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Pakistan

Human rights ignored in the "war on terror"

1. Introduction

"I cannot believe that there can be a trade between the effective fight against terrorism and the protection of civil liberties. If as individuals we are asked to give up our freedom, our liberties, our human rights, as protection against terrorism, do we in the end have protection?" UN Secretary-General Kofi Annan, September 2006.(1)

In its pursuit of the US-led "war on terror", the Pakistani government has committed numerous violations of human rights protected in the Constitution of Pakistan and in international human rights law. They include the right to life and the security of the person; to be free from torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment); to be free from enforced disappearance and to challenge the lawfulness of detention. Victims of human rights violations in the "war on terror" include Pakistani and non-Pakistani terror suspects, men and some women, children of terror suspects, sometimes held as hostages, journalists who have reported on the "war on terror" and medical personnel who allegedly treated terror suspects.(2)

Irrespective of the "war on terror", the people of Pakistan suffer widespread violations of their civil and political rights. In Pakistan, torture and ill-treatment are endemic; arbitrary and unlawful arrest and detention are a growing problem; extrajudicial executions of criminal suspects are frequent; well over 7,000 people are on death row and there has recently been a wave of executions. Discriminatory laws deny the basic human rights of women and of minority groups.

To this dismal human rights record, Pakistan's actions in the "war on terror" have added a further layer of violations. Hundreds of people suspected of links to al-Qa'ida or the Taliban have been arbitrarily arrested and detained. Scores have become victims of enforced disappearance (for a definition see section 6); some of these have been unlawfully transferred (sometimes in return for money) to the custody of other countries, notably the USA.

Many people have been detained incommunicado in undisclosed places of detention and tortured or ill-treated. Their families, distressed about the lack of information on the whereabouts and fate of their loved ones, have been harassed and threatened when seeking information. The right to habeas corpus has been systematically undermined as state agents have refused to comply with court directions or have lied in court.

The fate of some of the victims of arbitrary arrest, detention and enforced disappearance has been disclosed – some have been charged with criminal offences unrelated to terrorism, others have been released without charge, reportedly after being warned to keep quiet about their experience, while some have been found dead. However, many have been unlawfully transferred to other countries, without any judicial or other procedures, and in violation of the principle of *non-refoulement*, which prohibits people being sent to countries where they face serious human rights abuses. Some were transferred to US custody and have ended up in the US Naval Base at Guantánamo Bay (Cuba), Bagram airbase (Afghanistan) or secret detention centres elsewhere. Others have been unlawfully returned to their countries of origin, where they may be at risk of further abuse. However, many remain unaccounted for – their fate and whereabouts are unknown.

The clandestine nature of the arrest and detention of terror suspects makes it impossible to ascertain exactly how many people have been subjected to arbitrary detention or enforced disappearance. The independent non-governmental organisation, the Pak Institute for Peace Studies in May 2006 stated that over 1,000 people have been arrested in the "war on terror" in Pakistan. US President George W Bush has said on several occasions that "our ally, Pakistan, has killed or captured more than 600 terrorists".(3) Pakistan President Pervez Musharraf has mentioned some 700 terror suspects arrested, but these figures may not be accurate.

Amnesty International is concerned that there has been no public outcry against the erosion of human rights reported in Pakistan as a result of its involvement in the "war on terror". Civil society, political parties(4) and the media have by and large ignored the issue.(5) People who have taken up the issue have been subjected to harassment, threats and abuse. Journalists have told Amnesty International that there is a perception in Pakistani civil society that those people who have been subjected to arbitrary detention and enforced disappearance belong to Islamist groups that support terrorist activities, sectarian killings and discriminatory laws and practices.

Amnesty International is concerned about the increase in human rights violations in Pakistan in the context of the "war on terror" and the apparent indifference to this in society. Human rights are universal and should be enjoyed by all. Amnesty International takes no position on the guilt or innocence of alleged terror suspects; however, the organisation insists that everyone must be able to enjoy the full range of human rights. The rights to life, the security of the person, the protection of law and to freedom from torture cannot be suspended in any circumstances. Article 4 of the Constitution of Pakistan provides that "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 other person for the time being in Pakistan". These words must become a reality, including in the context of the "war on terror".

The practice of enforced disappearance, which was rare before 2001, has become more common in contexts besides the "war on terror". Over the past two years, dozens of Baloch nationalists are believed to have been subjected to enforced disappearance and there are recent reports that leaders of Sindhi parties and members of the Shia minority have as well.(6) The increasing frequency of such human rights violations and the impunity enjoyed by the perpetrators may also have contributed to raising the threshold of tolerance to human rights violations generally in Pakistan. The non-governmental Human Rights Commission of Pakistan (HRCP), in its annual report for 2004, said that the "tone of media reports [about deaths in custody] did not reveal the feeling of outrage that used to be noticed in reports of such incidents in the past". It said that this might be attributable to the "impact of the war on terrorism on the public psyche" and that "people were getting used to deaths in custody as *normal happenings*".(7)

Amnesty International fully recognizes the right and duty of the Pakistani authorities to prevent and punish crimes, including violent crimes such as acts of terrorism, and to bring to justice those responsible for committing such crimes. The organisation has consistently denounced indiscriminate attacks and attacks targeting civilians carried out by armed groups such as al-Qa'ida. Specifically, the organisation has condemned the attacks on the USA on 11 September 2001 as crimes against humanity. All those responsible for these and similar crimes must be brought to justice. At the same time, measures taken to combat terrorism must respect national human rights guaranteed under national and international law.(8) There can be no justification for Pakistan carrying out human rights violations including arbitrary arrest, secret and unlawful detention and enforced disappearances; torture and other ill-treatment; extrajudicial executions; and unlawful transfers to other countries in violation of the principle of *non-refoulement* and in circumvention of Pakistan's extradition law.

