are imprisoned under the *Zina* Ordinance at any one time, and Amnesty International considers some of them to be prisoners of conscience, imprisoned because of their gender.

These human rights violations are committed in a society where women are disadvantaged in many areas. They have less access than men to education, food and health care. They are grossly under-represented politically and consequently their concerns are rarely taken into account in policy and law-making. Women suffer a high level of domestic violence and the tribal system of retribution which persists in many part of the country exposes them to cruel treatment and even death. Women are sold into prostitution and as bonded labourers. All these abuses are well documented, yet successive governments have done nothing to prevent them.

The government of Prime Minister Benazir Bhutto has taken some measures to ameliorate the lot of women. It has established some police stations entirely staffed by women, appointed some women to high positions within the judiciary and set up a number of commissions to assess which laws discriminate against women. The 1993 pre-election promises of the Pakistan People's Party, now in power, included amending or repealing laws which discriminate against women, greater political participation by women and ratification of the UN Convention on the Elimination of All Forms of Discrimination against Women. However, little has been done to implement these promises. Amnesty International urges the Government of Pakistan to implement the recommendations set out in this report to ensure that women's rights are respected.

Amnesty International campaigns for the immediate and unconditional release of prisoners of conscience — people detained for their beliefs, or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, provided they have not used or advocated violence. Amnesty International works to oppose unfair political trials, torture, "disappearances", the death penalty, extrajudicial executions and other forms of arbitrary killings. Amnesty International also calls on governments to promote and protect the full range of human rights enshrined in international standards, including the rights of women.

2. BACKGROUND: WOMEN IN PAKISTAN

Women in Pakistan are disadvantaged from the moment they are born. The birth of a girl is frequently met with disappointment, even anger, and the blame is usually placed on the mother. As a rule, the girl child receives less food, less access to education and less health care. As a result girls are more likely to die of childhood diseases. There are only 91 females to every 100 males in Pakistan, according to 1991 estimates.

Investment in girls' education and skill development is meagre. As one women's organization put it: *"the girl is a liability; at an early age the girl child is made aware that she is only a temporary member of the family. Any skills she learns will benefit not her own family but her in-laws."* (*Quarterly Newsletter*, Aurat Foundation, Vol.I, 2, 1989)

School enrolment of girls is low: only 28 per cent of girls of primary-school age attend school, and only 11 per cent of older girls go to school, according to women's groups. The drop-out rate is high. Girls are kept at home to do household chores or to look after younger children when required by the family or whenever funds are low. Only some 24 per cent of females are literate, compared to 49 per cent of males, according to government statistics. Women's groups estimate that only 12 to 15 per cent of

females can read and write.

Girls generally marry young, at around 15 years of age. The birth rate is high — women give birth to six children on average — and both infant and maternal mortality rates are also high.

Eight women are raped every day on average in Pakistan, according to 1993 estimates by the non-governmental Human Rights Commission of Pakistan (HRCP). Only a small fraction of these rapes are committed by police officers. However, when law enforcement officials are seen to be able to rape women without fear of prosecution, this clearly signals to society at large that the authorities do not treat the crime seriously. Some 800 cases of rape were reported in the national press in 1994; half of them were gang-rapes and most of the victims were under-aged girls. Human rights groups estimate that only one third of cases are reported or registered with the police.

Women are usually married off by their families, in a transaction in which the "bride-price" is negotiated by the two families. The woman is then considered and treated as the property of her husband and may not defy him. Wives, it is assumed, have given permanent consent to sexual intercourse with their husbands. Marital rape — intercourse without the consent of the wife — is only an offence if serious injuries result. Sexual activity outside marriage is a criminal offence for which the law prescribes stringent punishments (see below).

Domestic violence against women is widespread and rarely brought to public notice or punished unless the woman dies or suffers gruesome injuries. A Muslim prayer leader of a mosque in Punjab province tied his 24-year-old wife, Zainab Noor, to the bed and then inserted a red-hot iron bar into her vagina. He believed that she had maligned him before their neighbours. Widespread publicity about this case led to a rare prosecution: Mohammad Sharif was sentenced by a Rawalpindi sessions court to 30 years' imprisonment in mid-1994.

Husbands have killed their wives and then claimed that they died when their cooking stove exploded. Some 240 cases of women dying in this way were reported in the press in 1994. Such incidents are reportedly rarely investigated thoroughly by police and post-mortem examinations are rarely performed. Two hospitals in Rawalpindi — the Rawalpindi General Hospital and the Pakistan Institute of Medical Sciences — admitted 35 women with severe burn injuries between March and October 1994. Of the 35 women who appeared to be victims of domestic violence, 31 died. In 27 of these cases no complaint was lodged with the police; in one case, in which the victim survived, a compromise was found between victim and perpetrator and in another the husband was sentenced to 20 years' imprisonment. In the remaining six cases police investigations were initiated.

Human rights groups report an increasing number of instances of public humiliation of women. Women have been stripped in public, paraded through the streets, dragged by their hair or publicly sexually humiliated. The HRCP recorded 48 such cases in 1993 and 92 cases in 1994.

Women who are bonded labourers are completely at the mercy of their masters. They suffer rape and gross ill-treatment of every sort. These abuses have been extensively described by journalists and human rights organizations, yet no systematic action has been taken by the authorities to stop the abuses and prevent their recurrence. In the tribal areas of Pakistan, men or families whose honour is impugned have resorted to revenge attacks and killings, particularly against women. The rape of another man's wife is reportedly an accepted form of revenge in some areas. Again, despite well-documented evidence, the authorities allow these practices to persist.

There is a well established trade in women, even though slavery is prohibited under the Constitution. The victims are mostly poor village girls from Bangladesh who are abducted or lured with promises of employment and a better life. Once in Pakistan they are sold into prostitution or domestic servitude. According to a human rights lawyer in Karachi, some 120 to 150 Bangladesh women are sold every month. Many of these girls, some in their early teens, are arrested during raids on brothels. Most are charged with *zina* (extra-marital sexual intercourse) or with illegal entry into Pakistan. Those who manage the slave trade and local pimps are rarely caught and charged. The cross-border trade in women

is not possible without the connivance and active collaboration of police and border security forces.

A study conducted in Larkana Women's Jail in March 1995 revealed that among the 80 women then imprisoned were 39 Bengali and nine Burmese women charged with *zina* or with illegal entry. Their 18 children were charged with the same offences to permit them to stay in prison. According to the jail superintendent the number of foreign women sold into Pakistan's "flesh trade" is slowly on the increase. Prison records showed that these women are usually released on bail within two years and returned to the very men who brought them into the country. A few remain in prison indefinitely, as neither government is willing to repatriate them.

Young girls kidnapped from rural areas or bought from impoverished parents are also bought and sold within Pakistan. A human rights organization estimated that in 1994 at least 2,000 girls and women were sold into prostitution within the country. A daily newspaper, *The Frontier Post*, reported the names and addresses of traffickers in the North West Frontier Province in November 1994, but there have apparently been no official investigations into these detailed allegations of kidnapping.

There is considerable evidence that at least at the local level, the authorities know about and connive with the trade in women. However, the government has ignored it. Pakistan's Ambassador to the United States of America is reported to have said in 1992, "I am not aware of any organized trafficking going on". (Quoted in testimony given at a public hearing of Asia Tribunal on Women's Rights, Tokyo, March 1994.)

