

AMNESTY INTERNATIONAL

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THE GOVERNMENT OF PAKISTAN FOLLOWING A VISIT IN JULY - AUGUST 1989

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This paper begins with a brief account of Amnesty International's human rights concerns over the years in Pakistan. It then describes the findings of a recent delegation to the country in 1989 under Prime Minister Benazir Bhutto's government. Individual cases are described, the organization's recommendations for human rights improvements are listed and prison rules on whipping and fettering which contravene internationally-recognized human rights standards are quoted in an appendix.

Respect for human rights has increased since the change of government in December 1988. Thousands of prisoners have been amnestied, including many political prisoners convicted by special military courts under martial law; 2,029 death sentences have been commuted; compensation has been announced for certain categories of martial law prisoners. Nevertheless human rights are still not inviolate. Aware of the shortcomings of special military courts, the government established a review board to consider the cases of martial law prisoners who were excluded from the amnesty. The board recommended release in some cases, but its procedures do not ensure that prisoners are granted the defence rights necessary to ensure a fair hearing by internationally-recognized standards.

The paper describes Amnesty International's disquiet over the law allowing the imprisonment on grounds of religious conscience of Ahmadis - a religious group whose claim to be Muslim is punishable with imprisonment - and over the authorities' failure to investigate fully sectarian violence against Ahmadis which has resulted in several deaths. Broad powers of administrative detention remain available, but have not been widely used by the present government. Courts set up under the Suppression of Terrorist Activities (Special Courts) Act of 1975 are increasingly used, however. These courts can try certain non-violent political offences, and their procedures do not wholly conform to internationally-recognized standards for fair trial.

Torture in prisons, although not eradicated, has reduced - but is still liable to recur as those responsible for torture in the past have not been brought to trial. Torture, including rape, is particularly liable to occur in police stations. The present government has started to address the issue by establishing in August 1989 a Cell to Monitor Police Atrocities in the Ministry for the Interior, and plans have been made to monitor police stations in Sind through citizen's committees. However, further safeguards need to be implemented to halt torture. The cruel

punishments of whipping, amputation and stoning remain on the statute book, and two instances of public whipping were reported in 1989.

Whipping can be prescribed for major offences against the prison rules, and prison conditions in general can be improved. Fetters are still used on prisoners, including in some prisons on children. The government has created a committee to revise the Pakistan Prison Rules and stated its intent to improve overall prison conditions.

As soon as she assumed office, Benazir Bhutto requested the President to commute all pending death sentences. Since then, the courts have continued to pass sentence of death but there have been no executions. Many death sentences were passed in 1987, 1988 and 1989 by Special Courts for Speedy Trials, sometimes after trials lasting only two or three days. These courts no longer sit, but in Punjab province they continued to try cases for several months after February 1989, when the Ordinance which provided for their continuing existence expired.

The validity of their judgments, including the death sentences imposed, after February 1989 has yet to be decided by the Supreme Court.

The government has told the UN General Assembly that it is considering ratifying the three main international human rights instruments.

This summarizes a 32-page document, Pakistan: Human Rights Safeguards: Memorandum Submitted to the Government of Pakistan following a visit in July - August 1989, AI Index: ASA 33/03/90, issued by Amnesty International in May, 1990. Anyone wanting further details or to take action on this issue should consult the full document.

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HUMAN RIGHTS SAFEGUARDS IN PAKISTANMEMORANDUM SUBMITTED TO THE GOVERNMENT OF PAKISTAN FOLLOWING A VISIT IN  
JULY - AUGUST 19891. INTRODUCTION

An Amnesty International delegation visited Pakistan in late July - early August 1989 to meet senior officials of the federal and provincial governments. The aims of the visit were to learn about the measures to protect human rights which the federal government of Prime Minister Benazir Bhutto, and the provincial governments, have taken or proposed; to discuss with the authorities the implementation of further human rights safeguards in Pakistan; and to present Amnesty International's continuing concerns in Pakistan.

This memorandum summarises Amnesty International's findings and its recommendations for legal and other human rights safeguards. In submitting its recommendations in writing in this memorandum, Amnesty International hopes that dialogue will continue with the authorities in Pakistan, and wishes to express its appreciation of the positive steps the government took at the outset towards the respect of human rights. Amnesty International would also like to express its thanks for the time and attention given to their delegates by members of the government and others, and for the spirit of cooperation and good-will in which they were received.

Amnesty International's delegates were the organization's Secretary General, Ian Martin; Professor Virginia Leary, Professor of International Law at the State University of New York at Buffalo; Dr Ghanim Al-Najjar, Lecturer in Political Science at Kuwait University; and a member of the International Secretariat staff. Among the federal and provincial ministers and officials they met were:

Islamabad: federal authorities: Prime Minister Benazir Bhutto; Chairman of the Senate, Wasim Sajjad; Minister for the Interior, Aitzaz Ahsan; Minister for Law, Justice and Parliamentary Affairs, Syed Iftikhar Hussain Gillani; Minister for Religious and Minority Affairs, Khan Bahadur Khan; Attorney General Yahya Bakhtiar; Adviser to the Prime Minister on Foreign Affairs, Iqbal Akhund; Foreign Secretary Muhammad Hamayun Khan; and other officials.

Lahore: Punjab provincial authorities: Additional Home Secretary, Taquiuddin Pal; Inspector General of Police, Manzoor Ahmed; Inspector General of Prisons, Hafiz Qasim; Deputy Inspector General of Police, Nisar Ahmed; Deputy Advocate General Farooq Bedar; and other officials.

Karachi: Sind provincial authorities: Governor of Sind, Justice (Retired) Fakhruddin Ebrahim; Minister for Finance (on behalf of the Chief Minister), Ismail Udejo; Minister for Jails, Manzoor Hussain Wasan; Political Adviser

to the Chief Minister, Raza Rabbani; Information Adviser to the Chief Minister, Iqbal Haider; Home Secretary, Noor Ahmed Shah.

Peshawar: North West Frontier provincial authorities: Chief Secretary, Omar Khan Afridi; Home Secretary, Rustam Shah Mohmand; Inspector General of Prisons, Mohammad Rafiq Afridi; Advocate General, J Akbarji; and other officials.

Amnesty International regrets that its delegates had insufficient time to arrange to meet the provincial authorities in Baluchistan.

In addition to the authorities listed above, the delegation met lawyers, doctors and others concerned with human rights protection in Pakistan, including members of the Human Rights Commission of Pakistan. It would like to thank them, also, for their help and cooperation.

## 2. BACKGROUND TO AMNESTY INTERNATIONAL'S WORK ON PAKISTAN

Amnesty International is a worldwide human rights organization which works on behalf of prisoners and certain other victims of human rights violations. It seeks the immediate and unconditional release of "prisoners of conscience" - that is, men and women detained for their beliefs, colour, sex, ethnic origin, language or religion, who have not used or advocated violence. It calls for the fair and prompt trial of all political prisoners. It unconditionally opposes torture and other cruel, inhuman or degrading treatment or punishment, and campaigns for the abolition of the death penalty.

Amnesty International has worked on behalf of prisoners of conscience and other political prisoners in Pakistan under successive governments since the 1960s. Its delegates have met members of several previous governments to discuss human rights concerns. In April-May 1976 a delegation went to Pakistan to discuss with officials of the government of Prime Minister Zulfikar Ali Bhutto and others the legal procedures under special and emergency legislation then in force for the detention and trial of political prisoners. Its findings and recommendations were published in Islamic Republic of Pakistan: An Amnesty International Report including the findings of a mission to Pakistan, 23 April - 12 May 1976, which also documented reports of torture of political detainees. In January 1978 Amnesty International again visited Pakistan to discuss its continuing concerns with the new martial law administration under General (subsequently President) Zia-ul-Haq, and to raise new concerns on the trial procedures of military courts and the introduction of punishments considered cruel, inhuman or degrading by internationally-recognized standards - whipping and amputation of the hand. The delegates also raised concerns about the trial of former Prime Minister Zulfikar Ali Bhutto on charges of conspiracy to murder and abetment of murder which was in progress during their visit. The Short Report of an Amnesty International Mission to the Islamic Republic of Pakistan, 20-25 January 1978 summarises the delegation's findings and recommendations. Zulfikar Ali Bhutto was sentenced to death in March 1978 and executed in April 1979. Throughout this period Amnesty International appealed for the sentence to be commuted. The Supreme Court upheld the conviction and the sentence by a majority of four to three. In February 1979 an Amnesty International delegation visited Pakistan to attend the beginning of the Supreme Court hearing of a petition brought by Zulfikar Ali Bhutto to review its decision to uphold the verdict and the sentence, and to appeal to the authorities not to use

the death penalty.