2. Political background

Pakistan's cooperation with the USA in the "war on terror" has meant that it has provided logistics facilities, shared intelligence and has arrested and handed over terror suspects.(9) US Lieutenant General Karl Eikenberry, Commander of the Combined Forces Command Afghanistan stated recently, "if you look at Pakistan's actions over the past several years, Pakistan has arrested and killed more Al Qaeda members than any other country. Pakistan is a great ally in the war on terror".(10)

The Pakistani government has after September 2001 also banned Islamist organisations, many of which are widely believed to have close links to al-Qa'ida and the Taliban. It has frozen bank accounts suspected of belonging to militant organisations, condemned hate-speech and literature calling for violence and announced reforms of the *madrassa* system.(11) In return the USA has written off debts, extended substantial grants and reinstated arms sales(12) and a military training programme earlier suspended.

Domestically, the government's pursuit of the "war on terror" has met with resistance, particularly from Islamic groups. The *Muttahida Majlis-e-Amal* (MMA), an alliance of six Islamic parties, for the first time gained a significant parliamentary presence in general elections in October 2002 on an anti-US platform. It formed the provincial governments in the North West Frontier Province (NWFP) and (in coalition) in Balochistan, and with its 45 seats in the National Assembly has the power to influence legislation.

This change in the domestic balance of power has contributed to inconsistencies in the federal government's approach to Islamist groups that advocate violence on grounds of religious difference and oppose Pakistan's participation in the US-led "war on terror". Another factor is the army's reported history of involvement in the nurture and support of Islamist groups. Consequently, the government has vacillated between seeking religious parties' support to counter the secular opposition and cracking down on some of them.(13) Many of the government's policies have not been fully implemented. For example, after suicide attacks in July 2005 in London, UK, the government announced the compulsory registration of all *madrassas*, expulsion of all foreign students by end-2005 and renewed efforts to modernize *madrassas*. None of these measures has been fully enforced. In August 2006, Interior Minister Aftab Ahmed Khan Sherpao confirmed that some 700 foreign *madrassa* students were still in Pakistan and that their visas would be extended to allow them to complete their studies. No decision has been taken about the admission of new students.(14) In February 2006, Prime Minister Shaukat Aziz said that only 9,271 of an estimated 13,000 *madrassas* had been registered.(15) Similarly, no direct action was taken when banned Islamist groups re-emerged under different names or when hate-speech and hate literature continued to contribute to religiously motivated violence.

In its regional relations, the peace process with India, declared "irreversible" by President Musharraf in 2005, has been challenged by domestic Islamic groups who oppose any change in Pakistan's long-standing Kashmir policy. The peace process has recently been shaken by allegations about India's (and Afghanistan's) support for, and funding of, Baloch nationalists.(16) Pakistan's reported discomfort at increasing Indian influence in Afghanistan, and Indian allegations of Pakistani involvement in suicide attacks in Mumbai and elsewhere.

Relations between Pakistan and Afghanistan are encumbered by historical links between sections of the Pakistani leadership, army and intelligence services to fighters against the Soviet Union in Afghanistan. In 2003, Pakistan began a security operation in the designated tribal areas bordering Afghanistan(17) to kill or capture members or associates of al-Qa'ida and the Taliban who fled Afghanistan and their local associates. Currently, some 80,000 army personnel and several hundred platoons of paramilitary forces and tribal police are pursuing foreign fighters fleeing Afghanistan and their Pashtun hosts. After initially focusing on South Waziristan, claimed to be now "almost militant-free"(18) the operation in early 2005 shifted to Bajaur and North Waziristan from where armed clashes continued to be reported until a June 2006 ceasefire was announced by tribal fighters.

The unprecedented control over the tribal areas by the army is by many observers seen to have undermined the

status and influence of tribal elders, government-appointed Political Agents⁽¹⁹⁾ and local elected representatives. This leadership vacuum has increasingly been filled by militant clerics, leading to the resurgence of Pashtun groups under the leadership of local clerics, pursuing and enforcing a strict Islamist agenda.⁽²⁰⁾

Pakistani Taliban have reportedly enforced strict adherence to their interpretation of Islamic norms of behaviour through their own illegal radio stations⁽²¹⁾ and vigilante operations, the dispensation of their own version of "Islamic justice" ⁽²²⁾ and targeted killings of government officials and some 150 pro-government tribesmen in the recent past. Many were beheaded and had notes pinned to their bodies warning other collaborators of a similar fate. Some observers have said that "Taliban groups [are] forming shadow governments in the tribal areas".⁽²³⁾ Armed Islamists are reported to be patrolling the streets in towns and villages of the tribal areas, to ensure compliance with their injunctions and Pakistani Taliban have set up checkpoints to collect "taxes" from local traders.⁽²⁴⁾ Journalists have told Amnesty International that hundreds of tribal families, caught between Taliban threats of cruel punishments and the army's excessive use of force, have fled the tribal areas.

No effective steps have been taken to stop the Taliban's subversion of the government's authority in the tribal areas. On the contrary, tribal fighters have been strengthened by the increasingly lenient terms offered to them by the government in peace negotiations. In South Waziristan, the Shakai Pact of March 2004 stipulated that the tribes cease harbouring foreign fighters and hand them over to the government or ensure their registration. The Pact broke down when one of the signatories of the pact, tribal fighter Nek Mohammad refused to abide by this condition. In the Sararogha Pact of February 2005, the government agreed to pay large sums of money to several tribal fighters to pay of their alleged debts to al-Qa'ida. This pact did not require that foreigners be handed over or registered. The Miramshah Pact of 5 September 2006 provided for the release of arrested tribal fighters, return of their weapons and withdrawal of troops and checkpoints in return for foreigners settled in North Waziristan respecting the law and renouncing attacks in Afghanistan. Many observers have seen the provision of a safe haven for foreign fighters as a "capitulation"⁽²⁵⁾ and a "face saving retreat for the Pakistani army"⁽²⁶⁾ which had suffered considerable losses in the course of the security operation.