2.1 Political participation by women

Women in Pakistan have the right to vote but they exercise this right only rarely and not always freely.

Although the Prime Minister, Benazir Bhutto, is a woman, women are under-represented at all levels of government. Women's views and issues are largely ignored in law and policy making. In the 1993 general elections only four of the 217 seats in the National Assembly were won by women, including Benazir Bhutto and her mother, Nusrat Bhutto. Two of the 87 seats in the Senate were won by women and one woman obtained a seat in the Punjab and one in the North West Frontier Province provincial assemblies. Most established political parties do not nominate women as candidates to contest elections.

A constitutional provision guaranteeing 43 seats for women in the national and provincial assemblies (but not in the Senate) lapsed in 1990 after having been in force for 10 years. In local government, women's representation is very low.

2.2 Achievements of women's groups

Women's organizations in Pakistan are well established and provide a variety of services to women, primarily in urban centres. Many women's organizations focus on educational work and legal aid. Some of these groups have produced leaflets advising women on how to report crimes to the police, on how to report rape and on where to find support in cases of domestic violence.

It is the great achievement of women's groups in Pakistan to have brought the problem of rape, and particularly rape in custody, into the open. With their support, some of the victims have overcome their shame and humiliation and have publicly related their experiences.

Women's groups in Pakistan vary in their approaches and goals, but most agree on the following demands: enforcement of all existing laws against domestic violence, sexual harassment and violence in custody; more women police and prison staff; review of all laws affecting women and amendment or repeal of laws that discriminate against women; reserved seats for women in federal and provincial parliaments and in local government bodies; and ratification of the UN Convention on the Elimination of All Forms of Discrimination against Women, without reservation.

2.3 Discrimination in law: the Zina Ordinance

The Constitution of Pakistan proclaims the rights of women. Article 25(1) states unequivocally: "All

citizens are equal before the law and are entitled to equal protection of law." Article 25(2) goes on to say: "There shall be no discrimination on the basis of sex alone".

Nevertheless, several Pakistan laws explicitly discriminate against women. In some cases they allow only the evidence of men to be heard, not of women. In particular, the Evidence Act and the *Zina* Ordinance, one of four *Hudood* Ordinances promulgated in 1979, have eroded women's rights and denied them equal protection by the law.

Women are also disadvantaged generally in the criminal justice system because of their position in society. An Amnesty International delegation which visited Pakistan in November 1994 concluded that men find it considerably easier than women to obtain bail and so spend less time in prison. In general men are able to obtain surety from their families while women's families (their fathers or husbands) are often the ones bringing the charges. Women are also less likely to be able to hire a lawyer.

Women are particularly liable to be punished under the *Zina* Ordinance which deals with extra-marital sexual intercourse (see section 3.2, below). Offences under this law attract different punishments according to the evidence on which the conviction is based. In cases where the most severe (*hadd*) punishments may be imposed, the evidence of women is not admissible.

In a rape case the onus of proof falls on the victim. If a woman fails to prove that she did not give her consent to intercourse, the court may convict her of illicit sexual intercourse. In Karachi Central Court alone, about 15 per cent of rape trials reportedly result in the woman who brought the case being charged and imprisoned (*Eastern Eye*, London, 14 June 1994).

Under the *Zina* Ordinance, the age of criminal culpability for girls has been lowered to the age at which they reach puberty. As a result, girls as young as 11 or 12 are liable to the most severe punishments, including flogging and stoning to death.

Offences under the *Hudood* laws are tried by regular sessions courts. Applications for bail may be filed either in the High Court or in the Federal *Shariat* Court. The majority of cases tried under the *Hudood* laws result in convictions carrying the less severe (*ta'zir*) punishments, but there are also some acquittals and a few convictions involving the most severe (*hadd*) punishments.

Sometimes the courts in Pakistan go even further than the *Zina* Ordinance. The Lahore High Court in 1994 observed that a Muslim is justified in killing anyone committing *zina* in his home. The presiding judge agreed with the argument of the accused that such killing constitutes a religious duty rather than an offence.

About half the women prisoners in Pakistan are held on charges of *zina*; most of the others are charged with murder, drug offences and theft. Arrests under the *Zina* Ordinance can be made without a magistrate first investigating whether there is any basis for the charge and issuing a warrant. As a result, women in Pakistan are often held under the *Zina* Ordinance for years although no evidence has ever been produced that they have committed any offence. Men frequently bring charges against their former wives, their daughters or their sisters in order to prevent them marrying or remarrying against the man's wishes. Sometimes the intended husbands are also charged and arrested. Most women remain in jail for two to three years before their cases are decided, often on the basis of no evidence of any offence.

Women who remarry after a divorce have frequently been charged with *zina* by their former husbands, who may wish to force them back into the first marriage, to humiliate or punish them, or just to prevent them from remarrying. Under the Muslim Family Laws Ordinance, a man who has verbally divorced his wife must register the divorce in writing with the local authorities. Three months later the divorce is legally effective. While men are obliged to register the divorce, there is no time limit stipulated. Men delay registration for a variety of reasons. If a woman who believes herself divorced remarries, while her first husband has not in fact registered the divorce, she risks being charged with *zina* or even rape.

In a decision widely seen as progressive, the Lahore High Court in January 1995 upheld a woman's right to divorce under certain circumstances. If the marriage contract stipulates that the husband delegates the power or right to divorce, a wife may initiate divorce proceedings. The High Court held

that the right, once given, cannot be revoked.

3. HUMAN RIGHTS VIOLATIONS

Women in Pakistan are subjected to widespread violations of their human rights. Some of these violations are suffered almost exclusively by women, such as rape in custody. Women also face laws which directly contribute to, facilitate or invite violations of their fundamental rights.

3.1 Torture, including rape, in police custody

Women are beaten, kicked and raped in police stations to humiliate them, to intimidate them or to extract money. Torture, including rape, by police officers is widespread. Yet few police officers are ever prosecuted for abusing women in their custody. In the very few cases in which police have been convicted of rape by lower courts, the convictions have all been overturned by higher courts.

Niaz Bibi, a 35-year-old mother of six, alleges that the women in her household were insulted and threatened by Excise Police during a raid on 1 May 1995 on her home at Manghopir, Karachi. The police had come in search of her brother-in-law. She was taken to the interrogation centre of the Excise Department, where she was allegedly kicked and beaten with sticks by police who kept asking for money. Niaz Bibi reported that she had injuries to her head, arms and ankles. Her husband, a truck driver, succeeded in raising Rupees (Rs.) 150,000 (US\$ 5,000) by pawning his truck. The money was handed over to the head of the Excise Department on the evening of her arrest. Niaz Bibi's grandfather reported that the Excise Police threatened that if the money were not paid, Niaz Bibi would be charged with possessing heroin and would spend the rest of her life in jail. Police officers from Manghopir police station refused to register a complaint about ill-treatment by the Excise Police. No inquiry into the incident appears to have been undertaken.

Rape in custody is widespread but vastly under-reported. According to human rights lawyer Asma Jahangir, "Women are arrested, raped and sexually assaulted every day in the presence of female constables, who find themselves helpless in such situations" (Asma Jahangir, 23 September 1992, *New York Times*, letter to the editor). Regulations protecting women are ignored with impunity. Women continue to be held in police custody overnight and to be questioned alone by male police officers. A woman covered with burn scars from chin to waist whose husband had doused her with kerosene and set her on fire told Amnesty International in November 1994:

"What is the use? ... I belong to a respectable family; we don't go to the police ... If a woman goes to a police station she cannot protect her honour."