During the military administration of General (later President) Zia-ul-Haq Amnesty International published evidence pointing to a consistent pattern of gross human rights violations in Pakistan: Human rights violations and the decline of the rule of law, issued in January 1982. It expressed particular concern at the suspension of fundamental rights guaranteed under the 1973 Constitution and the restrictions imposed on the judiciary under martial law provisions, and documented reports of widespread detention of prisoners of conscience, unfair trials of political prisoners by military courts, torture of prisoners including political detainees, and the use of the punishments of whipping and death, including public executions. This report was followed by the publication in November 1985 of Pakistan: The trial and treatment of political prisoners convicted by special military courts. With the lifting of martial law in December 1985 military courts were abolished and articles of the constitution guaranteeing certain fundamental rights were restored. However, the eighth amendment to the constitution, introduced before martial law was lifted, indemnified all official acts under martial law regulations, so that prisoners convicted by martial law courts could not challenge the legality of their convictions before the courts. In April 1987 an Amnesty International delegation again visited Pakistan to discuss its concerns with officials of the civilian government of Prime Minister Muhammad Khan Junejo. After the lifting of martial law the government announced that the cases of prisoners convicted by military courts would be reviewed by the executive, but this resulted in the release of few prisoners.

### 3. RECENT DEVELOPMENTS

In May 1988 President Zia-ul-Haq dissolved parliament. He died in an air crash in August 1988, and an interim administration was formed under Acting President Ghulam Ishaq Khan. Elections to the National Assembly were held in November 1988, and Benazir Bhutto assumed office as Prime Minister in December 1988 with a strongly stated commitment to protect and uphold human rights.

Benazir Bhutto's Pakistan People's Party (PPP) has formed the federal government since December 1988, and has also controlled the provincial governments in Sind and North West Frontier. However, in Punjab, Pakistan's most populous province, the PPP formed the opposition in the Punjab Provincial Assembly, where the Islamic Democratic Alliance controls the provincial government under Chief Minister Nawaz Sharif. Since February 1989 the Baluchistan provincial government has been formed by an alliance of the Baluchistan National Alliance (BNA), the Islamic Democratic Alliance and the Jamiatul-Ulema-e-Islam, while the PPP has been in opposition.

Immediately on taking office the Prime Minister announced an amnesty program under which thousands of prisoners were released, including many political prisoners convicted by special military courts, and also requested President Ghulam Ishaq Khan to commute the death sentences pending at that time. A total of 2,029 death sentences were commuted. In April 1989 the government announced that people who had suffered over three months' imprisonment under martial law for political reasons, or who had been victims of torture under martial law, would be compensated by the government, and requested such people to submit applications to the Ministry of Interior. By August 1989, according to a press report, the Interior Ministry had prepared lists of those who qualified for

compensation, but it was not known when payments would start to be made.

Amnesty International welcomed the release of political prisoners and the commutation of the death sentences in December 1988 and asked for the opportunity to visit Pakistan to discuss with federal and provincial authorities the further protection of human rights and the organization's continuing human rights concerns.

The issues discussed during the visit, and a number of recommendations for safeguards, are summarised below.

#### 4. PRISONERS OF CONSCIENCE AND POLITICAL PRISONERS CONVICTED BY SPECIAL MILITARY COURTS

In recent years Amnesty International has been especially concerned about the treatment and unfair trial of prisoners of conscience and other political prisoners convicted by special military courts between 1977 and December 1985, including the fact that these prisoners had no right of appeal to a higher court or tribunal against their convictions. The military courts had not been independent from the martial law authorities. They had restricted defence rights and accepted testimony reportedly extracted under torture as evidence.

Although martial law was lifted in December 1985 and fundamental rights restored to the constitution, prisoners convicted by special military courts remained without judicial redress because their convictions could not be challenged as a result of the adoption of the eighth amendment to the constitution, passed immediately prior to the lifting of martial law. Executive reviews of the cases of certain categories of martial law prisoners announced in 1988, before the change of government, led to the release of only a few political prisoners: Amnesty International recorded two such releases. However, in October 1988 the Supreme Court ruled that, on certain restricted grounds, petitions challenging conviction by a military court could be heard by the provincial High Courts. Several such petitions have been filed, but none have yet been decided to Amnesty International's knowledge.

Many political prisoners convicted by special military courts were among those released under the amnesty program announced by the Prime Minister in December 1988. At that time Amnesty International was working for the release of one prisoner of conscience and investigating the cases of 72 further political prisoners convicted by special military courts. Those released included all but nine of the political prisoners whose cases Amnesty International was investigating. Prisoners convicted of serious criminal offences [1] were excluded from the amnesty, including the nine prisoners who remain under investigation by Amnesty International.

----- [1] On 3 December 1988 the new government announced an 8-point amnesty programme for prisoners convicted by military courts and other prisoners. The press release, published in several newspapers on 4 December 1988, reads as follows: "(1) Commute all death sentences to life imprisonment. (2) Pardon all women prisoners except those convicted of murder. (3) Remit the sentences of all persons who were convicted and sentenced under MLR-31

Recognizing shortcomings in the trial procedures of military courts, the government of Prime Minister Benazir Bhutto constituted a review board to examine the cases of the prisoners convicted by special military courts

who were excluded from the amnesty. The board could recommend release of prisoners to the executive if they found clear evidence of injustice in the records of the case. The board consisted of the Attorney General and two former judges, Justice (Retd) K M A Samdani and Justice (Retd) Fakhruddin Ebrahim, acting on behalf of the Minister for the Interior and the Minister for Law. As explained to Amnesty International's delegation, the board passed its recommendations to the Minister for the Interior and the Minister for Law for confirmation. Where release was recommended the Prime Minister then requested the President to remit the remaining sentence.

The board was not functioning at the time of Amnesty International's visit in August 1989. It ceased working pending the appointment of a replacement for Justice (Retd.) Fakhruddin Ebrahim when he was appointed Governor of Sind in April 1989.

Discussions during the visit made clear that, against the expectations of its members, the review board felt that the great majority of the convictions by special military courts which it had examined were based on evidence which withstood scrutiny. Indeed, according to figures provided by the Minister for Law, the board recommended release in only 69 out of the 700 cases it had examined.

The board has reportedly since reconvened, although Amnesty International does not know exactly when it resumed work. Amnesty International is concerned that the board will not be able to examine the cases of all remaining prisoners convicted by military courts because, as ministers acknowledged, there are no remaining records for a number of these prisoners.

Amnesty International recognises the serious nature of the crimes for which the remaining martial law prisoners were convicted, but remains concerned that the procedures employed by the review board fall short of internationally-recognized standards for a fair hearing, as specified in Article 14 of the International Covenant on Civil and Political Rights. Unless a procedure is established providing such safeguards, the validity of their criminal convictions cannot be assured.

-----in  
absentia. Such persons will, however, have to face trial for the substantive offences for which they will be charged. (4) Remit the sentences of convicts who are above 60 years of age and have undergone imprisonments for five years or more. (5) Remit the sentences of all persons convicted and sentenced by Military Courts for offences not involving drugs, smuggling, corruption, embezzlement, bank frauds, robberies, dacoity, murder and rape. Armed Forces personnel will not be entitled to this. Their cases will be reviewed by the Armed Forces themselves. (6) Grant to all convicts in Pakistan a remission of three months of their sentences. (7) Grant remission from the days of their imprisonment to all persons convicted and sentenced by Military Courts to whom remissions have so far been denied. (8) Direct that in commuting the total period of imprisonment to be undergone by the prisoners convicted and sentenced by Military Courts the period served as under-trial prisoner be included."