Some media reports claim that Pakistani Taliban are joining Afghan Taliban operations, as indicated by several Pakistanis arrested and killed in battles there.⁽²⁷⁾ Some Pakistani politicians have also accused Pakistan state agencies of supporting the re-emerging Taliban in Afghanistan.⁽²⁸⁾ Several observers believe that without support from sympathizers in the local administration, Pakistani Taliban could not participate in the fighting nor Afghan fighters withdraw to Pakistan.⁽²⁹⁾ Others have asked whether the focus on al-Qa'ida members in the context of the "war on terror" to the neglect of Taliban members in the pursuit of the war on terror is related to reported "ambivalence or internal division" in the Pakistani establishment.⁽³⁰⁾

Afghan government officials have repeatedly urged Pakistani authorities to stop Taliban infiltration. Similarly, while US officials praise Pakistan as a "key ally" in the "war on terror", they often call for it to take more effective action.⁽³¹⁾ Pakistani officials have rejected such criticism saying that Pakistan would take steps on any "actionable material as to where Taliban leaders are", provided by US or NATO forces.⁽³²⁾ In September 2006, President Musharraf admitted that earlier government efforts had focused only on al-Qa'ida members in Pakistani cities and agreed to pursue the Taliban leadership hiding in Pakistan.⁽³³⁾ Pakistani officials have conversely claimed that Afghan authorities had failed to curb Afghan terrorist suspects from infiltrating Pakistan.⁽³⁴⁾

US-Pakistani relations have been strained by the growing closeness between the USA and India and the USA's agreement to India's nuclear programme while denying similar recognition to Pakistan. US demands of access to nuclear scientist Dr A.Q. Khan; Pakistan's insistence on pursuing a pipeline project with Iran and India despite US objections; Pakistan's traditionally close relations with China; and US foreign policy goals in the Muslim world have further strained bilateral relations.⁽³⁵⁾

The Musharraf government will have to find ways to reconcile Pakistan's commitments to pursue the US-led "war on terror" with its duty to protect and promote human rights. It reiterated this commitment when it was elected to the UN Human Rights Council in 2006.

3. Arbitrary arrests and detentions

"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 other person for the time being in Pakistan." Article 4(1) of the Constitution of Pakistan.

People held in Pakistan for alleged links to al-Qa'ida or the Taliban have been arrested and detained without reference to any national or international human rights guarantees. Custodial safeguards have been blatantly ignored and the protection of the law has been routinely denied. Domestic law requires arrests to be carried out in most cases by police presenting a valid arrest warrant yet most of the hundreds of terror suspects detained since 2001 have not been arrested in this way. None were charged with a recognizable criminal offence. Their detention was not recorded in a register of a recognized detention centres. They were held incommunicado - denied access to a lawyer or to their family and many were held in secret detention. They were not brought promptly before a magistrate.

Many detainees appear to have been held solely in order to obtain information without any intention of bringing criminal charges against them – for which there is no provision in Pakistani law. Many have been detained by Pakistani intelligence agencies – often on behalf of, or in the presence of, US personnel. The fate and/or whereabouts of many of these detainees remain unknown.

3.1 Safeguards relating to arrest and detention in Pakistan

The Constitution of Pakistan lays down safeguards relating to arrest and detention in Article 10 which provides: "(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest ... and no person shall be detained in custody beyond the said period without the authority of a magistrate." The Code of Criminal Procedure, 1898, spells out these safeguards in greater detail. Under its provisions, a magistrate decides if a detainee is to be remanded to police custody, which may extend up to 15 days. Once police conclude their investigation and submit a police report, a detainee may be remanded to judicial custody or be released. The detainee has the right to access a lawyer of his or her choice, to meet with family and be seen by a doctor.

The Constitution also provides for preventive detention for anyone posing a threat to the public order, which under the Maintenance of Public Order Ordinance, 1960 (MPO) extends to three months but can be extended further up to one year. Those suspected of terrorism offences can be held for up to one year without trial under the Anti-Terrorism Act, 1997 (ATA), if their name is listed as belonging to a banned group and provided the government is satisfied that "it is necessary so to do". It has to give notice to a detainee of such detention and provide grounds which the detainee can challenge. A person can also be criminally charged with terrorist offences under the ATA. In such cases a complaint (First Information Report, FIR) has to be filed and remand sought within 24 hours from a magistrate; such remand may extend up to 15 days and on application for a further 15 days. Such cases are tried in special courts set up for the purpose.(36)

The higher judiciary has in several decisions ruled that preventive detention orders, whether under the MPO or the ATA, have to fulfil several criteria. (37) The detaining authority must substantiate its order and all the grounds cited with significant material evidence of the detainee's prejudicial activities and it must place all the evidence before a court to allow it to assess the lawfulness of the order.