Victims hesitate to report rape to the police for a variety of reasons. Like women in other countries, Pakistani women find it difficult to overcome the shame attached to the offence and the embarrassment of explaining it to a male police officer. If women have been raped or ill-treated by police, they face threats and sometimes further violations. Moreover, women seeking to bring rapists to account run the risk that they themselves will be charged with *zina*.

Amnesty International knows of dozens of cases involving rape where police have refused to register a First Information Report, the first step in a police investigation. Sajida Parveen's house in Multan, Punjab province, was broken into at night by police officers from Budhla Sant police station in July 1994. Her husband was away, working in Lahore. A Head Constable locked her children in another room and threatened to kill them if anyone offered resistance. She was then reportedly raped at gunpoint by two police officers. They later robbed her of gold ornaments and money and warned that her children would be harmed if she reported the crime. Sajida Parveen went to a magistrate and had a medical examination which reportedly confirmed that she had been raped by more than one person. The police refused to register her complaint. She had to go to the High Court to have the First Information Report registered, but even then no action was apparently taken against the police officers alleged to have raped her.

In some cases media coverage has forced police to register a complaint brought by a woman. On 3

January 1995 Kaki, a 15-year-old girl from the Hindu minority, was abducted by two armed soldiers. She had gone to pray at a temple in Giddu, Hyderabad district. The soldiers took her to a nearby field and raped her, leaving her unconscious and injured. One of the soldiers absconded, while the other was turned over to the police by local people. Police initially refused to file a complaint. However, local newspapers reported the incident and the army ordered an inquiry. Police then filed the complaint and a senior police officer told journalists that a preliminary medical report had confirmed that Kaki had been raped. According to reports, Kaki's parents have been threatened by police to make them drop the charges. To Amnesty International's knowledge, the findings of the army inquiry have not been published and no action appears to have been taken against the alleged rapists.

Trying to complain about rape sometimes results in further victimization. A family recently arrived in Lahore in search of work gave one of their daughters, 13-year-old Shahnaz, to a restaurant owner as a housemaid. She was allegedly raped by her employer's son, who threatened to kill her if she told anyone. Shahnaz' parents approached the employer, who reportedly filed a false case of theft against Shahnaz. She was arrested in October 1994 but was not brought before a magistrate as required under the law. Her family did not know where she was. After Shahnaz' brother filed a *habeas corpus* petition in the Lahore High Court, she was found in the living quarters of a sub-inspector of police in Model Town. There was no record of her arrest. After her release, Shahnaz reportedly stated that she had been repeatedly raped in custody. It is not known if any action has been taken against the police officer.

Shameem, a 21-year-old mother of three, went to the police to file a rape complaint. She was raped again — this time by the police. Shameem, from North Nazimabad in Karachi, was kidnapped with two of her children and raped by a cleric in July 1991. Shameem's mother filed a complaint with the police. Several months later, the accused cleric was detained in police custody for questioning but he was released in June 1992, reportedly for lack of evidence. Shameem escaped from the cleric's house after almost 13 months' of captivity. She and her mother went to Peerabad police station to file a complaint about the abduction and rape. The police officers refused to register Shameem's complaint, stating that she must have acquiesced in the act, and charged her with *zina*. The police then detained Shameem and demanded a bribe of Rs. 15,000 (US\$ 500) for her release.

Shameem said the police officers beat her regularly, and insulted her. She reported that at night:

"two of them beat me and held me down while the third one raped me. Then the other ones raped me, one after another. They took turns holding me down and raping me, every night. They threatened to kill me and my children if I told anyone about it."

Shameem was acquitted of the charge of *zina* with the cleric, but to Amnesty International's knowledge no action has been taken against the police officers who raped her in custody.

The *Zina* Ordinance is an enormous obstacle inhibiting women from pursuing cases against police officers who have raped them. It has also been exploited by police officers in order to get their own way. Amnesty International knows of a number of instances where women were threatened with being charged with *zina* if they did not comply with police demands. Police have also bribed women who have been raped in custody to persuade them not to pursue complaints or have threatened them with violence or with false criminal charges.

A 20-year-old woman travelling from Karachi to Peshawar in early 1995 was forced to get off a train at Nawabshah by railway police who subsequently gang-raped her. Police officers reportedly raided the railway police quarters and took the woman and one railway police officer into custody. An inquiry into the incident was ordered by the Deputy Magistrate of Nawabshah. The railway police officer was charged under the *Zina* Ordinance — but so was the raped woman.

In rare cases a rape charge has been brought against police officers, but none has yet resulted in a conviction upheld on appeal. In April 1995, two police officers were arrested for allegedly raping a woman and attempting to rape her daughter-in-law in Sukkur two weeks earlier. A Head Constable and a Constable allegedly abducted the woman, took her to the New Pind Police Lines and raped her there

during the night. They reportedly later went to her house, tore the clothes from her daughter-in-law and attempted to rape her. A complaint was lodged against the constables and three other police officers under the *Zina* Ordinance.

Even well-attested cases of torture and ill-treatment have failed to secure convictions. In September 1992 members of a legal aid organization in Lahore were told by two women prisoners awaiting trial in Kot Lakhpat Jail, Lahore, that they had been tortured in Shah Bagh police station. One of the women said that she had been tied up by two constables and the Station House Officer and beaten with leather thongs for an entire night. The other woman reported that she had been beaten by one of the constables; she was then three months pregnant and said that she had miscarried as a result. Seven days after their arrest the two women were brought before a magistrate and transferred to judicial custody. When lawyers visited them in jail they noted visible marks of violence on their bodies. The jail authorities later confirmed that the Senior Woman Medical Officer of the General Hospital Lahore had "recorded multiple injuries" on the bodies of the two women but had failed to report this fact to the higher authorities. The two women appeared before a magistrate in Lahore in November 1992 and repeated their allegations that they had been tortured by police officers. Nevertheless, the magistrate's report stated that the two women:

"categorically stated that no police violence was persecuted against them... Both of them did not desire any criminal proceedings against the police people or some one else... this court is constrained to conclude that allegations of police violence are baseless."

The complaint of torture by police was not pursued.

3.2 The *Zina* Ordinance: imprisonment on grounds of gender

"Pakistan has the rare distinction of perhaps being the only state where a rape victim stands a heavy risk of punishment, if unable to prove the crime. It is a well-known fact that it is extremely difficult to establish the proof of rape anywhere in the world. So when the Pakistani law demands from the victim to prove that the rape did in fact occur, or else be prepared to undergo 10 years or so in jail, it is in fact sounding a stern warning to victims to refrain from reporting rape".(Newsletter, War against Rape, September 1992)

Five new laws were introduced as part of a process of "Islamization" under the martial law government of President Zia ul-Haq in 1979. They greatly altered the Pakistan Penal Code to the detriment of women. Some discriminate explicitly against women.

The *Hudood* laws, promulgated in 1979 and enforced in 1980, cover the offence of *zina* (unlawful sexual relations); the offence of *qazf* (false accusations of *zina*); theft and robbery; and intoxicants-related offences. The *Hudood* laws apply to all Pakistanis, whether Muslim or not, and override all other legislation.

The *Zina* Ordinance encompasses *zina* (extra-marital sexual intercourse), rape, and abduction for the purpose of committing a sexual offence. *Zina* covers both fornication (intercourse between unmarried partners), and adultery (intercourse between partners at least one of whom is married).

