

Pakistan

Human rights abuses in the search for *al-Qa'ida* and Taleban in the tribal areas

1. Introduction

Amnesty International is concerned that during the two-week long operation in March 2004 intended to remove people believed to be associated with the Taleban and *al-Qa'ida* from South Waziristan in the tribal region of Pakistan, a range of human rights violations were committed.¹ They included arbitrary arrest and detention, possible unlawful killings and extrajudicial executions and the deliberate destruction of houses to punish whole families when some of their members were alleged to have harboured people associated with the Taleban or *al-Qa'ida*. Tribal fighters who may be associated with the Taleban or *al-Qa'ida* appear to have taken - and in some cases killed - hostages.

The security operation in Pakistan's border region with Afghanistan, the largest operation since troops entered the semi-autonomous tribal region in early 2002 to seal the border against people fleeing the military action in Afghanistan, focused on a small area in South Waziristan.² Throughout the operation, the Pakistan army authorities maintained a high level of secrecy. Several journalists who were trying to cover the security operation in the

¹ Though Pakistan closed its western borders in the wake of the events of 11 September 2001 and more specifically after the beginning of the military action in Afghanistan initiated by the US-led coalition on 7 October 2001, hundreds if not thousands of people associated with *al-Qa'ida* and the Taleban are widely believed to have slipped through the long and porous border. Some are believed to have settled amongst the tribes with whom they have an ethnic affinity, others are believed to have coerced or paid local people to accommodate them.

² The Constitution of Pakistan lays down the distinct and semi-autonomous status of the Federally Administered Tribal Areas (FATA); Article 247 states that the higher judiciary of Pakistan has no jurisdiction there. Most criminal laws of Pakistan do not apply and criminal jurisdiction is administered through the Frontier Crimes Regulation of 1901 which recognizes communal criminal responsibility and collective punishments. There are seven FATAs along the border with Afghanistan, divided fairly arbitrarily from their fellow Pashtuns in Afghanistan by the 2,240 kilometre Durand Line. They are the Bajaur, Mohmand, Khyber, Orakzai, Kurram, North Waziristan and South Waziristan Agencies. Their about three to four million inhabitants, mostly Pashtuns, live within several dozen tribes and subtribes who fiercely defend their autonomy. Through tribal solidarity, which values hospitality, revenge and male honour in accordance with the unwritten code, the Pashtunwali (the way of the Pashtuns), the tribal territories have reportedly been a haven for the Taleban, who were largely Pashtun, and their *al-Qa'ida* allies. For details see: F. Tanguay-Renaud: "Post-colonial pluralism, human rights and the administration of justice in the Federally Administered Tribal Areas of Pakistan", *Singapore Journal of International and Comparative Law*, 6(2002)1.

tribal areas were arbitrarily detained and had their professional equipment taken away or destroyed.

Pakistani authorities have stated that though the operation in South Waziristan involved military personnel, it was not a military action. Acting Foreign Secretary Tariq Usman on 29 March informed the press that the people arrested over the previous two weeks were “not considered prisoners of war but criminals” who had been arrested by the army. He said that the arrests were part of an “anti-terrorist operation” carried out by armed forces acting in aid of the civil administration.³

Amnesty International believes that actions such as those carried out during the law enforcement operation in South Waziristan are governed by international human rights law and standards. Amnesty International acknowledges the duty of the state to protect the population from political violence and to hold those responsible for such violence to account. However, in this process, human rights are all too often given second place as civil and political rights of suspects are ignored or deliberately violated. Amnesty International has repeatedly expressed its concerns regarding the lack of human rights protection in the context of Pakistan’s law enforcement and “anti-terrorism” measures.⁴ On 3 February 2004, the organization issued an open letter to President Musharraf urging that the Government of Pakistan ensure the full protection of law of all people in Pakistan including those suspected of “terrorist” offences.⁵ On 2 March 2004, Amnesty International expressed its concern that human rights were violated in South Waziristan following reports that the army had unlawfully killed suspected “terrorists”.⁶ The organization has not received any response from the Government of Pakistan on any of the issues previously raised with the government.