3.2 Arrests in the "war on terror" shrouded in secrecy

3.2.1 Number of arrests

Given the secrecy surrounding state activities in the "war on terror", it has been impossible for Amnesty International to ascertain the exact number of arrests and detentions. Official statements are incomplete and civil society bodies have not comprehensively reported figures for such arrests and detentions.(38)

Interior Minister Aftab Ahmed Khan Sherpao stated in October 2005 that over 600 foreign nationals had been arrested since September 2001, most of them immediately after the attacks in the USA. "A large number of them have been extradited and 97 have been released. Some are under interrogation. A number of them were killed as well, some 300, in various incidents. ... The principal charge against them has been terrorism, with a variety of allied charges." He did not specify how many Pakistanis had been held in this context.(39)

A report prepared by the Pakistani security agencies before President Bush's visit in 2006 provided an overview of what they described as Pakistan's "achievements" in the "war on terror" since 2001. It said that the security agencies had killed 850 alleged "terrorists" and had arrested another 600, including some on the FBI's "most wanted" list.(40) During this period, 350 to 400 personnel of the army, paramilitary forces, subsidiary forces and police were killed, and 760 injured.(41) President Pervez Musharraf has repeatedly stated that 700 or 750 people have been detained and handed over to US custody.(42) Military spokesman Major-General Shaukat Sultan said in June 2006 that since 2001 some 400 soldiers had lost their lives, 80 had been injured, 500 alleged "terrorists" had been killed, and over 1,000 alleged "terrorists" had been arrested, including both foreign fighters and their local facilitators.(43) He termed this a "successful operation".

According to the Pak Institute for Peace Studies, media monitoring between January 2002 and May 2006 showed that more than 1,000 al-Qa'ida suspects had been arrested. Of these, 70 were from Algeria, 86 from Saudi Arabia, 20 from Morocco, 22 from the United Arab Emirates, 11 from Libya, seven from Kuwait, 20 from Egypt, 28 from Indonesia, 18 from Malaysia, and 36 from other West Asian countries. Amongst 18 nationals of Western countries arrested in Pakistan in the context of "war on terror" there were five Americans, two Australians, 11 British nationals and an unknown number of French and German nationals. The study did not include all the arrests of Afghans and Pakistanis following clashes with security forces in the tribal areas and only included high profile Pakistani and Afghan members of al-Qa'ida arrested in those areas. The study also said that more than 1,000 alleged al-Qa'ida members had been killed in security operations in Pakistan.(44) Pakistani media have reported arrests of between 550 and 700 terror suspects since 2001.(45)

3.2.2 Failure to record arrests

Under international human rights law and standards and domestic law, Pakistani authorities are under an obligation to maintain accurate official registers of detainees as a safeguard against enforced disappearances.(46) Information should be made available to family members, lawyers and other persons with legitimate interest and judicial and other competent authority seeking to trace the whereabouts of a detained person.(47) The lack of information surrounding those detained in the context of the "war on terror" is indicative of the fact that human rights guarantees are routinely circumvented. Little is known because detainees are held incommunicado and information is withheld from family members and others seeking to trace the detained.

3.2.3 Lack of information

In the absence of official and publicly accessible information, the public, including human rights organisations, have

had to rely on media reports to build up a picture of the pattern of arrests and detention. Given official secrecy surrounding arrests, such reports frequently contain little information on the identity, nationality, and number of terror suspects arrested. In many cases, the media report the arrest of "Arabs" or "men from Central Asia", without giving any indication of identity or exact nationality.

Transliteration difficulties, the number of aliases of terror suspects and mistakes in recording similar sounding Arab names add to the difficulties connected with ascertaining the number of arrests. Many arrests are never mentioned in the media at all, either because the information is deliberately withheld (see case of Mohammed Naeem Noor Khan section 3.6.1.) or because relatives, fearing publicity and retribution, remain silent. In some cases, arrests become only known once relatives approach the courts and habeas corpus proceedings are subsequently reported in the media.

3.3 Recent enforced disappearances

Recent reports of enforced disappearance include the following cases:

On 4 February 2005, Tunisian national **Abdul Qayum** was arrested in Peshawar; security officials said they suspected links with al-Qa'ida. It is not known what happened to him after the arrest.(48)

Usama Bin Yussaf, was arrested in Faisalabad on 7 August 2005. He was running a phone call centre. Possibly a Saudi national, he was described as an al-Qa'ida operative closely linked to alleged al-Qa'ida operative Abu Faraj-al Libi who had been arrested on 2 May 2005. He was reportedly captured by tracking his mobile phone, whose number was in al-Libi's phone directory. He was reportedly moved to Lahore on 9 August and on the following day to Islamabad. Nothing is known about his fate and whereabouts since then.(49)

Haji Mohammad Yasin, an Afghan money changer, was arrested in Peshawar on 22 June 2006 by the Federal Investigation Agency (FIA) for allegedly undertaking illegal money transfers for Taleban members.(50) Nothing is known about his fate and whereabouts.

In July 2006, several security officials said that an Uzbek(51) al-Qa'ida member who had been arrested in Wana, South Waziristan, had confessed two weeks earlier to having helped to plan the suicide car bomb attack near the US consulate in Karachi on 2 March 2006 which killed five people including a US official. No further details about his identity, or place of detention were revealed.(52) Officials of the Interior Ministry denied that the arrest had been made. (53)

The latest instance to come to Amnesty International's notice is the arrest of **Imran Munir** who had recently returned with his father from Malaysia. They were met in Islamabad in late July 2006 by Inter-Services Intelligence (ISI) Brigadier Masood who asked Imran to come to his office. He did not return from there. His father filed a habeas corpus petition which began to be heard in the Rawalpindi bench of the Lahore High Court on 1 August 2006. On 2 August, the ISI stated that Imran Munir was not in their custody and that the agency had no information as to his whereabouts. (54) His fate and whereabouts remain unknown.

3.4 Circumstances of arrest

Moazzam Begg, a British national abducted on 31 January 2002 from his home in Islamabad, has given a detailed account of his arrest and detention. It includes many features which have characterized other cases of arbitrary arrests and detention.

