

AI Index: ASA 33/012/2012  
Ref: TG ASA 33/2012.009

Rajaz Pervez Ashraf  
Prime Minister  
Prime Minister House  
Pakistan Secretariat,  
Constitution Avenue,  
Islamabad  
Pakistan

**AMNESTY  
INTERNATIONAL**



**AMNESTY INTERNATIONAL** INTERNATIONAL SECRETARIAT  
Peter Benenson House, 1 Easton Street  
London WC1X 0DW, United Kingdom  
T: +44 (0)20 7413 5500 F: +44 (0)20 7956 1157  
E: [amnestyis@amnesty.org](mailto:amnestyis@amnesty.org) W: [www.amnesty.org](http://www.amnesty.org)

30 August 2012

Dear Prime Minister

### **OPEN LETTER: PAKISTAN MUST RESOLVE THE CRISIS OF ENFORCED DISAPPEARANCES**

On the occasion of 30 August, International Day of the Victims of Enforced Disappearances, Amnesty International urges the Pakistan government to demonstrate the political will to resolve Pakistan's crisis of enforced disappearances once and for all.

The fate of thousands taken by state officials or those acting on their behalf, held out of sight and without charge, denied access to lawyers and loved ones, remains unknown to this day.

Pakistan's armed forces, including their intelligence services and paramilitary forces officially under the authority of the executive, are the primary organ of the state accused of committing enforced disappearances. Pakistan's Constitution lists a range of fundamental human rights protections, which together with Pakistan's binding international human rights obligations prohibit the state or its agents from committing such violations. In practice, however, the armed forces act with very limited judicial or executive oversight. There must be major legal and policy reforms to regulate arrests, detentions and investigations by the armed forces and its institutions and by civil law enforcement authorities that stand accused of involvement in these violations. There must also be effective oversight of all civil and military institutions by the executive and judicial system. Without these changes, there will be no end to Pakistan's crisis of enforced disappearances.

The Government of Pakistan has made little progress in determining the fate of thousands of "missing persons" despite its repeated promises since being elected into office in March 2008. At the time, the government signalled that it would break from the practice of secret detention that was common under the military rule of former President Pervez Musharraf. Alarming, enforced disappearances have not only persisted across every province and territory of Pakistan under this government's watch, but even gathered pace in Balochistan and Sindh provinces. Suspected insurgents, political activists, journalists, lawyers and others across Pakistan continue to be subjected to enforced disappearance.

The promulgation of the Actions (in Aid of Civil Power) Regulations (AACPR) in June 2011 has further undermined the protection of human rights in the Federally Administered Tribal Areas (FATA) and parts of Khyber Pakhtunkhwa province. These regulations give sweeping, retrospective powers to the security forces to arbitrarily detain individuals and allow for the imposition of the death penalty for a number of vaguely and broadly defined offences with virtually no independent oversight.

In practice, detainees have almost no access to effective judicial remedies. They are rarely, if ever, granted access to their families or a lawyer and frequently remain unaware of the charges, if any, against them or the grounds for their detention. Rules on evidence contained in the AACPR, which

deem the testimony of Pakistan armed forces personnel to be conclusive, violate the presumption of innocence and an individual's right to a fair trial. As such, the AACPR are not compliant with Pakistan's binding obligations under international human rights law and do not reflect the human rights safeguards contained in the Constitution.

We recognize the security challenges faced by Pakistan as a result of the ongoing insurgencies in the Tribal Areas and Balochistan, and the strain that these conflicts have placed on the criminal justice system. However, the continuing exclusion of FATA from the jurisdiction of the high courts to rule on the regular law and constitutional protections, and the failure to enforce these and binding international human rights law protections in Balochistan and other parts of the country is unacceptable. In addition, as with the case, for example, of the 'Adiala 11', the practice of transferring detainees from areas where the high courts have jurisdiction to enforce the constitutional protections, to FATA where they do not, appears to be an attempt by the intelligence agencies and other security forces to exploit this legal lacuna and avoid accountability for human rights violations such as enforced disappearances.

A golden opportunity to address the human rights black hole that is FATA was lost when the government finally announced its much-anticipated package of reforms last year. The reform package did not address the fact that FATA remains beyond the jurisdiction of the high courts and Pakistan's federal and provincial parliaments, nor did it repeal or adequately reform the harsh, colonial-era Frontier Crimes Regulation which allows the authorities to mete out collective punishments to entire communities and contains other provisions that are contrary to international law.

Enforced disappearances, abductions and extra-judicial executions continue with impunity at an alarming rate in Balochistan. Reportedly, hundreds of Baloch activists, teachers, journalists and lawyers have been abducted or killed in the last two years alone. The bullet-ridden bodies of individuals, who have been forcibly disappeared or abducted and many bearing apparent marks of torture, are found across the province almost every day.