The Constitution of Pakistan guarantees fundamental human rights to anyone in Pakistan, irrespective of nationality. Article 4 states: “(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every person for the time being within Pakistan. (2) In particular – (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.” While a national emergency declared in 1999 has not been formally revoked, no human rights are suspended.⁷

³ BBC, 30 March 2004.

⁴ In July 2002, Amnesty International published its report, *Pakistan: Transfers to US custody without human rights guarantees*, AI Index: ASA 33/014./2002.

⁵ *Pakistan: Open Letter to President Musharraf*, AI Index: ASA 33/02/2004.

⁶ *Pakistan: Abuses of rights in hunt for al-Qa'ida reported*, AI Index: ASA 33/07/2004.

⁷ Chief Executive Musharraf on 14 October 1999, two days after he took power, declared a national emergency and suspended the Constitution. The Provisional Constitutional Order of the same day said in Article 2(3): “The Fundamental Rights conferred by Chapter 1 of Part II of the Constitution, not in conflict with the Proclamation of Emergency or any Order made thereunder from time to time, shall continue to be in force.” The Constitution was subsequently reinstated but the Proclamation of Emergency has not been formally revoked.

International human rights standards require respect for the human rights of all people, including those against whom there is a suspicion of involvement in violent criminal activities. To treat in a different manner those suspected of “terrorist” offences by unlawfully killing them, arbitrarily arresting them or handing them over to another country while circumventing formal extradition proceedings violates a range of human rights, including the right to equality before law which is a fundamental right recognized in the Constitution of Pakistan. Amnesty International is also appealing to members of armed groups, including those associated with *al-Qa'ida* or the Taleban and their supporters to abstain from deliberate and arbitrary killings, hostage-taking and torture of people taken captive.

The security operation in villages around Wana in South Waziristan was called off on 28 March 2004. However, government officials have repeatedly stated that the search for *al-Qa'ida* in the tribal areas is by no means over. On 1 April 2004 an additional brigade of some 3,500 troops reportedly arrived to reinforce regular military and paramilitary forces already based in the region. Amnesty International calls on the Government of Pakistan to ensure that in any future action, the forces involved comply fully with international human rights law and standards and fundamental rights guaranteed in the Constitution of Pakistan. Short term gains in fighting militancy at the cost of curtailing fundamental rights will in the long term serve to weaken the rule of law. Amnesty International urges the Government of Pakistan to ensure that in its efforts to curb violent political activities measures are taken to ensure that legal provisions relating to the use of force, arrest, detention and extradition with regard to everyone, including those suspected of membership of a “terrorist” organization, are fully implemented. It should maintain the rule of law in all circumstances.

2. Sequence of events

Coinciding with the visit of US Secretary of State Colin Powell to South Asia, the Pakistan army in mid-March 2004 intensified an operation which has been ongoing in the area since the beginning of the year and was intended to trace remaining members of the Taleban and people associated with *al-Qa'ida* believed to be sheltering with members of the local population along the border of Pakistan with Afghanistan.⁸ At the same time, US forces undertook their own search for *al-Qa'ida* on the Afghan side of the border. The two operations were described by commander of US forces in Afghanistan, Lieutenant General David Barno as a joint “hammer and anvil” approach with both sides ensuring that those fleeing the search would be found. While the operation in Pakistan was carried out with the

⁸ At the beginning of his tour of South Asia, Powell on 16 March 2004 expressed his administration’s desire that Pakistan should show more initiative in cracking down on *al-Qa'ida* and Taleban members. This was preceded by US Defence Secretary Paul Wolfowitz saying on 10 March in an interview with the *Far Eastern Economic Review* that Pakistan was cooperating in the search for *al-Qa'ida* but less so in tracking down members of the Taleban. Powell said on 18 March that Pakistan would be made a major non-NATO US ally.

help of US equipment and reportedly assisted by between one and two dozen US intelligence personnel, Pakistani authorities have consistently denied that US soldiers were involved.⁹

The Pakistani army operations focused on five villages within a six-kilometre radius of the district capital Wana in the South Waziristan Tribal Agency, some 20 kilometres from the border with Afghanistan. According to official statements some 70,000 troops are currently deployed in the border region and between 5,000 and 7,500 troops were directly involved in the action.