Several hundred martial law convicts remain imprisoned. The provincial authorities informed the delegation that at the time of their visit 363 martial law convicts remained imprisoned in Punjab province and 169 in Sind. Amnesty International does not know the figures for North West Frontier Province and Baluchistan and cannot assess what proportion may



have been wrongly charged with criminal offences on politically-motivated grounds. There is uncertainty among human rights organizations in Pakistan as to the number of political prisoners convicted by special military courts who remain in jail.

To ensure that no prisoner is wrongly jailed on the basis of politically-motivated charges following conviction in a trial which fell seriously short of internationally-recognized standards for fair trial, Amnesty International believes that further remedial measures need to be instituted.

The procedures employed by the review board do not ensure that prisoners are granted the defence rights necessary to ensure a fair hearing by internationally-recognized standards: these could include the right of the prisoner to appear before the board and to be represented by a lawyer, and that the board be empowered to request and consider new evidence. Amnesty International acknowledges the integrity and impartiality of the review board, but is concerned that all the evidence pertaining to each case may not be available for the board's consideration at present.

While welcoming the releases so far of many political prisoners unfairly convicted by special military courts, Amnesty International recommends that procedures conforming to internationally-recognized standards for a fair hearing be established to review the cases of remaining prisoners convicted by these courts, in order to establish beyond doubt that there are not political prisoners among them, wrongfully or unfairly convicted of criminal charges brought for political reasons.

#### 4.1 Case histories

Seven martial law prisoners convicted in two separate cases are of particular concern to Amnesty International. They are all members of the Ahmadiyya community, convicted of murder and related offences. Constitutional petitions challenging the validity of the convictions on procedural grounds are pending in both cases.

##### 4.1.1 The "Sahiwal" case

Abdul Qadeer, Nisar Ahmed, Mohammad Haziq Rafiq Tahir, Muhammad Ilyas Munir and Mohammad Dinn were convicted of murder and rioting following a reported attack on their place of worship in Sahiwal, Punjab province, in October 1984. A group of men had come to the Ahmadiyya mosque and started painting out writing on the walls. The caretaker reportedly tried to protect the property and the other Ahmadis present, and finally fired at the men with a shot gun, killing two non-Ahmadis. When questioned by the police the caretaker is reported to have admitted responsibility for firing the shots which caused the deaths. However, at least six further Ahmadis were arrested including, it is said, two or more persons who were not present during the incident. The trial of the seven Ahmadis ended in late April 1985, but the verdict was only announced in mid-February 1986. One person was acquitted, four were sentenced to 25 years' imprisonment and two, Naemuddin (the caretaker) and Muhammad Ilyas Munir, were sentenced to death -sentences which were commuted to life imprisonment in December 1988.

Information received after the sentences were announced indicated that there may have been a serious miscarriage of justice in the review and confirmation procedure required under martial law provisions. According to this information, the

original sentences of the court had been two death sentences and terms of seven years' imprisonment on the four others. The review of the court's findings and sentences by the appropriate Martial Law Administrator resulted in more favourable findings for the accused: the Revision Order required the court to reconsider the convictions "on all the charges which is based on doubtful evidence and as such is not legally sustainable". The Revision Order also noted that Naemuddin, the caretaker, had been convicted of murder but should have been charged with the lesser offence of culpable homicide not amounting to murder, which does not command a death sentence. However, the trial court seems to have disregarded these directives. It maintained the two death sentences, and increased the terms of imprisonment on the other four from seven to 25 years. Finally, in the confirmation minute regarding the two death sentences, signed by President Zia-ul-Haq, the findings against the other four accused were altered to record a conviction for murder with abetment, instead of the original charges of murder with illegal assembly. The confirmation minute provides no explanation for the substitution of these findings.

#### 4.1.2 The "Sukkur" case

In the second case Nasir Ahmad Qureshi and his brother, Rafi Ahmad Qureshi, were sentenced to death for murder by a special military court.

Their death sentences have been commuted to life imprisonment. In May 1985 two people were killed and at least 12 injured during a bomb explosion at a mosque in Sukkur, Sind province. There had reportedly been regular agitation against Ahmadis in Sukkur since April 1984, and the Amir (the head of the Ahmadiyya community) in Sukkur had been stabbed to death in May 1984. Nasir Ahmad Qureshi and Rafi Ahmad Qureshi are his sons.

At least two dozen Ahmadis were arrested in Sukkur following the bomb explosion. All but seven, including the late Amir's sons, were released after about two weeks. Their trial began in November 1985, and concluded in mid-December. However, the verdicts were not announced until March 1986. Five were acquitted, but Nasir Ahmad Qureshi and Rafi Ahmad Qureshi were convicted. The defence counsel alleged several irregularities in the conduct of the police investigation into the case. These included falsification of the date of arrest on police records - allegedly to conceal that the five accused had been shown to the supposed eye-witnesses before the identification parade - and dispute over the time at which the police recorded the First Information Report (FIR) on the incident, on which their investigation was based. The FIR had been lodged by the head of the mosque at which the explosion occurred, and Rafi Ahmad Qureshi and Nasir Ahmad Qureshi were named as having been seen at the time of the offence. However, a FIR recorded some time after an alleged offence occurred cannot be given the same value as evidence as one filed immediately afterwards.

Amnesty International is concerned that the prisoners involved in these two cases were denied the right to a fair trial that they have been unable to appeal against their convictions. The contradictory findings of different martial law authorities increase Amnesty International's concern that the case against the Ahmadis allegedly involved in the Sahiwal case may not have been investigated impartially.

## 5. LEGISLATION PROVIDING FOR IMPRISONMENT OF AHMADIS ON GROUNDS OF CONSCIENCE

The Amnesty International delegation discussed with federal ministers and provincial authorities its concerns regarding legislation introduced in 1984 which provides for the imprisonment of members of the Ahmadiyya community for the practice of their faith.

The Ahmadiyya movement was founded in the nineteenth century by the followers of Mirza Ghulam Ahmed. Ahmadis regard Mirza Ghulam Ahmed as a prophet, and claim to be Muslim. However, they are not recognized as such by the State of Pakistan because they do not recognise the prophet Muhammad as the final prophet. In 1974 the government of Zulfikar Ali Bhutto introduced a constitutional amendment which declared the Ahmadiyya community a non-Muslim minority.

In April 1984 President Zia-ul-Haq promulgated Ordinance XX. This Ordinance amended the Pakistan Penal Code (PPC), introducing Sections 298-B and 298-C, which prohibit Ahmadis from calling themselves Muslims, using Muslim practices in worship and propagating their faith. These new offences became punishable with up to three years' imprisonment and a fine. According to a press report, in Nawai Waqt of 11 September 1988, 3,113 Ahmadis had been charged under Ordinance XX by September 1988. Ahmadis have also been charged for the expression of their faith under Section 295-C PPC, introduced in 1986, which provides a maximum penalty of death for defiling the name of the prophet Muhammad.

Amnesty International takes no position on the definition of a Muslim and the question whether Ahmadis should be considered Muslims or not. Amnesty International's concern is that Ordinance XX provides for imprisonment on grounds of religious conscience, violating the right to freedom of religious expression contained in Article 18 of the Universal Declaration of Human Rights, and contrary to the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief. Indeed, in August 1985 the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities passed a resolution expressing "grave concern at the promulgation of Ordinance XX" and calling for its repeal. Amnesty International, also, urges that Ordinance XX be repealed.