Zina and rape attract different punishments according to the evidence on which the conviction is based. Punishments can be either *hadd* or *ta'zir*. The most severe punishments are *hadd*. (*Hadd*, plural *hudood*, literally means "the limit"). These are fixed punishments which a judge must impose irrespective of mitigating circumstances. If a *hadd* punishment cannot be imposed, but the court is convinced of the guilt of the offender, it may impose a lesser *ta'zir* punishment. (*Ta'zir* means "to punish".) In such cases, the court has some discretion within certain well-defined limits.

The *hadd* punishments for *zina* and rape are either stoning to death in a public place or 100 lashes in public. If *hadd* punishments are to be imposed for *zina* or rape, specific types of evidence must be produced. This must be either a confession in court by the accused or the testimony of at least four Muslim male eye-witnesses. If the accused is a non-Muslim, the eye-witnesses may be non-Muslim as

well. The testimony of a woman — even if she is the rape victim — does not count as evidence. As a result of this legislation, women may be convicted on the basis of procedures and rules of evidence which are clearly discriminatory. If Amnesty International believes that women have been imprisoned by reason of their sex, without having used or advocated violence, Amnesty International considers them to be prisoners of conscience, and calls for them to be released.

If the accused is convicted on other evidence, the court may impose the lesser *ta'zir* punishment. The *ta'zir* punishment for *zina* is imprisonment for up to 10 years, 30 lashes and a fine; for rape the *ta'zir* punishment is imprisonment for between four and 25 years, 30 lashes and a fine.

The punishments imposed under the *Hudood* laws — both the most severe and the lesser punishments — are cruel, inhuman and degrading. Amnesty International believes that no one should be subjected to such punishments and that they deny internationally recognized human rights.

3.3 Rape victims charged with *zina*

"While the alleged rapist is innocent in the eyes of the law till proven guilty, the victim is presumed to be guilty until she proves her innocence" (Asma Jahangir, Hina Jilani; *The Hudood Ordinances: A Divine Sanction?*)

Rape is a common crime in Pakistan. Yet girls and women find it exceedingly difficult to have the rapist brought to account. The provisions of the *Zina* Ordinance make it possible that a woman who has been raped will herself be charged with *zina* (unlawful intercourse), for which she may have to face harsh punishments. In some cases when a woman rape victim has been imprisoned on a charge of *zina* because discriminatory rules of evidence mean she cannot prove that she did not give consent, Amnesty International believes she is a prisoner of conscience, imprisoned solely on account of her gender.

To prove a case of rape is extremely difficult under Pakistani law. For the most severe *hadd* punishment to be imposed for rape, four adult Muslim male witnesses of good repute must have actually witnessed the crime, or the rapist must confess. The woman victim's testimony is irrelevant, as is expert opinion, medical reports or documentary evidence.

Even in cases where the lesser *ta'zir* punishments apply, women find it difficult to establish that they have been raped. While their testimony is taken into account in such cases, the case law indicates that courts exhibit a strong bias in favour of men. If there is room for the slightest doubt, for instance if the rape was not immediately reported, or a medical examination was delayed, or if there is no strong physical evidence of violence, the charge of rape is dropped. In the few cases where rapists have been convicted, the victims were young girls who suffered considerable physical injuries.

If the court rules that intercourse involved consent, the woman who brought the rape charge is herself charged with *zina*. The fact that the rape charge was brought constitutes proof that intercourse did take place, and pregnancy resulting from the rape is also taken as proof of intercourse. In some cases the men originally accused of rape have been acquitted, while the woman victim has been convicted. In others the men originally accused of rape have been convicted of consensual intercourse, which carries a lesser *ta'zir* punishment than rape. Some of these convictions have been upheld by the appeal courts.

The most infamous case in which a victim of rape was eventually charged with *zina* and sentenced to the *ta'zir* punishment is that of Safia Bibi. The 18-year-old blind girl became pregnant after being raped in 1983. Due to her blindness she could not identify the rapist. Her pregnancy was considered irrefutable proof that intercourse had taken place so she was charged with *zina*. She was found guilty and sentenced to three years' imprisonment, 15 lashes and a fine. The alleged rapist, who had become her co-accused on the *zina* charge, was acquitted for lack of evidence. After widespread protests by women's and human rights groups, the Federal *Shariat* Court acquitted Safia Bibi on technical grounds. Christians are particularly at risk if they seek divorce. According to the Divorce Act of 1869, Christians can obtain a divorce only if they can prove adultery. However, if adultery is proved, the partner who committed adultery may be charged with *zina*. If adultery is alleged but not proved, the partner who has alleged *zina* may be charged with *qazf* (false accusation of *zina*).

3.4 Cruel, inhuman and degrading punishments

Women convicted of *zina* have been sentenced to public flogging and to death by stoning. For example, in 1987 Shahida Parveen and Muhammad Sarwar were both sentenced to the *hadd* punishment of death by stoning for rape. Shahida had been divorced by her first husband and then married Muhammad, but her first husband denied having divorced her and the divorce deed had in fact not been registered. The court ruled that Shahida and Muhammad had raped each other and the fact of their living together was taken as a confession of the offence. On appeal both were acquitted.

Allah Bux was sentenced to death by stoning and his wife Fehmida was sentenced to 100 lashes after Fehmida's father had accused them of *zina*. Fehmida was found to have become pregnant before the couple was married. On appeal both retracted their confessions and were acquitted.

Azra Parveen and Arif Hussain were sentenced to 10 years' imprisonment and 30 lashes each when her father accused them of *zina*, claiming that they were not married, despite their valid marriage certificate. After one year in jail, they were acquitted on appeal and released.

The punishment of stoning to death is controversial even among scholars of Islamic law. It was declared to be un-Islamic by the Federal *Shariat* Court in 1981 and that section of the *Zina* Ordinance was declared void. Under pressure from Islamist groups, President Zia ul-Haq issued a constitutional amendment which permitted the Federal *Shariat* Court to review its own decisions. A month later he reconstituted the bench of the Federal *Shariat* Court, retaining only the judge who had supported the view that stoning to death was an Islamic punishment. In June 1982, the Federal *Shariat* Court ruled that it had no jurisdiction to examine the Islamic character of the *Hudood Ordinances* but simultaneously declared stoning to be an Islamic punishment.

Hadd sentences of stoning to death and 100 lashes for *zina* or rape have so far always been overturned on appeal. However, as long as the law remains on the statute book, these punishments could be imposed at any time. They should be abolished altogether.

Flogging is a mandatory punishment under the *Zina* Ordinance and not within the discretion of the judge to decide. An executive order in 1986 directed that women should not be punished by flogging, but the status of this order is not known. Women are frequently sentenced to be flogged, particularly women convicted on drug-trafficking charges, and some floggings have been carried out, although not recently.

3.5 Death by stoning

Amnesty International unconditionally opposes the death penalty as it violates the most fundamental right, the right to life. Stoning to death is a particularly cruel form of execution, designed to cause maximum pain.

Trials of women on *zina* charges in which the *hadd* punishment of stoning to death may be imposed are inherently unfair. In cases of *zina* or rape liable to the *hadd* punishment, the testimony of women is disallowed altogether. Women may be convicted of *zina* or rape and sentenced to the *hadd* punishment of stoning to death without having had the opportunity to testify on their own behalf. By contrast, men have usually not been given the *hadd* punishment for rape, simply because their female victims cannot testify against them.