In the first two months of 2004, Pakistani authorities repeatedly demanded that the tribes hand over those of their members wanted for harbouring people associated with *al-Qa'ida* or the Taleban. However, deadlines for such handovers were set and ignored. On several occasions tribal *lashkars* (militias) were set up by tribal *jirgas* (councils) and dispatched to catch the wanted men. However, neither foreign fighters nor their local hosts were found in significant numbers.

On 16 March 2004, an intensive security operation ensued in Kalusha village when a paramilitary Frontier Corps unit surrounded and raided houses and approached a mud fortress. An apparently bullet-proof land cruiser suddenly sped out of the fortress and drove away at high speed apparently carrying a foreigner. Armoured cars had not been seen in the region before. The car was protected by dozens of heavily armed fighters who opened fire at members of the Frontier Corps. In the fighting, at least 16 soldiers and 24 opposition fighters, including several foreigners, were reportedly killed; some 22 members of the Frontier Corps were injured. About a dozen men of the Frontier Corps were taken hostage by opposition fighters whereas the Frontier Corps arrested 26 opposition fighters.

The ferocity of the attack led government officials to suspect that an important person had been protected or was still being protected in the mud fort. President Musharraf spoke on 18 March of a "high-value target" whom government authorities initially identified as Dr Ayman al-Zawahri, chief strategist of *al-Qa'ida*. This assessment was later revised as "pure guesswork" and official spokespersons admitted that the high profile person they were expecting to kill or arrest might have fled, allegedly through one of the dozens of underground tunnels which had been detected.¹⁰ At a later stage of the offensive, officials said the person who had fled was Tahir Yuldashev, leader of the Islamic Movement of Uzbekistan who is accused of a series of bomb attacks in the Uzbek capital Tashkent and is rumoured to have led resistance against US forces during the fighting in Afghanistan in early 2002. Officials said he had been injured in the action but managed to get away.

The offensive was launched on a larger scale at Kalusha and Shin Warsak villages on 18 March. Official sources said that between 500 and 600 people associated with *al-Qa'ida* were hiding in the area. They did not clarify if foreign or local tribal fighters were included in

⁹ An unknown number of US troops are reported to use at least three air bases in Pakistan for logistical support for ongoing operations in Afghanistan.

¹⁰ Initially portrayed as escape tunnels built to link the mud fortresses, local journalists pointed out that these were disused underground irrigation channels many of which are found throughout the region.

this number. On that day, some 14 soldiers were killed when they mistakenly landed by helicopter in a compound held by local tribal fighters. Four soldiers reportedly went missing during the fighting. Fights continued in the following days.

On 22 March, the military action came to a preliminary halt when the Pakistan authorities requested tribal *jirgas* to negotiate with tribal people who were believed to be protecting foreigners to bring about their surrender to Pakistan authorities. On the same day, a military supply convoy was ambushed in a rocket attack near Wana by opposition fighters. At least 12 soldiers were reportedly killed and 20 others injured while some 20 soldiers were taken hostage.

Meanwhile resistance to the security operation had grown among the tribal population, leading to an increasing number of armed attacks on army posts, installations and convoys attributed to tribal fighters. Outside the immediate theatre of the military operation, three separate attacks on army bases and convoys reportedly left another 17 soldiers dead.