In many cases, victims' families blame these incidents on Pakistan's security forces, especially the Frontier Corps and intelligence services. The security forces deny the charges and claim that the deaths are a result of tribal differences between Baloch militant groups. However, in many of the cases Amnesty International has documented, the victims were last seen alive being led away by uniformed Frontier Corps soldiers, often accompanied by men in plain clothes, in front of multiple witnesses at military checkpoints and in cities and towns. Regardless of determining blame for these and other killings in Balochistan, the fact they continue unabated represents one of the greatest failures of the Pakistan state to protect the right to life.

Amnesty International welcomed the establishment of the Commission of Enquiry on Enforced Disappearances in March 2010. However, to Amnesty International's knowledge, there has been no attempt by the Commission to systematically interview traced individuals to determine any patterns of enforced disappearance; to facilitate assistance to them or their families; provide protection to witnesses who have testified before it; or to investigate named organisations such as the intelligence agencies or other security forces or individuals accused of enforced disappearances.

Pakistan's high courts have taken several positive steps to investigate the role of the armed forces, intelligence services and other law enforcement authorities in the disappearances crisis. But the courts too have failed to bring any named individuals to trial, even in those instances where strong *prima facie* evidence has been submitted by lawyers acting on behalf of the families of missing persons. As far as Amnesty International is aware, no member of state security forces and intelligence services has been prosecuted for alleged involvement in enforced disappearance, arbitrary detention, torture or killing except in the case of Sarfaraz Shah. In that case, the state acted only after widespread media coverage following the release of a video of members of the paramilitary Rangers shooting dead Sarfaraz Shah in Karachi in June last year.

Amnesty International is keenly aware of the security threats facing the people of Pakistan and recognises the right and duty of the authorities to prevent crimes, including acts of terrorism. However,

it is the fundamental right of every suspect to be charged and tried fairly in a court of law. By holding people in secret detention the government of Pakistan violates the rights of those detained. Those held in such circumstances must be immediately granted access to their family, lawyers, and the courts to rule on the lawfulness of their detention. All individuals, whether officials of the state or not, should be investigated for their alleged role in enforced disappearances or other crimes recognised under international law. Where sufficient admissible evidence exists they must be promptly and fairly tried and, if found guilty, punished, without recourse to the death penalty.

Amnesty International urges the Government of Pakistan to:

- end the practice of secret and arbitrary detentions, including by ensuring that the rights of all detainees to contact with the outside world – including lawyers, family and courts – are fully guaranteed by Pakistani law and respected in policy and practice by the armed forces and civil authorities;
- immediately release anyone who has been subject to enforced disappearance or otherwise held in secret detention, or, provided sufficient admissible evidence exists, charge any affected individual with a lawful offence consistent with, and following proceedings which comply with, international standards;
- if charged, ensure that the deprivation of liberty of the individual is only resorted to in exceptional circumstances and after careful consideration has been effectively given to all possible alternatives to detention;
- if charged, ensure that all proceedings comply with international fair trial standards, without recourse to the death penalty;
- ensure the Commission of Enquiry on Enforced Disappearances has the power and resources to investigate and publicly establish the fate and whereabouts of all individuals who have been subjected to enforced disappearance;
- provide redress to the victims and survivors of enforced disappearance, including family members, and protect relatives and witnesses against the threat or other risk of reprisals or intimidation;
- ensure all individuals suspected of being responsible for enforced disappearances are identified and prosecuted in fair trials in civilian courts, regardless of their rank or office;
- accede to the International Convention for the Protection of All Persons from Enforced Disappearance, make the Declarations under Articles 31 and 32 of the Convention concerning the competence of the Committee on Enforced Disappearances to consider individual and inter-state complaints, and fully implement all provisions of the Convention in law, policy and practice;
- accede to the Rome Statute of the International Criminal Court which, among other things, makes enforced disappearance a crime against humanity;
- repeal or reform the Actions (in Aid of Civil Power) Regulations 2011 and the Frontier Crimes Regulation 1901 to ensure they conform with international human rights law and standards; and
- extend the jurisdiction of the high courts to FATA so that fundamental rights protections of the Pakistan Constitution, interpreted in a way that is consistent with the International Covenant on Civil and Political Rights, including safeguards for arrest and detention under Articles 9 and 10 and fair trial under 10A, can be enforced there; and ensure Constitutional and ICCPR protections are enforced across the entire country.

Yours sincerely

Salil Shetty

Secretary General, Amnesty International