Moazzam Begg reported that when he opened the door around midnight of 31 January 2002 after the door bell rang, "the first thing I knew was a gun at my head. I was pushed right back, through the forecourt, through the open front door, into the living room where my peaceful evening had just ended in shock and rising fear." The intruders made him kneel but did not ask his identity or reveal theirs. In response to his objection to their entering the rooms where his wife and children slept,

"they put a cloth hood over my head. They pulled my hands behind my back, handcuffed me and fastened flexi-cuffs (a disposable plastic shackling device) tightly around my ankles. I was physically picked up and carried to the vehicle [and] dropped in the back of a 4x4 [vehicle], lying flat. Within seconds, as we started to move, someone pulled up my hood just enough so that I could see. Instantly a camera flashed in my face. Behind it I saw a very badly disguised American, dressed to look like a Pakistani. He had a cloth wrapped around his head in a style that attempted to be, but was obviously not, Pakistani. Then the person on the other side of me, also an American but dressed a little better in an Afghan cap, produced a pair of handcuffs. I was cuffed behind my back already, but he waved these at me, and he said, 'Do you know where I've gotten these handcuffs from?' 'I've no idea, how would I know where you got your handcuffs from?' 'I was given these by the wife of a victim of the September 11th attacks.' I was calm enough to tell him that she would think he was really stupid, having caught the wrong person. Then he put them on top of the ones I already had on. I was incredulous" (55)

Moazzam Begg reports that he was refused when he pleaded with the Pakistanis present to allow him access to a lawyer, his family and the UK consulate. He describes being carried out of the car into what he assumed an intelligence facility and that his personal details were taken down by a Pakistani official. He relates that this official who appeared uncomfortable detaining him, told him "if we don't, we'll be hit hard by the Americans, by President Bush's army. You know that statement of theirs, 'you're either with us or against us'? Well, we've had to take a position." That Moazzam Begg was in detention at the behest of US agents, was later repeated to him by a senior Pakistani officer.(56) (see also sections 3.6.2 and Appendix 1.)

3.4.1 Exclusion of safeguards for arrest

Moazzam Begg's account contains no mention of regular law enforcement personnel being involved, such as the police. In many cases police are on record as saying that they were unaware of terrorism related arrests in their area of jurisdiction. In cases where police were alerted to or participated in raids or gun battles in support of intelligence agencies, they did not have access to the detainees. For example, police joined the chase of Abu Faraj al-Libi in Mardan on 2 May 2005 following a shooting. They told the media that al-Libi and others were taken away by intelligence personnel before police personnel could speak to them.(57)

The seizure of terror suspects is routinely carried out without an arrest warrant, the arrest is not formally registered in a police station, no information is given to the detainee as to the grounds of arrest and no criminal charges are filed and investigated. Detainees have no opportunity to contact a lawyer and to inform the family of their fate or whereabouts. The Director of the non-governmental Human Rights Commission of Pakistan (HRCP), I.A. Rehman, told Amnesty International that legal requirements of arrest are circumvented in the case of terror suspects because the investigative work of police and other security agencies was insufficient to secure convictions. He stated that to avoid having to release suspects, they were held unlawfully without reference to any law. He also told Amnesty International that intelligence officials often pick up people who are completely unconnected to terrorist groups to show the country's "success" in the "war on terror".

The Chief Justice of Pakistan, Justice Iftikhar Muhammad Chaudhry, in October 2005 acknowledged that terror suspects were entitled to the protection of the law. He said that "any so-called terrorist, whether a national or alien, cannot be deprived of life or liberty except in accordance with law. A fugitive, when arrested cannot be unceremoniously handed over to a foreign government, without producing him before a Magistrate as commanded by Article 10 (2) of the Constitution."(58)

3.4.2 Involvement of foreign intelligence agents

As reflected in Moazzam Begg's account above, US intelligence personnel appear to have known of or participated in the arbitrary detention and enforced disappearance of some terror suspects in Pakistan. Amnesty International has received reports that US personnel were present during the seizure of people considered "high value targets" in the "war on terror", many of whom have subsequently been held incommunicado in secret detention or subjected to enforced disappearance and to torture or ill-treatment.

In March 2003, a senior government official, speaking of several arrests following which the detainees' fate or whereabouts were unknown, was quoted as saying that "in all major cases FBI [US Federal Bureau of Investigation] agents have been involved in some way".(59) In 2004, a senior law enforcement officer reportedly said, "we do not know the fate of those picked up as we have nothing to do with them. We just provide assistance to the FBI in picking up the suspects. We do not know how many of the detained persons have been let off."(60)

Many reports of individual arrests mention the presence of US personnel. For example, on 9 January 2003, a joint team of the US FBI and the Pakistani ISI team arrested two Arabs of unknown nationality, Abu Hamza and Abu Umer in Karachi. They were later taken to the Bagram airbase in Afghanistan for further interrogation.(61)

FBI personnel were present during the arrest of Abu Zubaydah and several dozen other suspected al-Qa'ida members in Faisalabad in March 2002, according to local media. Following the arrests, the whereabouts of several of those arrested was unknown. The early morning raid on a Faisalabad residence on 28 March 2002 was reportedly supervised by nearly 20 US agents.(62) "The Americans were armed and masked. They did not go inside the houses but stood outside," a police source was quoted as saying.(63)

The newspaper *Dawn* reported, *"for the first time, American agents directly took part in the raids conducted by special teams at six different places in the city ... to arrest the 'most wanted terrorists' of the world. Separate raids were conducted on various houses by joint teams of the Federal Bureau of Investigation with the assistance of sensitive agencies and the Elite Force ... An interesting revelation made during the operation was that the hideout of the alleged suspects of Al-Qaeda was believed to have been detected by a special cell of the American FBI and CIA whose personnel were monitoring and deciphering round-the-clock all e-mail messages from the gadgets, scanning the air and satellite signals."*(64)

US intelligence had reportedly monitored email communications, alerted their Pakistani counterparts in mid-March and arrived in Faisalabad on 27 March to prepare the joint operation with local agencies.(65) Local media reported that no charges were brought against any of the arrested men, nor were the arrests entered into the diaries of local police stations. The names and whereabouts of the arrested men were kept secret. They were reportedly moved by FBI and Pakistani intelligence personnel to Lahore and Islamabad for questioning. Several local people who were arrested at the time, were released after a few days and reported that they had their belongings returned to them with marking made by the FBI.(66) Others remained subjected to enforced disappearance.