On 26 March the bodies of eight members of the Frontier Corps were found near Ghruza. They had been missing since a military supply convoy was ambushed by suspected tribal fighters near Wana on 22 March. According to Inter-Services Public Relations (ISPR) Director General Maj.-Gen. (retd.) Shaukat Sultan, they had been shot at point blank range while their hands had been bound behind their backs by their captors. A *jirga* of elders of the Mehsud tribe announced on 28 March that they would punish those responsible for the apparent summary execution of these soldiers.

Army units were on 28 March withdrawn from the villages of Azam Warsak, Shin Warsak and Kalusha around which they had thrown a cordon. They, however, remained at a base near Wana in South Waziristan.

This followed the release in the afternoon of 28 March of 11 men of the Frontier Corps who had been held hostage by members of a tribe since 16 March; the release had been preceded by protracted negotiations between members of a *jirga* and the tribal captors. Reports are unclear about the fate of another man of the Frontier Corps who had also been taken hostage and who may have escaped earlier or who may have left the group after their release. While a tribal *jirga* had apparently been assured that two officers of the local district administration who had been captured on 16 March would be released later as they had been taken to a remote place, reports on 29 March said that their bodies were found in a well. Officials said the two district officers had been killed whilst in the custody of the members of the tribe who had captured them.

Army spokesmen declared that the two-week military action in South Waziristan had been a success. Maj.-Gen. Shaukat Sultan said on 29 March: "Destruction of a major terrorist stronghold, defence works like tunnels, trenches, towers and communications systems [has been achieved]. Most of the miscreants have either been killed, captured or dispersed in small groups. Local facilitators of the terrorists have been uncovered. A sizeable quantity of arms

and ammunition has been captured. The dead have been confirmed through interrogation, intelligence sources and radio intercepts.”¹¹

However, government sources admitted that hundreds of people associated with *al-Qa'ida* and the Taleban and their tribal supporters remained at large. These included several named members of a tribe who were believed to have links with and sheltered people associated with the Taleban and *al-Qa'ida* and are wanted by the authorities. The government said it was committed to continue the campaign to “flush out” “at any cost” people associated with *al-Qa'ida* who remained in the region.¹² Interior Minister Faisal Saleh Hayat told the National Assembly on 25 March that the “anti-terrorism” operation would continue in the tribal areas until all members of *al-Qa'ida* and the Taleban had been removed from Pakistan as scores of wanted people were still at large. He said that the withdrawal of troops was intended to allow for tribal conflict resolution mechanisms to resolve the issues and that tribal *jirgas* had agreed to take on the task of persuading tribes to hand over to state forces any persons linked to *al-Qa'ida* and the Taleban and their tribal supporters found in their areas. A list of some 150 wanted “terrorists” had been given for that purpose to the *jirgas*. On 24 April, the government announced an amnesty for five men who had been wanted for sheltering people associated with *al-Qa'ida* and the Taleban after they agreed to give up all activities harmful to the interests of Pakistan, including the harbouring of foreign fighters. An army spokesman said that foreign fighters hiding in the region should surrender to the government by 30 April, register with local authorities and renounce violence, or face military action.

3. Reports of human rights violations by Pakistani military and paramilitary forces

i. Possible extrajudicial executions

According to official statements, at least 63 foreign and local tribal fighters were killed in the operation and a considerable number of fighters must be presumed to have been injured. Maj.-Gen. Shaukat Sultan said on 29 March that amongst them was Abdullah, the chief of *al-Qa'ida* intelligence whose full name and nationality were not made public. On the next day he clarified that Abdullah was the top local intelligence operative in Wana for *al-Qa'ida*. Officials provided different figures for soldiers killed in the action to the press, but on 29 March Maj.-Gen. Shaukat Sultan stated that 46 army and paramilitary personnel had been killed and 26 injured. While the high number of soldiers killed during the two-week long operation appears to suggest that the killings of soldiers and opposition fighters occurred in intense fighting, a closer examination appears to indicate that on several occasions groups of soldiers were killed after they had been captured by opposition fighters. Nothing is known at present about the circumstances in which opposition fighters were killed.