In practice, Ordinance XX facilitates serious harrassment of Ahmadis. Cases are regularly filed against them under Sections 298-B and 298-C PPC for the free expression of their faith. The law is broadly interpreted at local level: numerous criminal prosecutions, which can result in imprisonment, have been opened against Ahmadis for wearing badges imprinted with a verse from the Koran, for example, or for using the greeting assalam-o-alaikum, the most common greeting among Muslims. Beyond this, Amnesty International believes that Ordinance XX has contributed to a climate in which members of the Ahmadiyya community become more vulnerable to other forms of attack or harrassment. For example, in April 1989 Ahmadis residing at Nankana Sahib in Punjab province were reportedly attacked by a group of Muslims who systematically burnt their houses and property. A similar attack reportedly followed at Chak Sikander in Punjab province on 16 July 1989 which resulted in the deaths of three Ahmadis and one Muslim and the destruction of much property belonging to Ahmadis. Amnesty International was not able to investigate these events directly, and is aware that there are conflicting accounts of the sequence of events at Chak Sikander. However, it is concerned by reports that police failed

to take action to protect the lives of those attacked. During their visit, the delegation urged that a full independent inquiry, the results of which should be made public, be held into these killings. Amnesty International remains concerned by reports that by the end of 1989 no such inquiry had been held and that the Punjab provincial authorities had not taken steps to ensure that the many Ahmadis who had fled from their homes at Chak Sikander could return in safety. Furthermore, reports indicate that murder cases registered with the police by each side to the conflict have been treated differently by the authorities. Seventeen Ahmadis were reportedly arrested in connection with the murder of the Muslim, but no arrests have been reported in connection with the case registered by the Ahmadis for the murder of three members of their community.

In situations of ethnic or religious conflict the authorities have a particular responsibility to safeguard the fundamental rights of minorities, including security of the person. Failure to take effective steps to protect these rights may create the impression that the authorities acquiesce in crimes committed against them.

#### 6. ADMINISTRATIVE DETENTION

Administrative detention is a measure used by executive government authorities to detain people without charge or trial. Such powers are often misused to circumvent the process of law and to intimidate and silence opponents of the government. Administrative detention has been extensively abused in Pakistan by successive governments to detain prisoners of conscience and other political prisoners. Administrative detention continues to be used, albeit on a lesser scale, by the present government. In October 1989, the leader of the Sind National Alliance, G M Syed, was placed under an administrative detention order by the Sind provincial authorities following the alleged burning of the Pakistan national flag at Sukkur airport by his supporters. Charges were brought against G M Syed and these supporters for sedition and defiling the national flag.

In Pakistan the Constitution provides for administrative detention for a period of up to three months, which can be extended by a review board to a total of eight or twelve months, depending on the grounds for detention. Article 10 of the Constitution specifies that administrative detention laws will apply to "persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services". The same article removes constitutional safeguards designed to protect the rights of prisoners - that they be promptly given the reasons for their arrest, permitted to consult a lawyer of their choice and produced before a magistrate within 24 hours - from those detained under administrative detention laws. Under Article 10 (5) administrative detainees must be informed of the grounds for their detention within fifteen days. However, facts which the detaining authority consider it would be "against the public interest" to reveal need not be disclosed to the detainee.

The law in Pakistan permits administrative detention on very broadly formulated grounds which are open to abuse. The Maintenance of Public Order Ordinance of 1960 (MPO), which was recently used to detain Sind National Alliance leader G M Syed, empowers the authorities to detain a person for up to three months if they consider him or her to be "acting in any manner prejudicial to public safety or the maintenance of public order". In the past, detention orders under the MPO have been issued

without specific grounds, and fresh detention orders have frequently been issued when the initial period of three months had expired. Other legislation, including the Security of Pakistan Act, 1952, also provides for administrative detention.

The officials who discussed the issue of administrative detention with the Amnesty International delegation agreed that the legal provisions for its use are too broad and are thus open to abuse. However, they did not necessarily see removal of administrative detention powers from legal provisions altogether as being desirable, arguing that their retention was necessary in the interest of safeguarding the integrity and security of Pakistan.

As the UN Special Rapporteur on Administrative Detention has emphasized, administrative prevention should only be used as an exceptional measure, and should not be used to bypass the safeguards of the judicial framework (Report of the Special Rapporteur on Administrative Detention submitted to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1989).

To protect against future abuse of administrative detention, Amnesty International believes that the grounds on which administrative detention orders may be issued should be reviewed, leading to the formulation of precise guidelines designed to ensure that an administrative procedure is not used to detain people who should be charged and tried according to normal criminal law, who do not pose an extreme and imminent threat to security, or who should not be arrested at all. Such guidelines should explicitly prohibit administrative detention for the expression of non-violent political or other beliefs and for the peaceful exercise of the right to freedom of association.

To protect the rights of administrative detainees the government should ensure that they are entitled to all the safeguards contained in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by consensus by the United Nations General Assembly on 9 December 1988, and relevant articles of the International Covenant on Civil and Political Rights (ICCPR). These include the following provisions:

- detainees and their counsel must receive prompt and full communication of any order of detention, together with the reasons for detention;
- detainees must have access at any time to a court empowered to rule without delay on the lawfulness of their detention and order their release if the detention is unlawful;
- they must have immediate and regular access to legal counsel and adequate time and facilities to consult with that counsel.

#### 7. THE FAIR TRIAL OF POLITICAL PRISONERS: TRIALS UNDER THE SUPPRESSION OF TERRORIST ACTIVITIES (SPECIAL COURTS) ACT, 1975

All courts empowered to try political prisoners or to impose the death penalty should conform to internationally-recognized standards for fair trial. Amnesty International has raised concerns with successive governments regarding certain procedures of special courts constituted under the Suppression of Terrorist Activities (Special Courts) Act since their introduction.

Under the Act, special courts have exclusive jurisdiction over certain scheduled offences. These include political acts where violence is not involved. For example, defiling the national flag or removing it without authorization from government property (Section 123-B PPC) is a scheduled offence under the Act, punishable with up to three years' imprisonment and a fine. Sedition is also a scheduled offence under Section 124-A PPC, which reads as follows:

"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to incite disaffection towards the Central or Provincial Government established by law, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."

Offences involving violence such as waging or attempting to wage war against Pakistan, and specified offences involving the use of explosive substances, are also scheduled offences under the Act.

Those officials who discussed the Special Courts with the delegation argued that they follow the normal criminal procedure, but that the possibilities for adjournments during the trial had been limited in order to expedite the trial.

However, examination of the Act shows that some of its procedures do depart from internationally-recognized standards for fair trial as specified in Article 14 of the International Covenant on Civil and Political Rights, in particular by introducing an ambiguity into the presumption of innocence. The provisions of Article 14 include the right of all persons charged with a criminal offence to be presumed innocent until proved guilty according to the law, the right of defendants to examine witnesses against them and to call witnesses on their behalf, and the right to be present for their trial.

The delegates expressed concern that there is a shift in the burden of proof under Section 8 of the Act, such that the accused is presumed guilty if found to be in possession of, or to control, any article which is capable of being used for the commission of any offence under the Act, including non-violent political offences. The accused is also "presumed to have committed the offence" under Section 8 if he or she has been "apprehended in circumstances which lead to . . . a reasonable suspicion that he has committed" a scheduled offence. Most of those with whom the delegates discussed the Act appeared unaware of this provision, and also appeared to believe that the Act applied only to violent offences. From further discussion of Section 8 with officials in Pakistan, and from examination of the comments on the Act and the interpretation of Section 8 by the courts, Amnesty International acknowledges that in practice the presumption of guilt is conditional: the prosecution must prove that the accused was in possession of the article concerned, or was apprehended in the specified circumstances. Once that is proven, however, the burden of proof of innocent intent appears to be laid upon the accused. The provisions of Section 8 thus introduce an ambiguity into the presumption of innocence, which is not in accordance with the observation of the Human Rights Committee in General Comment 14 paragraph 7 that the presumption of innocence is "fundamental to the protection of human rights", and that "the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt." [2]

The use of special courts constituted under the Act appears to be increasing, especially in Sind province. According to a report in Dawn in January 1990, 419 cases have been referred to these courts in Sind. These include the cases of G M Syed and his followers, who were charged with defiling the national flag and sedition. However, Amnesty International does not know the number of cases referred to these courts involving non-violent political offences.

Amnesty International recommends that the trial procedures under the Suppression of Terrorist Activities (Special Courts) Act be reviewed and brought fully into accordance with internationally-recognized standards for fair trial.