All the most severe sentences have to be confirmed by the Federal *Shariat* Court, which is the appeal court in all cases under the *Hudood* Ordinances. Three out of a total of eight judges are *ulema*, Islamic scholars who need not have formal legal training. Appeals from the Federal *Shariat* Court are heard by with the *Shariat* Appellate Bench of the Supreme Court, where two of the five judges are *ulema*.

Prisoners sentenced to death under the *Hudood* laws cannot appeal for commutation or clemency in the same manner as those sentenced to death under several other sections of the Pakistan Penal Code. The Supreme Court in 1992 decided that the President has no power to "commute, remit or pardon" death sentences imposed as *hadd* (the most severe) punishments, only death sentences imposed as *ta'zir* (lesser) punishments.

Amnesty International does not argue that women should be given the right to testify against male defendants charged with *zina* or rape in order that such men may then be sentenced to death. Amnesty International advocates two changes: women must be entitled to testify in all cases brought against them, and particularly in those cases where the death penalty may be imposed; and cruel punishments should be abolished.

Several cases have been reported in which women were sentenced to death without being given adequate scope to testify on their own behalf. The most recent reported case is that of Nasrin, a 35-year-old housewife. She was charged with *zina* by her first husband, whom she had married in 1976 and with whom she had five children. In 1989, she married her second husband, Jaffer Hussain. Her first husband filed a complaint of *zina* in a sessions court in Dera Ismail Khan, Punjab province. Nasrin and Jaffer Hussain were arrested in November 1989 and granted bail by the Lahore High Court in March 1990. Nasrin could not prove that she had been divorced. In February 1993 Nasrin was sentenced to death by public stoning following a five-year jail sentence. Her second husband Jaffer Hussain was sentenced to 100 lashes. In July 1993 the Federal *Shariat* Court acquitted the couple. They had been held in prison for three years and eight months.

3.6 Girls sentenced to cruel, inhuman and degrading punishments

Fifteen-year-old Jehan Mina was raped by her uncle and cousin while she worked in her aunt's house. When she returned to her home after some months she was found to be pregnant. Her family filed a complaint of rape but since there were no witnesses, the alleged rapists were acquitted. However, Jehan Mina's pregnancy was taken as evidence of *zina*. She was sentenced to the *hadd* punishment of 100 lashes in public. Her conviction was upheld in February 1983 by the Federal *Shariat* Court, which argued that she could not satisfactorily explain her pregnancy. The punishment was, however, converted to the *ta'zir* punishment of three years' imprisonment and 10 lashes, deferred until her child reached the age of two.

The *Hudood* laws are applicable to defendants irrespective of age or gender but the *hadd* punishments may not be imposed on children. However, under the *Hudood* laws on sexual offences, a boy is adult if over the age of 18, but a girl is adult once she has attained puberty. Girls, who may reach puberty as early as 11 or 12, are thus considered adult. So girls as young as 11 or 12 may be sentenced to death by stoning while the same punishment may only be imposed on males over the age of 18. Children — boys and girls of any age — may be sentenced to public flogging.

The provisions which allow stoning to death of girls who have attained puberty and public floggings of children of any age run counter to Pakistan's commitments as a State Party to the UN Convention on the Rights of the Child. Under this Convention, Pakistan is obliged to bring its domestic laws into conformity with the Convention's provisions. Article 37(a) of the Convention states:

"No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

Pakistan ratified the UN Convention on the Rights of the Child in November 1990 with the general reservation that its provisions should be interpreted in the light of Islamic laws and values. The Committee on the Rights of the Child, a body of experts which reviews the observance and implementation of the Convention, noted in May 1993 that "practically no provision of the Convention comes into direct conflict with any of the major precepts of Islam" but stated in April 1994, that the "broad and imprecise nature of the reservation made to the Convention raises deep concern as to the compatibility with the object and purpose of the Convention". The Committee noted that Pakistan's national legislation permits the punishments of flogging and the death penalty for children below the age of 18 and recommended that the

general reservation be reviewed and eventually withdrawn, and that the death penalty and flogging for children be abolished.

3.7 Political arrests

Dozens of women activists were detained without charge or trial, some as prisoners of conscience, while the government of Prime Minister Mian Nawaz Sharif was in office from November 1990 to July 1993. Many were tortured. Some were interrogated under torture about the activities of their political parties, forced to implicate party leaders in criminal or dishonourable activities, or made to give up their party affiliations. Such incidents have not been reported under the present government. However, existing institutional safeguards are not sufficient to prevent a recurrence of such violations in future.

Political arrests have declined and the torture of women for political purposes appears to have ceased. However, dozens of women were detained because they demonstrated, peacefully, in support of the Muslim League (*Nawaz*) in October 1994. Most were released within hours or days.

Police are reported to have harassed, robbed, beaten, verbally abused and humiliated women during house-to-house searches for alleged "terrorists" in Karachi in 1994 and 1995. Men were arrested in large numbers, blindfolded and beaten. In some cases when a wanted person could not be found, police were reported to have arrested family members, including women, to put pressure on the wanted men to give themselves up. All of them were, however, released within a short time.

In some cases, *zina* charges appear to have been used against women on account of their political activities. Muslim League (*Nawaz*) parliamentarian Tehmina Daultana was one of the very few women to win a seat in the Punjab provincial assembly. After her divorce her first husband had filed for restitution of marriage but later withdrew his petition. However, in November 1994 she and her second husband were charged with *zina* by her ex-husband who claimed that she was not lawfully divorced from him and therefore lived in an unlawful relationship. Her house was raided by a large police contingent. Tehmina Daultana was granted bail and in December her first husband declared that he did not want to pursue the case (*Dawn*, 6 December 1994).

4. GOVERNMENT ACTION AND INACTION ON WOMEN'S HUMAN RIGHTS

The present government, led by the Pakistan People's Party (PPP), came to office in October 1993. During the election campaign the PPP pledged to respect human rights and democratic norms and laid particular emphasis on women's and children's issues. The PPP promised to review existing laws and to frame new laws to eliminate discrimination against women. It promised to amend the *Hudood* Ordinances and other discriminatory laws, to ensure women's fundamental rights, and to set up a permanent commission on the status of women.

Since it assumed office, the government has repeatedly reiterated its commitment to this program and has taken several steps towards implementing it. However, abuses of women's human rights continue unabated and the government has yet to take determined action against its own forces who commit human rights violations.

Some government measures are not specifically aimed at women but may benefit them nonetheless. These include the establishment of a governmental Human Rights Cell, which investigates complaints of human rights violations and issues recommendations to the relevant authorities. In April 1995 a Human Rights Relief Fund was established to provide financial and legal assistance to victims of human rights violations, including women.

Several commissions have been set up to assess laws which discriminate against women: a National Tribunal for Disadvantaged Persons; a Senate Commission of Enquiry for Women; and a National Consultative Committee.

Responding to a long-felt need for greater representation of women in the police and judiciary,

the government in 1994 appointed five women judges to the country's high courts, out of a total of over 50 new judges.

The government also set up four police stations in major cities entirely staffed by women. However, an Amnesty International delegation which visited the women's police station in Karachi in November 1994 found little evidence that it had been used. Prime Minister Benazir Bhutto has declared that by the year 2000 women would be 10 per cent of the police force. At present their presence is negligible: for instance of 85,000 police officers in Punjab, only 605 are female (*Reuter*, 25 January 1994).