Media reports mention that in addition to opposition fighters and soldiers, some 15 civilians, including children were killed in unclear circumstances; some reports speak of 26

¹¹ BBC, 30 March 2004.

¹² Information Minister Sheikh Rasheed Ahmed: “This operation will continue at whatsoever the cost may be”, *Reuters*, 26 March 2004.

civilian deaths. Law enforcement agencies reportedly advised local residents in some large villages in a 15 to 25 kilometre radius around Wana to hoist white flags if they had nothing to do with *al-Qa'ida* or the Taleban. However, many civilians were not aware of such advice as there are no communication links outside larger settlements. Some civilians may have been targeted simply because they were unaware of the need to visibly signal that they had no connection with foreign fighters. Local observers have also reported that the army used helicopter gunships and resorted to indiscriminate shelling, irrespective of whether white flags had been hoisted or not. In some cases, vans carrying women and children fleeing the area were reportedly hit by fire from helicopter gunships. There are also reports that residents left behind to look after homes and cattle after families had been ordered to leave were deliberately shot dead or arrested.

Amnesty International believes that in view of the lack of verified information about the operations in South Waziristan and the considerable number of deaths which occurred as the result of the use of lethal force by military and paramilitary troops, the possibility that some of the deaths may have amounted to extrajudicial execution cannot be ruled out. The secrecy surrounding the operations to the almost total exclusion of journalists and independent observers makes it impossible to assess if military and paramilitary troops made genuine and consistent efforts to arrest criminal suspects and resort to the minimum use of force necessary in the circumstances and if they resorted to lethal force only as a last resort as is required by international human rights law and standards.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations (UN) Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990 lays down in Principle 4: "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result." Principle 5 states: "Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life ..." Principle 8 states: "Exceptional circumstances such as internal instability or any other public emergency may not be invoked to justify any departure from these basic principles." Principle 9 states: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

Similarly the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly of the UN on 17 December 1979 (resolution 34/169) says in Article 3: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty... (c) The use of firearms is considered an extreme

measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. ...”

Amnesty International calls on the Government of Pakistan to ensure that all law enforcement personnel and military and paramilitary units acting in law enforcement operations use force only in accordance with these internationally agreed standards. They lay down clearly that force may be used only when strictly necessary and only to the minimum extent required under the circumstances. Lethal force may not be used except when strictly unavoidable in order to protect life.

Amnesty International urges the Government of Pakistan to ensure that all possible cases of extrajudicial executions are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the UN Economic and Social Council on 24 May 1989 (resolution 1989/65) lays down how such investigations are to be conducted. Principle 18 states: “Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary and summary executions in any territory under their jurisdiction are brought to justice. ... This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.”

Officials suspected of responsibility for extrajudicial executions should be suspended from active duty during the investigation. The results of the inquiry should be made public without delay and those found responsible brought to justice in a trial compatible with international standards for fair trial.

The Government of Pakistan ordered inquiries into earlier possible extrajudicial executions allegedly perpetrated by military forces in the tribal areas. On 28 February 2004, army personnel opened fire on a van approaching their post, killing six men believed to be Afghan refugees and injuring a 14-year-old boy who later died of his injuries. An army spokesman said that the army had opened fire in self-defence as it had come under fire from passengers of the van but local residents stated that there had been no exchange of fire. President Musharraf ordered that the incident be promptly investigated but it is not known if the inquiry has been set up. No report of an inquiry has been made public and to Amnesty International's knowledge, none of the alleged perpetrators have been suspended.