## 8. TORTURE

Torture in Pakistan has been an issue of long-standing concern to Amnesty International. The organization has raised with successive governments reported cases of the torture of criminal suspects in police custody, and of political prisoners by police, the military, and prison officers. During the most recent period of martial law there were frequent reports of the systematic torture of political prisoners in military detention centres, where prisoners were frequently held incommunicado and tortured during interrogation. The treatment of political prisoners during this period was publicly aired shortly after the change of government in December 1988 through publication in the national press of the testimonies of released prisoners.

Methods of torture have included suspending prisoners from their ankles; beating prisoners on the soles of their feet, ankles, knees and head; electric shocks; burning the body with cigarettes; pulling out hair; threatening execution and threatening to harm relatives of the prisoner; depriving prisoners of sleep for up to 5 days and of food for up to 36 hours. In some cases torture has reportedly resulted in death, and in others it has resulted in severe injury requiring medical intervention. Those responsible for torture have rarely been brought to justice.

Amnesty International believes that, while not eradicated, the practice of torture is now reduced in prisons in Pakistan. The organization remains concerned, however, that effective steps have not been taken to prevent its recurrence by bringing to trial persons found

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 ] The Human Rights Committee is the body established by the International Covenant on Civil and Political Rights to monitor implementation of the Covenant's provisions.

responsible for past offences. The delegation was informed of investigations into certain past cases, but was told of no case in which a law-enforcement officer or prison official had actually been brought to trial. It found that the follow-up to the investigation was inadequate to fulfil a preventive role. In Sind, for example, the provincial authorities provided a report on their investigations into three cases of torture which Amnesty International had raised with the authorities earlier. In only one of these cases - the torture in 1987 of Wazir Leghari - had officials been charged with a criminal offence, and they had not yet been brought to trial. The torture of Wazir Leghari in Dadu District Jail and in Hyderabad Central Jail had led to the amputation of his legs, as the report by the Sind authorities acknowledged. Two prison officers had been charged with

causing grievous harm and had been suspended from service, but both were reinstated without having been tried by a court.

Torture in police custody is still regularly reported, as well as the rape of women detainees. Scores of people were reportedly tortured in police custody during 1989, including at least eight women who were allegedly raped. In July two women were allegedly raped in police custody in Mandi Bahauddin Saddar police station, Punjab province. They were reportedly beaten with leather thongs, stripped and raped by six or seven police officers in turn. After a protest demonstration charges were brought against the police officers allegedly involved but it is not known to Amnesty International whether these officers were arrested and taken into custody. In Sind province an inquiry was called into the alleged rape of Saima Anjum by police at Landhi in December 1988, the results of which are not known to Amnesty International.

Amnesty International has elaborated a body of safeguards and remedies against torture which it calls upon all governments to implement. These include many of the recommendations made by the Human Rights Committee in General Comment 7 (16) and others included in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international human rights standards.

First, Amnesty International recommends official condemnation of torture at the highest levels, including by the head of state, head of government and heads of different security forces. Prompt ratification of or accession to the Convention Against Torture would demonstrate the government's commitment in this regard to both international and national communities.

Steps to indicate official condemnation of torture have already been taken by the Ministry of the Interior, which established a Cell to Monitor Police Atrocities in August 1989, signalling that the government believes the rights of detainees, and the law itself, must be respected. The Punjab provincial authorities also told the delegates that they had recently established an anti-torture cell within the police department to monitor and investigate cases of torture and take action against those responsible. No trials had yet taken place as a result of its investigations of police personnel responsible for torture. Steps to prevent torture in prisons included unannounced visits to prisons in Sind undertaken by the Governor, the Minister for Jails, and other senior officials, an example which Amnesty International hopes will be followed in other provinces.

A further demonstration of the government's commitment to halt torture, which the delegates proposed to federal ministers, would be to introduce torture as a specific offence in criminal law, making both the attempt to commit torture and complicity or participation in torture criminal offences. The delegates further proposed that torture be defined more broadly in Pakistan law than it is at present, in keeping with the definition given in Article 1 of the Convention Against Torture [3]. Article 1 prohibits a significantly wider range of practices than does Article 14 (2) of the Pakistan Constitution, which prohibits torture only for the purpose of "extracting evidence".

Official condemnation of torture needs to be given practical effect by the implementation of safeguards. Certain safeguards currently exist in law in Pakistan, but they are too few, and not always enforced, as discussed below.



As torture most frequently occurs during the first few hours or days of detention, Amnesty International recommends that incommunicado detention be strictly limited, and that prompt and regular access to detainees by a lawyer, doctor and family members be ensured. It is also important that all prisoners be brought before a judicial authority promptly after being taken into custody.

The Code of Criminal Procedure requires that prisoners be brought before a magistrate within 24 hours of arrest to assess the necessity for further remand in police custody and protect the detainee from ill-treatment. This requirement is not always enforced at present: magistrates are known to have passed remand orders without requiring that the prisoner be produced before them. In February 1989 the Sind High Court ruled that such practice by magistrates was "illegal", following the submission of a petition on behalf of a criminal suspect who alleged he had been badly beaten in police custody, and that the magistrate had issued a remand order without requiring to see him.

Detainees subjected to torture are often held in custody and interrogated by the same agency. In Pakistan, magistrates can remand suspects to police custody for a total period of 15 days while investigations continue. Amnesty International recommends review of this provision, believing that the formal separation of authority over detention and interrogation allows some protection for detainees by providing a degree of supervision of their welfare by an agency not involved in their interrogation.

It is also important that no internal security organizations be given responsibility for both the detention and interrogation of political suspects, and that secret detention is banned. All prisoners should be held in publicly recognized places of detention, and accurate information on

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 3] Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment reads as follows: "For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

their whereabouts should be made promptly available to relatives and lawyers.

Safeguards during interrogation and custody should also be implemented. There should be a clear chain of command within the agency which indicates who is responsible for supervising interrogation procedures and for disciplining officers who violate these procedures. At the moment of their arrest, or very soon after, prisoners should be informed of their rights, including the right to lodge complaints about their treatment. Those arrested should be offered a medical examination immediately after arrest and should be able to request further examinations regularly thereafter.

The government could further demonstrate its commitment to prevent

torture by publishing the regulations governing interrogation procedures currently in force, periodically reviewing procedures and practices, and inviting submissions and recommendations on these procedures from civil rights groups, defence lawyers, bar associations and other interested parties.

A further safeguard is the establishment of a regular system of visits to places of detention and interrogation by independent individuals. The delegation was interested to learn of the intent to establish local Citizens - Police Liaison Committees to visit and monitor police stations in Sind, at least four of which have since been established on an experimental basis. Amnesty International urges other provincial authorities to consider instituting such measures.

The independent and impartial investigation of all complaints and reports of torture is an important preventive measure. The investigating body should be able to act on its own initiative, and complainants and witnesses should be protected from intimidation. The findings should be made public, and action should be taken to bring to justice those who commit, incite or are otherwise implicated in torture. All victims of torture should receive medical rehabilitation and financial compensation from the state, commensurate with the damage suffered. Amnesty International saw as a welcome move in this direction the government's announcement of February 1989 that people who had been imprisoned and tortured for political reasons under martial law would be compensated.

Amnesty International believes that all law-enforcement personnel involved in the arrest, interrogation or treatment of prisoners should receive full training in the prohibition of torture in international and national law, and be instructed to refuse to obey any order to torture. In particular they should receive training on the requirements of the Code of Conduct for Law Enforcement Personnel. Amnesty International welcomed the desire expressed by Prime Minister Benazir Bhutto to combat torture by training security forces personnel in updated methods of law enforcement.

Given their particular vulnerability, special safeguards should be implemented to avoid abuse of women and children in custody. These dangers were highlighted in a directive given by a judge of the Lahore High Court in July 1989, following the abuse of a girl in a police station, that women should not be detained in police stations and should always be kept in judicial custody for their protection. Further safeguards to protect women and children should also be implemented: a female officer should be present during all interrogation of women detainees, and children should not be questioned other than in the presence of a parent or guardian.