Senior Interior Ministry official Brigadier Javed Iqbal Cheema admitted that the raid had been based on intelligence provided by US agents but insisted that the operation was conducted solely by local police. Punjab Inspector General of Police, Asif Hayat denied that any foreign agency had been involved in the operation. "No foreign force or foreign personnel were involved in this. The entire operation was conducted by Punjab police, Punjab Elite Force CID [Criminal Investigation Department] and one of our national agencies. They built up the information jointly and police conducted the raid."(67) US officials, however, confirmed that the raids had been carried on the basis of information supplied by US intelligence, and that FBI and CIA agents were present.(68) US General Tommy Franks stated that the raids had involved "US assets" but not US troops.(69) and FBI director Robert Mueller stated that the FBI had been involved in a support capacity.(70)

3.5 The location and manner of arrests

Terror suspects have been captured in a range of circumstances where they have been denied necessary safeguards. Some were arrested when they fled from Afghanistan; some in raids on homes, possibly on the basis of information extracted under torture; some in mass arrests in the tribal areas; some were arrested abroad; and some after payment of rewards.

3.5.1 Arrested while fleeing Afghanistan

A large number of people were arbitrarily arrested, detained and subjected to enforced disappearance when fleeing Afghanistan after the US-led invasion in October 2001. Many were caught by "bounty hunters" when the USA offered and reportedly paid large sums for the capture of terror suspects.

The report of **Adel Kamil Abdallah** (41), a Bahraini national, is typical of dozens of others. He fled Afghanistan in December 2001 and hid with other Arab people in the border areas from Afghan and Pakistani men searching the border area for people they could turn over to US officials against financial reward. Approaching the Pakistani border, he related that, *"we saw from afar a border post of the Pakistani army. ... we had valid and legal travel documents ... The Pakistani officials received us rather well. They asked us to rest and ... reassured us that everything would be fine and that they would take us in the morning to the nearest police station for a brief questioning just to establish our identities after which we would be escorted to our respective embassies.... We stayed over night at the Pakistani border post ... Whilst waiting for the car in the morning, we were surprised to see, instead of a car, a military helicopter with about 15 officers from the Pakistani Special Forces or anti-terrorist unit on board. They ... asked us to get on with them. There we realised that we had been betrayed by the officers at the border post. The soldiers onboard the helicopter blindfolded us and tied our hands and feet in our backs and then threw us into the helicopter. They assigned four soldiers to each one of us. These soldiers sat on our backs throughout the flight. The situation was so hard and so unexpected. The plane landed at the Peshawar airport. There they dragged us from the plane and, once again, threw us onto the ground. There we remained in the open for about two hours without anyone uttering a word with us. ... From the airport we were taken in trucks with a number of escort soldiers to a police station ... [where] they untied our feet but we remained blindfolded and our hands [remained] tied. They put us in prison cells where they unfolded our faces and untied our hands. We ... discovered that our cells were located somewhere underground with doors made of steel. The cell was very dirty ... We stayed in this cell for about a week. The treatment in this prison was awful. They hardly allowed us to go to toilet in this prison. The food was very bad. ... To do our ablution for prayer, they did not allow us to go out of the cell; they instead brought us water in our cells for ablution. This had the effect of gathering water in our small cell."* (71) (see section 3.5.5, 3.6.2 and 5.1.)

3.5.2 Mass arrests

Many terror suspects were arrested in mass arrest operations across Pakistan prompted by specific international or domestic events. According to the HRC, "Official responses to acts of violence, including both sectarian and other terrorist attacks, consisted almost exclusively of 'rounding up' dozens who they alleged were militants. Others were killed or arrested across the country in actions that remained shrouded in secrecy." (72)

In August 2005, when it emerged that some of the 7 July 2005 London suicide British bombers had visited *madrassas* in Pakistan, several hundred foreign and dual national *madrassa* students and other visitors, clerics and members of Pakistani Islamist groups were arrested. Many were arbitrarily held without charge or trial. Amongst them were reportedly at least 150 Africans, many of whom had valid documents to be in Pakistan, who remained for months in detention without charge or trial. Some of the others were subsequently released; others were held under the Maintenance of Public Order Ordinance or on criminal charges under which they were tried. The whereabouts of others remains unknown.

Amongst those caught up in the 2005 crackdown on foreign visitors was **Mohammad Shoaib Siddiqui**, a 24-year old British national who was visiting relatives in Karachi. A student of medicine at King's College, London, he was forcibly taken away on 20 August 2005 whilst in Karachi by three men in plain clothes. His family received a phone call from him the following day during which he said he was in prison. Before he could give any details, the phone went dead and his family has had not further contact with him. The Pakistani police reportedly treated this as an abduction case, but failed to pursue it. The family was reportedly contacted by a Pakistani intelligence agency which warned them that it would be in Siddiqui's best interest if they remained silent. (73) All state agencies approached by his father denied holding him.