Amnesty International urges the Government of Pakistan to fully comply with the Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and promptly set up independent investigations into all allegations of extrajudicial killings with a view to holding perpetrators to account.

ii. Arbitrary arrest and detention

According to Maj.-Gen. Shaukat Sultan, troops captured 215 fighters but released almost 50 after interrogation; those in detention as of mid-April include 73 foreigners and 94 local tribal

men. He said that the foreigners included Afghans, Chechens, Arabs, Uighurs and Uzbeks.¹³ Secretary Security FATA, Brigadier (retd.) Mehmood Shah informed the press on 28 March that all the arrested persons would be tried in Pakistan under Pakistan law. Acting Foreign Secretary Tariq Usman on 29 March clarified that “the detainees were not considered prisoners of war”. He said that they had committed criminal acts and had been arrested in an “anti-terrorist” operation carried out by the armed forces which had come to the aid of the civil administration.¹⁴ However, officials did not reveal where the detainees had been taken, under which legislation they were held, if any charges had been brought against them and which agencies were interrogating them. According to subsequent media reports, some of the detainees were taken to an army camp near Attock and interrogated by several intelligence agencies. Amnesty International has not been able to confirm this.

On 25 April, 50 of the detainees were released; they reportedly included tribal people and some 20 Afghan refugees who had been living in the area for the past two decades. They had reportedly been found innocent after interrogation in different prisons by joint teams comprising personnel of the Inter-Services Intelligence (ISI), Military Intelligence (MI), the Intelligence Bureau (IB) and other unnamed agencies.

On 21 March, while the security operation in the tribal areas was ongoing, law enforcement personnel in Rawalpindi and Islamabad arrested at least 75 people for their alleged links to *al-Qa'ida*. Police conducted surprise raids on Afghan slums on the outskirts of the twin cities. Fifty of these detainees were reportedly released after preliminary interrogation and the other detainees were taken to an undisclosed location. The identities of the detainees were not made public and they are not believed to have been formally charged. Amnesty International is not aware of the release of any of these detainees.

Amnesty International is concerned about the arbitrary arrests and incommunicado detention of both tribal and foreign people arrested during the operation as well as about the arbitrary arrest of several journalists (see below). The Constitution of Pakistan states in Article 9: “No persons shall be deprived of life and liberty save in accordance with law.” It lays down in Article 10 that every detainee has the right to be informed of the charges against him or her, to consult and be defended by a lawyer of his or her choice and be brought before a magistrate within 24 hours of arrest. None of these requirements appear to have been fulfilled in the cases described above. The detainees continue to be held incommunicado, without access to family or a lawyer. To Amnesty International’s knowledge, none of them have been charged with a criminal offence. The organization believes those arrested should be charged with a recognizably criminal offence or else released.

iii. Possible torture or cruel, inhuman and degrading treatment

Given the widespread use of torture and other cruel, inhuman and degrading treatment in places of detention in Pakistan, Amnesty International fears for the life and safety of the detainees. Torture is prohibited in Article 14(2) of the Constitution of Pakistan which says: “No person shall be subjected to torture for the purpose of extracting evidence.” Several

¹³ *AFP*, 30 March 2004, *BBC*, 29 March 2004.

¹⁴ *BBC*, 30 March 2004.

international treaties, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibit torture and cruel, inhuman and degrading treatment and punishment. Although Pakistan has not ratified either of these treaties, it is bound by the prohibition of torture in customary international law.¹⁵

Detainees are particularly at risk of torture and ill-treatment when they are held incommunicado in undisclosed places of detention. Amnesty International calls on the Government of Pakistan to ensure that all those detained are not subjected to any form of torture or ill-treatment.

iv. Harassment of journalists

The Government of Pakistan did not impose formal restrictions of access to South Waziristan during the security operation but several journalists seeking to observe, investigate and report developments in the area were arrested, apparently solely for the pursuit of their professional duties. Many had their professional equipment confiscated or destroyed. Only once, on 20 March, did the government organize a helicopter tour for foreign journalists, though reportedly not to the area where the fighting was actually taking place. Information about the operation was handed out by official spokespersons of the government or the army. The possibility of independent verification did not exist.