#### 8.1. CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Cruel, inhuman or degrading treatment or punishment is prohibited in such international instruments as the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment and Article 7 of the International Covenant on Civil and Political Rights. As the Human Rights Committee has said in its General Comment on Article 7, punishments considered cruel, inhuman or degrading include lashing and amputation. Amnesty International also believes that the death penalty constitutes a cruel and degrading punishment.

The punishment of stoning to death is one form representing an extreme measure of cruelty.

The Body of Principles in Principle 6 defines "cruel, inhuman or degrading treatment or punishment" broadly, extending its application beyond corporal punishment. It specifies that the term "should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time".

Prison conditions which fall short of the requirements of internationally-recognized standards such as the UN Standard Minimum Rules for the Treatment of Prisoners and which can be considered "cruel, inhuman or degrading treatment", are discussed separately below (8.2).

The punishment of whipping was introduced under several martial law regulations after the military takeover of July 1977, and was inflicted on political prisoners, among others, sometimes in public. Martial law regulations issued in July 1977 also introduced the amputation of a hand as punishment for theft, highway robbery and dacoity (banditry). Although the sentence of amputation has been passed, no amputation has been carried out to date in Pakistan to Amnesty International's knowledge.

Although no longer available under martial law regulations, the punishments of whipping, amputation and, additionally, stoning to death remain on the statute book under the Islamic Hudood Ordinances of 1979. Of these, only the punishment of whipping has been inflicted.

The sentence of stoning to death can be imposed for adultery under the Offence of Zina (Enforcement of Hudood) Ordinance of 1979, but the rules of evidence require that for this sentence to be passed there must be four adult male Muslim witnesses to the offence or that the accused confesses. Although the sentence of death by stoning has been passed in several adultery cases - for example, seven people are known to have been sentenced to death by stoning in 1989 - to date the sentence of death by stoning has not been upheld by the Federal Shari'a court (the court of appeal in cases brought under Islamic law). Nobody has been executed by this method outside the Tribal Areas of Pakistan. Amnesty International knows of one execution by stoning which took place in Mohmand Agency in northwest Pakistan in September 1987, when a man was stoned to death after having been sentenced by a jirga (an assembly of tribal elders) for involvement in a bomb blast in which a child was killed. The Tribal Areas are under separate administration and do not come under the jurisdiction of the Supreme Court, or of any provincial High Court.

Amputation is provided as punishment for theft, highway robbery and dacoity under the Offences Against Property (Enforcement of Hudood) Ordinance of 1979. This punishment has not been carried out to date.

Whipping is provided for a range of offences under the Hudood Ordinance, including sexual offences and theft. As a punishment for certain offences it is inflicted publicly. Although Prime Minister Benazir Bhutto said in her speech at Harvard University in June 1989 that whipping is no longer practiced in Pakistan, the sentence continues to be passed and two instances of public whipping were reported during 1989. In January 1989 Fateh Mohammad, alias Fatto, received 30 lashes publicly in Haroonabad, Punjab province, as a punishment for rape.

In December 1989 Mohammad Taj was also publicly lashed 30 times as a punishment for rape in Rawalpindi, Punjab province.

Whipping is also provided under the Pakistan Prison Rules as a punishment for major offences against the rules, in contravention of Rule 31 of the Standard Minimum Rules for the Treatment of Prisoners which prohibits corporal punishment for disciplinary offences.

The delegation discussed the punishments of whipping, amputation and stoning to death with federal and provincial authorities. They stated Amnesty International's opposition to these penalties on the grounds that they constitute cruel, inhuman or degrading punishment, and urged that they be abolished. Different views on this controversial issue were expressed to the delegates.

Some officials felt the punishments should not be abolished because they are provided under Islamic law; others expressed support in principle for abolition but indicated that abolition could not be expected in the near future. The delegation was told that the federal government had formed a committee to review the Hudood Ordinance, including the punishments it provides, which had not yet concluded its work.

#### 8.2. Cruel, Inhuman or Degrading Treatment or Punishment in Prisons

Amnesty International has expressed concern about harsh prison conditions to successive governments of Pakistan. In recent years it expressed particular concern that political prisoners have been held without precise charge for periods of up to three and a half years in conditions which fail to comply with the domestic provisions of the Pakistan Prison Rules or internationally-recognized standards such as the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. According to reports, some prisoners did not receive necessary medical treatment, were denied visits by relatives, were beaten in prison and were given inadequate food. Considerable numbers of prisoners have been held in bar shackles and fetters, though the use of these is prohibited by the Standard Minimum Rules.

The delegates raised particular concern about reports of the continuing use of fetters on prisoners. The Pakistan Prison Rules permit the use of handcuffs and link or bar fetters on prisoners as instruments of restraint and as punishment for offences against the prison rules. Several officials, both federal and provincial, expressed the view that fetters are necessary restraints on dangerous criminals to prevent their escape from jail, a view that is not reflected in internationally-recognized standards and which Amnesty International does not accept. Article 33a of the Standard Minimum Rules for the Treatment of Prisoners only permits restraints, but not chains or irons, to be used on prisoners during transit to prevent their escape.

The Amnesty International delegation also raised reports that some children are kept in fetters in Punjab jails, and was told by the Punjab authorities that children in fetters would have dacoity charges against them. In Sind the authorities said they were trying to reduce the use of fetters, and in North West Frontier Province they said that bar fetters were no longer in use.

Amnesty International notes that the Report on Prison Reforms, submitted to President Zia-ul-Haq in 1985 by the Cabinet Committee appointed to examine the state of the prison system, recommended an immediate end to the excessive use of bar fetters as prison punishment. It found that bar fetters often "made a prisoner more hostile, defiant and restive", and said that they "be used only as the last resort and their use

be interpreted . . . as the 'failure' of the Superintendent in controlling the prisoner through persuasion and indoctrination".

Amnesty International considers the use of bar fetters, shackles and chains to constitute cruel, inhuman or degrading treatment, in contravention of Article 33 of the Standard Minimum Rules, and recommends that their use, either as instruments of restraint or of punishment, be abolished as a matter of urgency.

The delegates were told by the federal authorities and by the Sind provincial authorities of plans to revise the Prison Rules and to improve prison conditions.

A committee has been formed to undertake this task, and Amnesty International hopes that it will be given the facilities to pursue its review without delay, in order that improvements can be swiftly implemented.

Amnesty International is not an organization specialising in prison reform and cannot provide detailed recommendations for the review of the prison rule book. It recommends that if such advice is sought, the government consult an appropriate international humanitarian organization for assistance in improving conditions and setting firm standards based on the Standard Minimum Rules for the Treatment of Prisoners, the International Covenant on Civil and Political Rights, the Code of Conduct for Law Enforcement Personnel, and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. (Appendix 1 lists the Pakistan Prison Rules which Amnesty International has identified as contravening internationally-recognized standards.)

The Procedures for the Effective Implementation of the Standard Minimum Rules, approved by the Economic and Social Council of the United Nations by its resolution 1984/47 of 24 May 1984, recommend that the Rules be embodied in national legislation and regulations, "subject, as necessary, to their adaptation to the existing laws and culture but without deviation from the spirit and purpose of the Rules." Included in the Standard Minimum Rules are requirements that all prisoners be provided with adequate light; decent sanitation; wholesome food of adequate nutritional value for health and strength which is well-prepared and served; readily-available drinking water; and adequate medical and dental services. The rules prohibit all corporal and other forms of cruel, inhuman or degrading punishment. They also prohibit the use of restraints of any kind in punishment, and of chains or irons in any circumstances.

## 9. THE DEATH PENALTY

One of the first steps taken by Prime Minister Benazir Bhutto when she assumed office in December 1988 was to request the President to commute all outstanding death sentences to life imprisonment. A total of 2,029 people benefited. Since then, there have been no known executions in Pakistan. However, death sentences which had not been confirmed by the High Court before December 1988 appear not to have been commuted: Amnesty International noted four cases reported in the press during 1989 in which the High Court upheld death sentences passed before December 1988. The courts continue to pass sentences of death, especially for murder, and there has been public pressure to extend the death penalty to the offences of drug-trafficking and kidnapping for ransom.