Pakistani media quoted security sources as saying that Mohammad Shoaib Siddiqui had been arrested by an intelligence agency for alleged links with al-Qa'ida; that he had pretended to spend holidays in the Northern Areas but had instead travelled to the NWFP. (74) The fate and whereabouts of Mohammad Shoaib Siddiqui remain unknown.

During the same period, **Tahir Shah**, a documentary film-maker and writer, was picked up along with two Swedish film-makers, **Leon** and **David Flamholz**, on 18 July 2005 while stopping over in Peshawar on their way to Afghanistan. He had reportedly tried to find a distant relative's house in Peshawar and was being videoed by David Flamholz who wanted to capture the unexpected reunion. Military police officers surrounded them, took them to their office, searched their baggage and took away their passports. Over four hours later, a senior army officer told the film-makers that they were under arrest, had no right to call their embassies and ordered them to be blindfolded, handcuffed and taken away at gunpoint. They were taken to a medical facility in an army compound where they were stripped and searched. They were then detained for one and a half days in an old barracks where they were interrogated. "As a British citizen of Asian Muslim origin, I was suspected of being part of the world of suicide

bombers, religious schools and Islamic fanaticism", Tahir Shah said.(75)

Though their detaining officers reportedly said to the detainees that there was no evidence against them, the three men were transferred three days later, chained and blind-folded, to another detention centre outside the city. They were held in isolation cells in a brightly lit cell block, in a place a guard called "the Farm". All three film-makers reported hearing weeping and screaming in other cells. Almost every night between midnight and 3 am, Tahir Shah was taken, frequently blind-folded and hand-cuffed, to be interrogated by officers in civilian clothes about his friends, their work and Islam. The Swedish film-makers were only interrogated once. They told Amnesty International that although the detaining authorities realized that their detention had been a mistake, they had to consult senior officers, prolonging their detention. Early on 3 August the three men were made to sign papers that they had not been ill-treated, given their bags and taken to the airport by an officer of the Pakistani Crime Investigation Agency (CIA) who reportedly apologized for the military's "heavy-handed" treatment. They were deported to London. At no point were they charged with any offence or brought before a magistrate.

Unsubstantiated allegations of terrorist activities also led to the detention of **Zeeshan Siddiqui**, a 25-year-old British national of Pakistani descent, who was arrested in Shabqadar, Charssada district, North West Frontier Province, on 15 May 2005 by a Pakistani intelligence agency. Agents claimed to have recovered incriminating computer material.(76) He was charged, however, only with possessing a forged Pakistani identity card and entering the country illegally.(77) He was reportedly travelling with a group of itinerant Islamic preachers and had reportedly lost his British passport containing his valid visa.

Following the bomb attacks in London on 7 July 2005, Zeeshan Siddiqui was repeatedly portrayed in Western and Pakistani media as the link between the London suicide bombers and al-Qa'ida.(78) Members of different intelligence agencies, including on at least three occasions British intelligence agents, interrogated Zeeshan Siddiqui. His lawyer told the media that British officials told him they were investigating him because "there is a lot of stuff about you on the internet".(79) However, no charges relating to terrorist offences were filed against him.(80) He was acquitted of possessing forged identity papers on 22 December 2005. On 7 January 2006, he was convicted of overstaying in Pakistan and fined, and two days later left Pakistan. During his detention he did not receive any treatment for injuries allegedly sustained as a result of torture. (see section 5.1 below.)

3.5.3. Arrests in the tribal areas

Following threats and abuse from local tribal fighters and government officials, journalists have withdrawn and ceased to report events there.(81) No independent observers have been allowed by the government to visit the tribal areas to investigate reports of human rights violations committed in the in the context of the "war on terror". The HRCP said that many attempts by human rights and political groups to monitor the situation in South Waziristan had been thwarted.(82) As a result, the main source of information about the situation on the tribal areas is the army.

Fewer arrests of terror suspects have been reported from the tribal areas than from other parts of the country. Most have been alleged al-Qa'ida members. Recently several arrests of alleged Taleban have been reported. Recent reports of arbitrary detention and enforced disappearance include the following cases.

In May 2006, an alleged al-Qa'ida operative, Tunisian national **Abdul Rahman** was reportedly arrested along with an Afghan and their Pakistani facilitator in North Waziristan.(83) Nothing further is known about them.

On 21 June 2006, four Turkish nationals – **Yilmaz, Ozer-Orhan, Sahim Arslan, Mohammad Kutuco** – and an Afghan national, **Abdul Rehman**, were arrested by the paramilitary Frontier Corps while travelling on a bus to South Waziristan. They were apparently suspected of links to al-Qa'ida. Official sources reportedly stated just that the men were handed over "to the authorities concerned".(84) On information reportedly obtained from the detainees, a further 11 Afghan refugees were picked up on 23 June in Quetta.(85) It is not known where they were taken or what happened to them.

Some Afghans suspected of links with the Taleban have also been arrested. In all these cases, the detainees have apparently not been charged or tried, and their fate and whereabouts are unknown.