Among those journalists who were arrested was Mujeebur Rehman, correspondent of the Urdu newspaper *Khabrain* who also works as a stringer for several foreign television stations. Rehman was arrested on 16 March while filming the operations near Wana. He was released after several hours but his digital camera was reportedly not returned to him on release. Shaukat Khattak, working for Geo TV, was held for several hours on 18 March in Dabkot where he had been filming army operations. He reported having been threatened and insulted by soldiers during this period. A staff member of the Peshawar office of the BBC World Service, Haroon Rashid and a member of *al Jazeera* TV, Saiful Islam, were detained in Peshawar on 21 March when they tried to interview injured soldiers in the Peshawar Military Hospital. They were interrogated by Pakistani intelligence officials and had their equipment confiscated before they were released after several hours. Several other Pakistani journalists were similarly prevented from covering the military operation. Local journalists working as stringers for Pakistani and foreign media, while continuing to report from near the fighting have said that they, too, were not allowed into the combat zone. Journalist organizations have appealed to army authorities to guarantee better media access by issuing passes to journalists. Reporters Sans Frontieres (RSF) said that the government's duty to ensure basic security to journalists must not be used as an excuse to bar independent reporting of this major army operation by arresting journalists, keeping them out of the area or seizing their equipment.

¹⁵ The UN Human Rights Committee has stated that the obligation not to subject people to torture or ill-treatment is a *rule of customary international law* and that the prohibition of torture is a *peremptory norm of general international law*; see General Comment 24 on issued relating to reservations and declarations, paras 8, 10.

Journalists were finally allowed to visit the affected villages for the first time in two weeks on 28 March after the military action had ended.

The right to freedom of expression, guaranteed in the Constitution of Pakistan and in international human rights law is not an unqualified right. Article 19 of the Constitution of Pakistan says: "Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission or incitement to an offence." The requirement that restrictions of the freedom of the press have to be provided for in law and invoked appears to have been ignored during the recent security operation.

Amnesty International calls on the Government of Pakistan to ensure that whenever circumstances exist which make the restriction of the right to freedom of expression and freedom of the press necessary, such restrictions are provided for in law and invoked, strictly limited in time, serve a legitimate purpose, conform to the principle of proportionality, are made publicly known and impartially implemented.¹⁶

Amnesty International urges the Government of Pakistan to ensure that incidents when journalists were arbitrarily detained and had their equipment confiscated or destroyed are investigated and those responsible held to account.

v. House demolitions

At the beginning of the security operation, army and paramilitary troops reportedly evicted at least 30,000 people from the area. According to local observers, the army on 16 March gave civilians in Kalosha three hours to vacate their homes; many left valuables behind because of the sudden order. Some of the displaced persons went to live with relatives but hundreds of people, including women and children, set up camp in the open on the outskirts of villages. No official shelter was made available to them. Dozens of homes were destroyed during the fighting from fire from helicopter gunships, artillery and grenades. According to reports as many as 83 family homes of people believed to have sheltered people associated with *al-Qa'ida* or the Taleban were deliberately destroyed by military bulldozers as part of a punitive

¹⁶ The Human Rights Committee, the body of experts monitoring the implementation of the International Convention on Civil and Political Rights (ICCPR) has in General Comment No. 29 identified the conditions to be met by states to invoke limits of the right to freedom of opinion and expression: *inter alia* the measures must be strictly limited in time, provided for in a law, necessary for public safety or public order, serve a legitimate purpose, not impair the essence of the right and conform to the principle of proportionality. (CCPR/C/21/Rev.1/Add.11) The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that "in practice it is quite difficult to monitor the legitimacy, necessity and proportionality of anti-terrorism measures in the absence of a universally, comprehensive and authoritative definition of terrorism. This, on the one hand, leaves ample space for abusive restrictions based more on varying definitions of terrorism that respond to individual States' interests than on a universal concept of what a terrorist act is, and, on the other hand, makes it all the more difficult to monitor and evaluate the necessity and proportionality of such restrictions." (E/CN.4/2003/67)

action against them. Some homes destroyed by army bulldozers reportedly belonged to people who had no connection with anyone associated with *al-Qa'ida* or the Taleban or their local supporters.