At present the death penalty can be imposed for the following offences under the Pakistan Penal Code:

- murder (Section 302)
- waging war, or abetting the waging of war, against the state (Section 121)
- abetting mutiny (Section 132)
- kidnapping a person under the age of 10 with the intent of murder or causing grievous bodily harm (Section 364-A)
- dacoity [robbery by five or more people] (Section 396)
- hijacking or abetting hijacking (Section 402-B)
- harbouring a hijacker (Section 402-C)
- defiling the name of the prophet Muhammad (Section 295-C)

The Explosive Substances Act of 1908, the Official Secrets Act of 1923 and the Army Act of 1952 also provide the death penalty as maximum punishment. Under Islamic laws introduced in 1979, sexual offences and murder in the course of robbery can be punished by death. Stoning to death was also introduced as punishment for certain forms of adultery.

Death sentences are most commonly passed for murder, and are followed by an automatic appeal to the provincial High Court. A further appeal can be made to the Supreme Court on the application of the prisoner. Prisoners sentenced to death under Islamic law must appeal to the Federal Shari'a Court instead. Once judicial channels for appeal have been exhausted the appropriate provincial government can commute death sentences under Section 54 of the Pakistan Penal Code and Sections 401 and 402 of the Code of Criminal Procedure. The federal government, also, is empowered to commute death sentences under Section 54 of the Pakistan Penal Code. Further, Article 45 of the Constitution of Pakistan empowers the President to commute "any sentence passed by any court, tribunal or other authority".

In discussions on the death penalty, the delegates stressed that Amnesty International's unconditional opposition to capital punishment is based on the view that it violates the right to life and that it is an extreme form of cruel, inhuman or degrading treatment or punishment. In addition to execution itself, Amnesty International also considers the experience of awaiting execution, which has been likened to a living death, to be a measure of extreme cruelty.

Several officials expressed their personal opposition to the death penalty, but none considered that abolition was likely in the foreseeable future. However, the delegation was informed that the federal cabinet opposed the extension of capital punishment to new offences, preferring to find alternative punishments.

Officials in Punjab said that they advocate the introduction to the penal code of compensation to the aggrieved party, if they are agreeable, as an alternative to capital punishment in keeping with Islamic principles.

The view was frequently expressed that the death penalty was necessary to combat rising criminal violence and to satisfy public demand for the authorities to take decisive action to curb this trend. Against these arguments, however, Pakistan's own experience of increased use of the death penalty during the last period of martial law should demonstrate that execution is not effective in deterring violent crime. Indeed, empirical research from other countries shows that the death penalty is no more effective as a deterrent than other punishments. Furthermore, when execution is available as a punishment it is open to political abuse as the execution of a former Prime Minister of Pakistan tragically underlined -

and is often imposed disproportionately on the poor and disadvantaged who lack the resources necessary to prepare an adequate defence. Execution denies the accepted legal principle of rehabilitating the offender. In addition - whatever the safeguards provided by the legal system - execution is irrevocable and there is always the risk that an innocent person could be executed.

The law of Pakistan does not prohibit the execution of children, or of people who were minors at the time they committed the offence. During periods of martial law in Pakistan minors have been executed. For example, in April 1981 an eighteen-year-old youth named Wajid was hanged at Kot Lakhpat Jail in Lahore.

He had been sentenced to death by a special military court for dacoity and murder allegedly committed two years earlier. Such executions contravene Article 5 of the International Covenant on Civil and Political Rights, which reads: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age . . .".

Amnesty International campaigns unreservedly for the abolition of the death penalty. As steps towards abolition in Pakistan it proposed that execution be prevented by exercise of the power of clemency by the relevant executive authorities; that the execution of people who were minors at the time of the alleged offence should be prohibited in law; and that the range of offences subject to the death penalty should be gradually reduced. Such steps would accord with the UN General Assembly Resolution of 8 December 1977 "that . . . the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment . . .".

#### 9.1. SPECIAL COURTS FOR SPEEDY TRIALS AND THE DEATH PENALTY

All death sentences are of concern to Amnesty International, but those imposed after trials which did not meet internationally recognized standards of fair trial provide additional cause for concern. Many death sentences in Pakistan were imposed following trials before Special Courts for Speedy Trials which appear to have followed inadequate procedures. These courts were introduced in 1987 and in the first six months of their existence over 50 people were sentenced to death, in some cases after trials lasting only two to three days.

Amnesty International had expressed concern to the previous government about the procedures employed under the Special Courts for Speedy Trials Act of 1987. These courts - which are no longer sitting - were established to try offences of murder and of dacoity with murder, or with attempt to cause death or grievous harm, which provincial governments deemed "gruesome, brutal and sensational in character or shocking to public morality" or which they considered had "led to public outrage or created panic or an atmosphere of fear or anxiety amongst the public or a section thereof". In October 1988 the list of scheduled offences was extended to include assault on women and various kidnapping offences.

Speedy trial courts were presided over by a serving or former high court judge, or someone qualified to be a high court judge, and could pass any sentence, including the death penalty. Appeals against the sentences of these courts could be made to the High Court within seven days of the judgment, and then to the Supreme Court.

The Act departed in some respects from normal criminal procedure

designed to protect the rights of defendants. For example, the provincial government could transfer cases pending before an ordinary court to a special court if it thought it in the "public interest" for the cases to be decided speedily. There was no provision for witnesses to be recalled and reheard if the judge changed during the course of the trial, or if a case was transferred from one special court to another. The court could not adjourn except "in the interest of justice", and an adjournment could be for no more than two days, which could adversely affect the presentation of witnesses before the court.

Also, once a case had been consigned to a speedy court no other court could then exercise jurisdiction.

The Act remained in force initially for one year in the first instance, but was extended for a further year in October 1988 by Presidential Ordinance.

For an Ordinance to remain in force it must be approved by the National Assembly within 120 days of its promulgation. Following the change of government in December 1988 the Ordinance was not placed before the National Assembly for approval, and it thus lapsed in February 1989.

Nevertheless, at the time of Amnesty International's visit in August 1989, speedy courts continued to sit in Punjab province, despite the view of the federal government that their jurisdiction had lapsed with the lapsing of the Ordinance.

In the view of the Punjab government, however, as explained to the delegates, the amendment to the original Act which extended the life of speedy courts for a further year still stood, despite the lapsing of the Ordinance under which that amendment had been made. The Punjab authorities thus argued that speedy courts could continue to sit until November 1989. Over a hundred petitions were filed in the Lahore High Court challenging the continuation of speedy courts and the sentences imposed after the expiry of the Ordinance. In late September 1989 the Lahore High Court decided that the continuation of speedy courts had been unlawful after February 1989, and that the sentences passed since then had no legal effect. However, in late October 1989 the Supreme Court suspended the operation of this judgment and granted leave to the Punjab Government to appeal against it. The status of the convictions, including the death sentences, passed by speedy courts after February 1989 remains uncertain, to Amnesty International's knowledge, until this appeal is heard.

The Punjab authorities argued that Amnesty International's concern with the imposition of death sentences was a separate issue from the fairness of the trial procedures. They argued that lengthy delay in trial proceedings is itself an injustice, that quick disposal of cases was necessary, and that death sentences passed by these courts are anyway subject to the same appellate process as death sentences passed by other courts. They felt that speedy trial was necessary in cases of heinous crime to overcome both the lengthy delays involved in bringing cases before the ordinary courts and the growing public concern that serious offenders were not being brought to justice. They also believed it to have a deterrent effect, and argued that it reduced the possibility of justice being subverted by limiting the possibility of external influence being brought to bear on witnesses and others involved in the trial.

The selection process was described to the delegates in some detail. It took place in the Home Secretary's department, where the newspapers were scanned daily for "sensationalized" cases, this being taken as the first sign of public alarm. The District Magistrate in the relevant area was then asked for his opinion of the case, and with his agreement the case was sent for speedy trial.

About 99 per cent of cases sent for speedy trial were said to have been selected in this way, with the remainder being sent



at the initial request of the District Magistrate. Between 80 - 90 per cent of cases selected from the press were said to be found appropriate for speedy trial.