The government has proposed a constitutional amendment bill to provide reserved seats for women in parliament on a permanent basis. The bill would create seats for women in the National Assembly, the Senate and the four provincial assemblies. The bill is currently pending with the Standing Committee of the Senate. When the government first sought to introduce this bill in November 1993, it faced massive criticism from the opposition. When it tabled the bill in April 1994, several Islamic parties walked out in protest.

The National Assembly passed a bill in October 1994 to set up at least one family court in every district and sub-district presided over by a woman judge, giving women the opportunity to appear before women judges in relation to cases such as divorce, dowry, restriction of conjugal rights, custody of children and guardianship.

The federal government also set up a committee on the UN Convention on the Elimination of All Forms of Discrimination against Women. The committee submitted its recommendations to the federal cabinet in 1994, which in August 1995 approved in principle the ratification of the Convention with the general reservation that it would apply only in so far as it was compatible with the country's traditions and values.

In a move designed to protect women, an executive order in 1994 prohibited the detention of women in police stations for interrogation. Except in cases of murder, armed robbery and undefined "special circumstances", magistrates should not remand women in police custody. If remand is necessary, then women should be held in judicial custody, and they should be interrogated only in the presence of their husbands or close male relatives.

The government has also apparently issued a directive not to register cases under the *Zina* Ordinance without first examining the evidence. As a result, fewer such cases have been registered in recent months. However, such directives are not legally binding.

While Amnesty International welcomes these measures, it believes that much more needs to be done to reduce and ultimately end abuses of women's rights. Many of the laws and institutions that disadvantage women were put in place by earlier governments, particularly the martial law government of President Zia ul-Haq. The present government has not so far amended these discriminatory laws.

Nor has the government taken any sustained action to prevent its own forces violating women's rights. Police officers continue to rape and torture women detainees with impunity. Existing safeguards relating to the detention of women continue to be ignored.

Successive governments of Pakistan have done little or nothing to protect women from criminal assault, including rape. Among the most vulnerable and least protected groups are bonded labourers and women subject to the system of tribal justice. The widespread abuse of such women has been reported in the news media and documented by human rights organizations. Yet the government has almost entirely failed to bring the rape, injuries and killings to an end, to charge and try the perpetrators, or to protect those at risk.

4.1 The tribal system of retribution

In vast areas of Balochistan, parts of Punjab and northern Sindh, conflicts are resolved in accordance with tribal customary law; access to the official judicial and legal system is only a last

resort. Women are particularly affected by tribal customs and laws.

The custom of *sakh* — testing innocence by walking over burning coal — is theoretically applicable to men and women but in practice it is mostly applied to women. Accusations of theft, breach of trust or infidelity go before the chief of the tribe. He often does not investigate the charges but orders the accused to take the test of truthfulness by walking through a trench full of burning coal. This custom has been prevalent among the Marri, Bugti and Buledi tribes in Balochistan, and it has spread to other areas such as Jacobabad in Sindh province.

Zainab, a married woman, was ordered by a Muslim holy man to take the fire test to prove her innocence after her husband accused her of committing adultery. In this case, the Sindh High Court ordered the district magistrate of Shikarpur to give her protection and she reportedly returned safely to her father's house (*Dawn*, 26 August 1994). Although *sakh* is clearly unlawful, no charges were apparently brought against the Muslim holy man. The Human Rights Commission of Pakistan (HRCP) appealed to the government to frame legislation to stop unlawful practices like *sakh*, which endanger the lives of the accused. There appears to have been no response.

Tribes in Balochistan and Sindh, including the Bugtis, Jakhranis, Mazaris, Jatois and Marris, follow a strict code of honour which, if broken, demands ruthless retribution by the tribe. The *karo-kari* tradition decrees that any man or woman who has an illicit relationship, thereby dishonouring the tribe, must be punished with death. Although equally applicable to men and women, in practice it is used to harass, punish and intimidate women. Almost invariably men accuse women of illicit relationships, not the other way around. If a man claims that a woman of the tribe is involved in an illicit sexual relationship, the woman may seek refuge in the house of the local *sardar* (large landowner) until the tribal court pronounces its verdict. If the woman is found guilty, she is killed by tribesmen. If the accused is a man, he will frequently be able to escape. However, few women have the means to flee. Even if a woman is found to be innocent, she may not be able to return to her family as the stigma of the accusation remains. As a result, many women who have been charged with illicit relations stay on in the *sardar's* household as unpaid and ill-respected maid servants.

The *karo-kari* system was originally motivated by notions of tribal honour. However, false claims of illicit relations are reportedly used in tribal society to wreak revenge against individuals, to extort money or to cover up crimes. For example, murders are known to have been covered up by disguising them as *karo-kari* killings.

The practice of *karo-kari* is well known, well documented and yet tolerated by the authorities. Many members of parliament, local administrators, police officers and members of the judiciary come from the families of large landowners, who do nothing to combat it. Police allegedly take huge bribes to cover up the killings. The HRCP has estimated that several hundred people, mostly women, lose their lives every year in *karo-kari* killings. In the Punjab district of Rajanpur alone, 96 people were killed, of whom 72 were women, during 1994.

4.2 Village councils

Sometimes village councils take the law into their own hands and impose unlawful punishments. In May 1994 a village council of elders with no legal authority sentenced a man convicted of rape to having his own wife raped. The council of a village near Mithankot in Punjab province ordered the wife of a man convicted of rape to be raped by the original victim's husband. The eight elders then watched the "sentence" being carried out.

Councils of elders settle local disputes, such as inheritance or land disputes, but they are neither authorized nor trained and equipped to try people for criminal offences. Police officers were reported to have been present both at the time of the verdict and when it was carried out: they did not intervene. It appears that a judicial inquiry was set up, but one year later no action

appears to have been taken against the village elders for taking the law into their own hands.

4.3 Bonded labour

Women bonded labourers are sold, held in chains, beaten, burned and raped by their owners with impunity. The authorities, including the police, the local administration and members of parliament do little or nothing to stop the abuses.

In theory bonded labour has been abolished in Pakistan. The Bonded Labour System (Abolition) Act was passed in 1992 and bonded labour is also prohibited under the Constitution. Article 11 (2) says: "All forms of forced labour and traffic in human beings are prohibited".

Nevertheless, the system of bonded labour persists. The size of the bonded labour force is disputed. In its report for 1994, the HRCP states that it was estimated to be in the region of 20 million. Bonded labourers are used in agriculture, in the carpet and brick kiln industries and as domestic labour.

Bonded labourers and their families come under the control of landlords when they need a loan because of sickness or a costly family commitment such as a wedding. The labourers, being illiterate, cannot prove that they have repaid the loan, sometimes many times over, by their work. In some cases bonded labourers are bought from other landlords. Private jails have been set up by rural landlords to prevent bonded labourers from running away.

There have been persistent rumours of "jails" run by big landlords in Sindh province. In November 1992 the army raided a fortified camp in Khokhar village in Sindh province and freed 80 men, 55 women and 90 children who were being held there. An army spokesman said: "This is the first case of a private jail in Sindh... They have told us horrifying tales of rapes, torture and forced labour."

