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

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Summary

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Amnesty International is concerned that during the two-week long operation in March 2004 intended to remove people 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. 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 Taleban or *al-Qa'ida*. Tribal fighters who may be associated with Taleban or *al-Qa'ida* appear to have taken - and in some cases killed - hostages.

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. The organization has not received any response from the Government of Pakistan on any of the issues previously raised with the government.

The security operation in villages around Wana in South Waziristan was called off on 28 March 2004. However, government officials have clearly stated that the search for *al-Qa'ida* in the tribal areas is by no means over. On 1 April 2004 an additional brigade reportedly arrived to reinforce regular army 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 laws 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 all necessary measures are taken to ensure

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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.

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 range⁸ 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.

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

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

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.