Amnesty International remains concerned that people have been sentenced to death by speedy courts which failed to provide adequate safeguards for the defence. It is not convinced that the selection process as described by officials in the Home Department did not create a presumption of guilt. The courts appeared to be designed to reach fast convictions: advertisements sponsored by the Government of Punjab which appeared in the national press following the enactment of the Special Courts (Speedy Trials) Act highlighted only cases in which criminals had been sentenced to death in trials lasting two to four days.

The balance between satisfying public demand for decisive and speedy action in cases of serious crime, and ensuring that fundamental principles of justice are maintained, is delicate. The defence of these principles becomes all the more important when certain crimes have been singled out and "sensationalized" or have caused "public outrage". Under these circumstances the pressure to convict and impose harsh sentences such as the death penalty may be great. However, when the death penalty can be imposed, the authorities have a particular duty to ensure that minimum safeguards for fair trial - which include the requirements that all persons be treated equally before the courts and that they have adequate time and facilities to prepare their defence and to have witnesses called on their behalf - are not compromised in the interest of satisfying public opinion.

#### 10. RATIFICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

One of the first steps often taken by a new government after a period of serious human rights violations is to announce its intention to ratify or accede to international human rights instruments. Ratification or accession not only demonstrates the government's intention to respect and uphold human rights, but also ensures that in future each national administration will be under an international obligation to guarantee specific and fundamental human rights, no matter who is in power. Ratification or accession also affirms to the international community the government's determination to respect the dignity and worth of the human person.

Amnesty International has urged successive governments of Pakistan to ratify international human rights instruments, and the delegation was encouraged by the assurance of several ministers that the government intends to do so. In particular the delegation welcomed the Foreign Ministry's assurance that it has recommended ratification without reservation of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Since then, the Government of Pakistan has informed the United Nations General Assembly that it is actively pursuing the question of Pakistan's accession to these instruments (Statement by the Pakistan delegation before the Third Committee of the Forty-fourth Session of the General Assembly, November 1989).

Amnesty International welcomes this statement and hopes that the government will ratify the ICCPR, the ICESCR and the Convention against Torture at the earliest opportunity, and that it will promptly implement the provisions of these instruments. Amnesty International also hopes the government will actively consider accession to the two Optional

Protocols to the ICCPR. The First Optional Protocol establishes a procedure whereby individuals may submit a written complaint to the Human Rights Committee alleging that their rights under the ICCPR have been violated. The Second Optional Protocol is the world's first pact of universal scope aimed at ending the death penalty.

## 11. SUMMARY OF AMNESTY INTERNATIONAL'S RECOMMENDATIONS

### Recommendation 1

Political Prisoners Convicted by Special Military Courts: Amnesty International recommends that procedures conforming to internationally-recognized standards for a fair hearing be established to review the cases of remaining prisoners convicted by special military courts to establish beyond doubt that there are not political prisoners among them, wrongfully or unlawfully convicted of criminal charges brought for political reasons. It recommends the urgent review of the prisoners listed above convicted in the "Sahiwal" and "Sukkur" cases.

### Recommendation 2

Legislation Providing for Imprisonment on Grounds of Conscientiously-held Beliefs: Amnesty International recommends that all legislation providing for imprisonment on grounds of non-violent conscientiously held beliefs be repealed, including Ordinance XX which makes the peaceful practice of the Ahmadiyya faith an imprisonable offence.

### Recommendation 3

Administrative Detention Provisions: Amnesty International recommends that the government review the provisions for administrative detention, and that it only be retained for use as an exceptional measure, if it is retained at all. If the powers for administrative detention are retained, precise guidelines should be formulated to ensure that an administrative procedure is not used to detain people who should be charged and tried according to normal criminal law, who do not pose an extreme and imminent threat to security, or who should not be arrested at all. The guidelines should explicitly prohibit administrative detention for the expression of non-violent political or other beliefs and for the peaceful exercise of the right to freedom of association and peaceful assembly. Administrative detainees should receive prompt and full communication of any order of detention, together with the reasons for detention; they should have prompt access to a court empowered to rule without delay on the lawfulness of their detention and order their release if the detention is unlawful; they should have immediate and regular access to legal counsel, and adequate time and facilities to consult with that counsel.

### Recommendation 4

The Fair Trial of Political Prisoners: Amnesty International recommends that the Suppression of Terrorist Activities (Special Courts) Act, under which people can be tried for non-violent and other political offences, be reviewed and brought fully into line with internationally-recognized standards for fair trial. In particular, it recommends amendment of Section 8, under which the accused can be presumed guilty in certain circumstances; that there be provision for the recall of witnesses who have already been heard if the composition of the court is changed; and that the trial of a person in their absence be prohibited.

### Recommendation 5

The Prevention of Torture: Amnesty International recommends that further safeguards against torture than exist at present be introduced and that all safeguards be enforced. These include:

- prompt ratification and implementation of the United Nations Convention Against Torture;
- the introduction of torture as a specific offence under the Pakistan Penal Code, including both the attempt to commit torture and complicity or participation in torture;
- the strict limitation of incommunicado detention, with prompt and regular access to detainees by a lawyer, doctor and family member guaranteed;
- enforcement of the requirement that detainees be promptly brought before a magistrate;
- the formal separation of authority over detention and interrogation;
- the prompt provision of accurate information on the whereabouts of prisoners, who should be held in publicly recognized places of detention, to relatives and lawyers;
- informing prisoners of their rights immediately after arrest, and offering them a medical examination;
- the publication of interrogation procedures currently in force;
- the establishment of a regular system of visits to places of detention by individuals independent of the detaining authorities;
- the independent and impartial investigation of all complaints and reports of torture, the findings of which should be made public;
- bringing to justice those who commit, incite or participate in torture;
- the compensation and medical rehabilitation of victims of torture;
- the instruction of all law-enforcement personnel in the prohibition of torture in international and national laws;
- the provision of special measures to protect women and children in custody, including that women only be interrogated in the presence of a female officer and that children should not be questioned other than in the presence of a parent or guardian.

### Recommendation 6

The Prevention of Cruel, Inhuman or Degrading Treatment or Punishment:

Amnesty International recommends that all punishments that are cruel, inhuman or degrading by internationally-recognized standards be abolished, in particular the punishments for criminal offences of whipping, amputation and death by stoning. It also recommends the removal from the Pakistan Prison Rules of provisions for the use of chains or irons as instruments of restraint or punishment, and for whipping in punishment for violation of the Prison Rules.

The organization recommends that the Pakistan Prison Rules be revised and brought into conformity with internationally-recognized standards on the treatment of prisoners, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, and the International Covenant on Civil and Political Rights.

#### Recommendation 7

The Death Penalty: Amnesty International recommends that the death penalty be abolished. As steps towards that end, it recommends that clemency be granted to condemned prisoners by the relevant executive authorities, that legislation be introduced prohibiting the execution of minors and of those who were minors at the time the alleged offence was committed, and that the range of offences subject to the death penalty be progressively reduced. Amnesty International further recommends that there be no possibility of the imposition of the death penalty by courts whose procedures fall short of internationally-recognized standards for fair trial. Finally, it recommends accession to the Second Optional Protocol to the ICCPR.

#### Recommendation 8

Ratification of International Human Rights Instruments: Amnesty International recommends that the government promptly ratify or accede to, and implement, the instruments which it has said it is actively considering: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and othe Cruel, Inhuman or Degrading Treatment or Punishment. The organization also recommends that the government consider accession to the two Optional Protocols to the ICCPR.

APPENDIXPakistan Prison Rules providing for cruel, inhuman or degrading treatment or punishment of prisoners in contravention of internationally-accepted standards

The prison rules listed below provide forms of treatment or punishment of prisoners which by internationally-recognized standards are considered cruel, inhuman or degrading. These rules are concerned with the use of fetters and other restraints, and of the punishment of whipping.

In addition Amnesty International opposes the death penalty, which it considers a cruel, inhuman and degrading punishment in itself and a violation of the right to life. Chapter 14 of the Pakistan Prison Rules applies to prisoners under sentence of death. It is not reproduced here.

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