The camps discovered in Khokhar and other villages in Sindh resemble fortresses with watch-towers manned by armed guards, 14-foot-high mud walls and additional barbed wire and electric perimeter fences. Male inmates were regularly chained at night, and their wives and daughters reported that they had been repeatedly raped by the landlord and his staff. Charges of wrongful confinement and rape were brought against the owner of the Khokhar village camp and others, but to Amnesty International's knowledge none of them are in custody.

The discovery of the Khokhar camp led to several investigations by newspapers which found direct evidence of the authorities' collusion with rural landlords who maintain fortified camps; 350 were reported to exist in Sindh province alone. The magazine *Newsline* of December 1992 lists several camps run by elected members of the National Assembly, belonging to both the Islamic Democratic Alliance and the Pakistan People's Party. A fortified camp with some 130 chained rural labourers uncovered in Sanghar belonged to a member of the National Assembly.

On 2 June 1995 a fortified camp was discovered at a village in Umerkot district, Sindh province. Following a visit by the HRCP the previous day, a police raid freed 54 people, including 31 women, out of a total of 148 inmates who all belonged to the Bheel and Kholi tribes. Several of the freed women reported that the landlord, his son and his guards and administrators had repeatedly raped them; even girls as young as 10 or 11 years of age had been raped. The freed men and women reported that 35 families had received loans of Rs. 500 (US\$ 166) each 22 years ago and that they had worked continuously since then to repay the money. They said their debts had mounted to some Rs. 50,000 (US\$ 1,666) per family. Several of the men had died over the years; their wives and children had reportedly then been sold to other landlords to "recover the loans".

5. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

5.1 Prisoners of conscience

The Government of Pakistan should release all prisoners of conscience immediately and

unconditionally, including women convicted of non-violent crimes after trials where explicitly discriminatory rules of evidence have led to their conviction.

The Government of Pakistan should review all legislation that leads to the imprisonment of prisoners of conscience and that does not conform to the provisions for fair trial enshrined in international human rights standards, such as those recognized in Articles 9 and 14 of the International Covenant on Civil and Political Rights, the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers and the UN Guidelines on the Role of Prosecutors.

5.2 Torture, including rape, and ill-treatment

Torture, including rape, is prohibited in international law in all circumstances. Consistent with this prohibition, as recognized in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Declaration against Torture) and the Convention against Torture, the government has a duty to investigate allegations of torture, compensate the victims and bring those responsible to justice.

Some forms of torture are also prohibited by the Constitution of Pakistan, which lays down in Article 14(2): "No person shall be subjected to torture for the purpose of extracting evidence". The *Qisas* and *Diyat* Ordinance, which was first promulgated in September 1990 and has since been repromulgated every four months, recognizes torture to extort a confession as a criminal offence. It can be punished either in the form of *qisas* (equal punishment for the crime committed) or *diyat* (compensation to the victim or the victim's family). Amnesty International welcomes the recognition of a form of torture as a criminal offence under this law, but urges that all forms of torture be prohibited. It also remains opposed to the provision allowing it to be punished in a manner in itself considered cruel, inhuman or degrading by international human rights standards.

Amnesty International believes that the Government of Pakistan should take the following steps in order to bring torture, including rape, to an end:

1. Publicly condemn torture, including rape, of women in custody;
2. Enforce and strengthen existing safeguards for women in detention;
3. Conduct prompt, thorough and impartial investigations into all reports of rape and other torture or ill-treatment of women in custody;
4. Bring to justice all law enforcement officials who have committed torture.

5.2.1. Publicly condemn torture, including rape, of women in custody

The Government of Pakistan should publicly demonstrate its total opposition to violations of women's human rights. Amnesty International is calling upon officials at the highest level, including the Head of State, heads of federal and provincial governments and heads of the different security forces, to condemn torture, including rape, of women in custody. They should make clear to all law enforcement personnel that rape and other torture will not be tolerated under any circumstances.

5.2.2. Enforce and strengthen existing safeguards for women in detention

Existing safeguards prescribe that women may not be arrested and searched except by a female police officer, and that a female police officer should be present until the detainee is handed over to judicial authorities. A woman may not be detained in police custody overnight and all questioning must be carried out in the presence of a male relative or a female police officer. These safeguards are routinely ignored. Amnesty International urges the government to ensure strict adherence to these regulations. This may entail increasing the number of women in the police force to ensure that female police officers are present at all times in every police station.

The government should ensure that all prisoners are always held in publicly recognized places, that up-to-date and accurate records about the whereabouts of prisoners are maintained at all times and that such records are made available to relatives and lawyers. The government should also ensure that any police officer who holds any woman prisoner in unacknowledged detention is brought to justice.

Where detention of women in police stations is unavoidable, women prisoners should be medically

examined upon arrest and at any later time upon request. Similarly, the requirement that women prisoners should be medically examined when transferred to judicial custody should be strictly enforced. If any woman on arrival in prison is found to be injured or complains of rape in police custody, such indications or allegations should be immediately transmitted to the highest jail authorities and a medical investigation initiated. Should there be any indication that the woman prisoner was tortured or raped in police custody, an independent and impartial investigation should be promptly set up with a view to bringing those responsible to justice.

The government should also consider setting up independent and impartial institutions staffed by women throughout the country to provide legal aid and assistance to women who have been subjected to human rights violations. The Human Rights Cell should be made independent of the government and be given sufficient powers and resources to investigate all violations of human rights. Further, all victims of rape and other torture or ill-treatment by state officials should be entitled to compensation and appropriate medical care and rehabilitation, in line with Article 11 of the Declaration against Torture.

5.2.3 Conduct prompt, thorough and impartial investigations into all reports and complaints of rape and other torture or ill-treatment of women in custody

Amnesty International urges the government to ensure that all allegations of rape and other torture or ill-treatment in custody are thoroughly, promptly and impartially investigated, in line with Articles 8 and 9 of the UN Declaration against Torture. As a first step every breach of the Code of Criminal Procedure requiring police to record complaints and to investigate allegations of human rights violations should be addressed and corrected and those responsible be held accountable.

Amnesty International also urges the government to ensure prompt and independent investigations into all allegations of human rights violations, including those by national human rights organizations and by Amnesty International. The findings of all inquiries should be published promptly and those found responsible should be held to account.

5.2.4 Bring to justice all law enforcement officials who have committed torture

In order to stop the recurrence of human rights violations, it is of paramount importance that those responsible are promptly brought to justice and are punished in accordance with international human rights standards, including Articles 4 and 7 of the Declaration against Torture. Amnesty International believes that the phenomenon of impunity is one of the main factors contributing to continuing patterns of human rights violations the world over.

Rape and other forms of torture and cruel, inhuman and degrading treatment of women in custody persists in a climate of impunity due to the failure of successive governments to bring those responsible to justice. Victims find it difficult to have their complaints registered by the police, to have their complaints investigated by the police and, in the case of rape, to convince the courts of their innocence and lack of consent. The authorities frequently transfer police officers likely to be prosecuted, and investigating officers sometimes distort or suppress evidence against themselves or colleagues. The risk of having a complaint of rape turned into a *zina* charge against the rape victim has been a major factor contributing to impunity for rapists, including those responsible for rape in custody. Amnesty International urges the government to consider abolishing or amending the *Zina* Ordinance to eliminate its contribution to impunity for human rights violations.