When people returned to their homes after the withdrawal of the army on 28 March, many found their homes demolished, ransacked and looted of valuables, including furniture, clothes and beddings. Several returning families found that the army had used their private residences as fortifications or barracks, using up provisions and in some cases, breaking furniture to light fires at night. Some of the orchards were reportedly cut down by the army. Villagers evicted from Shin Warsak and Kalusha where the fighting was concentrated also lost most of their livestock as they had been forced to leave behind their cattle which remained locked up without food or water for almost two weeks. Some cattle was killed or stolen. Some local schools, though clearly identified as schools, had been hit and destroyed, some wells had been made unusable when refuse was thrown into them.

Amnesty International opposes the deliberate punitive destruction of homes and means of livelihood. Such destruction violates Article 14(1) of the Constitution of Pakistan which states: "The dignity of man, and subject to law, the privacy of the home, shall be inviolable." Article 24(1) states: "No person shall be compulsorily deprived of his property save in accordance with law." Amnesty International urges that all those deprived of their homes and livelihood be promptly and adequately compensated and that troops should be clearly instructed that punitive destruction of homes and means of livelihood may not be repeated in future military actions.

vi. Possible transfers of detainees to countries in violation of the principle of *non-refoulement*

President Musharraf has on several occasions asked people associated with *al-Qa'ida* and the Taleban to surrender to state authorities and offered assurances that they would not be handed over to any other state. Other officials have made commitments that those arrested would be tried under Pakistani law if necessary. In response to a request from the Government of Uzbekistan to hand over any Uzbeks who might be arrested in the operations in the tribal areas, Interior Minister Faisal Saleh Hayat informed the press on 25 March that "those Uzbek terrorists captured by Pakistan would be tried in accordance with the law of the land."¹⁷

Such statements differ significantly from statements made in February 2004 by other government officials. A statement issued by Foreign Minister Khurshid Kasuri issued on 23 February 2004 said: "If someone has committed crimes against any other country and is caught in an anti-terrorist operation, our priority is to hand him over to his country of origin. If that country does not ask for repatriation, then the terrorist is handed over to any country putting forward evidence to us."¹⁸

¹⁷ *BBC*, 25 March 2004. At least three Uzbeks are believed to be amongst the foreign nationals arrested in March 2004 in the tribal areas or elsewhere in Pakistan.

¹⁸ Quoted in *Dawn*, 26 February 2004.

In the face of such inconsistent statements, Amnesty International remains concerned that Pakistan may consider handing detainees over to countries where they may be at risk of serious human rights violations in violation of the principle of *non-refoulement*. Pakistan is bound by rules of customary international law which prohibits the handing over of anyone in any manner whatsoever to a country where he or she may be at risk of serious human rights violations. The principle of *non-refoulement* is considered binding even on all countries, including on countries like Pakistan which have not ratified relevant international human rights treaties. Amnesty International is aware of several hundred detainees suspected of links with *al-Qa'ida* or Taleban membership who have over the past two years been handed over by Pakistan to the USA or to their countries of origin where they may have been at risk of serious human rights violations. Amnesty International reiterates its call on the Government of Pakistan to strictly abide by the principle of *non-refoulement*.

4. Human rights abuses by armed groups

Reports strongly suggest that members of armed groups operating in the tribal areas have taken hostages and in some instances killed them. These include eight members of the Frontier Corps who were found dead on 26 March and two local district administrative officers found dead on 29 March. Amnesty International appeals to members of armed groups to abstain from hostage-taking and deliberate and arbitrary killings of civilians and soldiers held captive and torture of anyone held captive.