5.3 Laws allowing cruel, inhuman and degrading punishments

Amnesty International is concerned about cruel, inhuman and degrading punishments provided under some laws, particularly the *Hudood* Ordinances. Amnesty International takes no position on specific systems of law, as long as those laws do not contravene internationally recognized standards of human rights. The *Hudood* Ordinances contravene international human rights standards in so far as they prescribe punishments, such as judicial amputations, public flogging and stoning to death which are cruel, inhuman and degrading and therefore prohibited.

Cruel, inhuman and degrading punishments are prohibited in a number of international standards including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the Declaration on the Protection of All persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture. The Constitution of Pakistan prohibits torture for the purpose of extracting confessions from detainees, but does not prohibit cruel, inhuman and degrading punishments. Amnesty International urges the government to replace such punishments with other penalties which are consistent with recognized international standards for the punishment of crime and the treatment of offenders.

5.4 The death penalty

Amnesty International unconditionally opposes the death penalty in all cases. The organization believes that the death penalty violates the right to life and the prohibition of cruel, inhuman and degrading treatment or punishment. In Amnesty International's view, the death penalty is inherently unjust and arbitrary, however heinous the crime for which it is imposed and however scrupulous the procedures by which it is enforced. The risk of error is inescapable, yet the death penalty is irrevocable. Amnesty International appeals to the Government of Pakistan to:

1. Abolish the death penalty;
2. While the death penalty is retained, abolish the death penalty for children;
3. Ensure that while the death penalty is retained, no one is sentenced to death in an unfair trial and that the death penalty is only imposed for the most grave offences.

5.4.1 Abolish the death penalty

Amnesty International urges the government to abolish the death penalty in Pakistan, thereby joining a worldwide trend. To date, 54 countries have abolished the death penalty for all offences, while 15 have done so for all but exceptional crimes such as wartime crimes. Twenty-seven countries can be considered abolitionist de facto: they retain the death penalty in law but have not carried out any executions in the past 10 years or more. Ninety-seven countries retain and use the death penalty at present, while 97 countries are now abolitionist either in law or practice.

5.4.2 Abolish the death penalty for children

Pakistan, as a state party to the UN Convention on the Rights of the Child, is under an obligation to bring its domestic laws into conformity with the provisions of the Convention. The Convention clearly prohibits the imposition of the death penalty on anyone who was below the age of 18 at the time of committing the offence. It also prohibits cruel, inhuman and degrading punishments for children. Amnesty International urges the government to amend its laws so as to protect children in line with the UN Convention on the Rights of the Child.

Pakistan is one of the few countries that still uses the death penalty against juveniles. The only other countries known to have executed juveniles since 1985 are Iran, Saudi Arabia, the United States of America and Yemen. Only 13 of the 185 member states of the UN are known to have legislation permitting the execution of juveniles for crimes committed when under the age of 18 at the time of the crime.

Internationally recognized legal standards prohibit the execution of juveniles. As of October 1994, the overwhelming majority of states had ratified or acceded to treaties prohibiting the execution of juveniles who were below the age of 18 at the time of the crime: the Convention on the Rights of the Child (160 states), the Fourth Geneva Convention of 1949, concerning the protection of civilians in time of war (185 states), and the International Covenant on Civil and Political Rights (127 states). Moreover, the UN has repeatedly declared that juveniles should not be executed.

5.4.3 Ensure that no one is sentenced to death in an unfair trial

In countries that have not abolished the death penalty, international standards require that the strictest possible procedural and substantive safeguards are followed. These minimum requirements are set forth

in a number of international instruments, including the UN Economic and Social Council (ECOSOC) Safeguards guaranteeing protection of the rights of those facing the death penalty.

Safeguard 4 says: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts."

The provision of the *Zina* Ordinance that the *hadd* punishment of stoning to death may be imposed on a woman whose testimony is not admissible clearly contravenes this Safeguard and should be abolished.

Safeguard 1 lays down that the death penalty may only be imposed for the most serious offences: "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences." The *Zina* Ordinance provides a mandatory death penalty for the offences of *zina* and rape, provided certain evidential requirements are fulfilled, which contravenes this Safeguard.

5.5 Ratification of and adherence to international standards

Among international standards to which Pakistan has become a State Party, only the Convention on the Political Rights of Women has been ratified and the Convention on the Nationality of Married Women has been signed but not ratified. Pakistan has not signed or ratified the UN Convention on the Elimination of All Forms of Discrimination against Women. This Convention has been ratified by all other countries of the South Asian Association for Regional Cooperation (SAARC) and 12 other Muslim countries. Pakistan has also not signed or ratified the International Covenant on Civil and Political Rights.

Amnesty International has repeatedly urged the Government of Pakistan to ratify, without limiting reservations, international human rights treaties, including the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights and its Optional Protocol.

Amnesty International fears that as it has in the case of the UN Convention on the Rights of the Child, Pakistan will sign the UN Convention on the Elimination of All Forms of Discrimination against Women with reservations of a general nature; such reservations may prevent significant changes being introduced into laws that now discriminate against women. Genuine respect for the rights of women would entail ratifying the Convention without reservations and taking urgent steps to bring domestic legislation into conformity with the Convention's provisions.

CAPTIONS

A woman talks to Amnesty International delegates in Karachi Central Jail, November 1994. Amnesty International believes that many women imprisoned in Pakistan under laws that explicitly discriminate against women are prisoners of conscience.

Women prisoners in Karachi Central Jail

A poster produced by a Pakistan human rights organization. Women's groups and human rights groups in Pakistan have campaigned fearlessly against abuses, including the death penalty.

Hasina, a woman who had been held prisoner in Karachi Central Jail for six months when Amnesty International delegates met her in November 1994. She was detained when her first husband denied that they were divorced and claimed that her second marriage was unlawful.

Shahida Parveen was sentenced to death by stoning in 1987. A court ruled that her sexual relations with her second husband constituted rape, after her first husband denied having

divorced her. She was acquitted on appeal. © Associated Press

An elderly woman cooking, Punjab. Women in Pakistan face widespread human rights violations, including torture in police custody and cruel punishments such as floggings and stoning to death. © *Sean Sprague/Panos Pictures*

A village woman grinds maize. In many parts of Pakistan, particularly rural areas, women face cruel, inhuman and degrading punishments, imposed not only by courts of law but also by village councils. © *Neil Cooper/Panos Pictures*

Harvesting maize in the Thar desert, Sindh province. Many women in rural areas are bought and sold as bonded labourers, and ill-treated with impunity by their owners. © *Neil Cooper/Panos Pictures*

A high-school student, Lahore. The present government of Pakistan has done nothing to amend laws that explicitly discriminate against women. © Sean Sprague/Panos Pictures

KEYWORDS: WOMEN1 / SEXUAL ASSAULT1 / IMPUNITY1 / TORTURE/ILL-TREATMENT1 / CORPORAL PUNISHMENT1 / TRIALS1 / LEGISLATION1 / POLICE1 / ADVERSE DISCRIMINATION1 / EXTRAJUDICIAL EXECUTION / ARBITRARY ARREST / FORCED LABOUR / EXTORTION / DEATH PENALTY / PREGNANCY / PRISONERS OF CONSCIENCE / WOMEN'S RIGHTS ACTIVISTS / FOREIGN NATIONALS / HOUSEWIVES / PARLIAMENTARIANS / JUVENILES / CHILDREN / MILITARY / HABEAS CORPUS / MEDICAL CONFIRMATION / PRISONERS' TESTIMONIES / MISSIONS / PHOTOGRAPHS /