In mid-July 2005, **Mullah Abdul Kabir**, former governor of Nangahar province under the Taleban, was reportedly arrested in Nowshera district, NWFP. Also reportedly arrested were his younger brother and former assistant **Mullah Abdul Aziz; Mullah Abdul Qadir**, responsible under the Taleban for recruitment and provisioning of fighters; **Mullah Abdul Haq**, who had worked in Mullah Omar's office, and a fifth unnamed man.(86)

Ahmed, a nephew of Taleban commander Jalaluddin Haqani, was arrested in Miramshah, North Waziristan on 29 September 2005. His name was reportedly on the list of wanted Taleban issued by the Pakistani government.(87)

Mullah Hamidullah, formerly in charge of the Taleban's Department for the Promotion of Virtue and Prevention of Vice in Khost, was arrested on 24 September 2005 in Bannu, NWFP. A security official reportedly said that he was moved to Peshawar for interrogation by a team of civilian and military officials.(88)

On several occasions mass arrests of Afghans have been reported. Some detainees have been held in secret detention centres, contrary to national and international law. In a recent operation in and around Quetta, Balochistan, in mid-July 2006, police arrested some 250 Afghans. About 50 were released within days for lack of evidence. Some police officials reportedly said the detainees did not have proper documentation to stay in Pakistan and would be charged under the Foreigners Act.(89) However, the Deputy Inspector General of Police, Quetta range, claimed that

they were "fighter Taleban and not Afghan refugees" or students.(90) The province's Director General of Police similarly claimed that the majority had fought with the Taleban in Afghanistan.(91) He stated that the detainees would be handed over to Afghan authorities after completing legal formalities. Amongst the detainees was reportedly **Mullah Hamdullah Achakzai**, described as a low ranking Taleban from Helmand province who was arrested on 17 July 2006 with five unnamed associates in Quetta.(92) On 23 July 2006 a group of 58 Afghans was handed over to Afghan authorities at Spin Boldak border checkpoint. It is not known if they were charged and detained in Afghanistan.

3.5.4. Arrested abroad

A few Pakistani terror suspects have been arrested abroad and taken into either Pakistani or US custody and were then subjected to enforced disappearance.

Saifullah Paracha (59), a businessman based in Karachi, went to Karachi airport to catch a flight to Bangkok on 5 July 2003. He rang his daughter from the airport saying he was ready to board the plane. His visa to Thailand had been hurriedly arranged by his US business partner, Charles Anteby, who was then in Bangkok. On the following day, Anteby rang Saifullah's wife, Farhat Paracha, to ask why her husband had not come to Bangkok. Farhat Paracha's initial fear was that her husband had suffered a heart attack during the journey. She tried but was unable to register a police complaint and wrote to all relevant Pakistani and Thai authorities to ascertain where her husband had been taken. None replied. On 25 July, she filed a habeas corpus petition in the Singh High Court.

On 5 August 2003, an *NBC* report about her son Uzair Paracha, who had earlier been arrested in New York by US FBI agents, mentioned that US officials had said that Saifullah Paracha was in custody in Pakistan. The International Committee of the Red Cross (ICRC) informed her on 23 August 2003 that Saifullah Paracha was being held by US authorities at Bagram, Afghanistan, and forwarded a letter from him in his handwriting. He stated in this letter that he was well, being given his medicines and adequate care. He was transferred to Guantánamo Bay in September 2004 and brought before the Combatant Status Review Tribunal tasked with reviewing the status of detainees held at Guantánamo Bay in November 2004. (see section 7.3 and 7.4.)

In a handwritten letter, dated 8 December 2004, Saifullah Paracha described his abduction by US agents in Thailand and his transportation to Afghanistan.

"I reached Bangkok International Airport on July 06, 2003 and at the airport I was illegally and immorally arrested – back hand/leg cuffed, black big mask on my head up to neck, was thrown on floor of station wagon facing down. I am heart patient / diabetic / high blood pressure / skin disorder, gout; it could have been fatal, there was no human consideration at all. From the airport I was taken to unknown place for few days and kept eyes covered, ears cover, handcuffed, leg cuffed. After few day[s] I was transported by plane to Afghanistan, under extremely severe bad conditions. I was kept in isolation from July 2003 – September 20, 2004 and since September 20, 2004 – I am in isolation cell in Guantánamo Bay Island... Am I being considered human being or animal, or is USA my God?"

It emerged during hearings of a habeas corpus petition filed in Karachi by Farhat Paracha on 25 July 2003 that the Pakistani authorities appear to have been aware of the impending arrest by US agents and to have facilitated it. Government authorities allowed Saifullah Paracha to leave the country, despite the fact that his name was on the Exit Control List (ECL),(93) which bars people from travelling abroad. According to the FIA, Saifullah Paracha was "accidentally cleared by FIA immigration staff at Karachi airport". The Deputy Attorney General stated that the computers in the terminal were not working at the time, allowing him to leave.(94) However, other passengers on the flight have stated that all computers were working that day. Observers in Pakistan have told Amnesty International that they believe that Saifullah Paracha was not arrested in Pakistan on account of his status and influence and because his arrest might have led to local protests.(95)

Khalid Mehmood Rashid, a Pakistani national, was handed over by South African officials to Pakistani officials in South Africa on 6 November 2005 and was flown to Pakistan on the same day. He has not been seen since. Officials of the Pakistani Interior Ministry confirmed in a letter to the South African Department of Home Affairs that Khalid Mehmood Rashid had arrived in Pakistan subsequent to his deportation from South Africa on 6 November 2005.(96) On 14 June 2006 the Pakistani High Commission in South Africa(97) stated that Khalid Mehmood Rashid was arrested by South African authorities on 31 October 2005 and that he "was wanted in Pakistan for his suspected links with terrorism and other anti-state elements. The suspect was handed over to Government of Pakistan officials on 6 November 2005. Presently he is in the custody of Government of Pakistan." Despite these official acknowledgements, the Pakistani Ministry of Interior has not responded to inquiries by his family as to his whereabouts and the charges on which he might be held. In a hearing on 29 June 2006 of the habeas corpus petition filed on 17 June, the Lahore High Court directed that the state to disclose the whereabouts of Khalid Mehmood Rashid within three weeks. That hearing, scheduled for 25 July 2006, was adjourned, according to information given to the lawyer, because too many cases were to be heard that day.

Another Pakistani national whose fate and whereabouts remain unknown after being arrested abroad is **Qari Saifullah Akhtar**, a Pakistani national who was arrested on 6 August 2004 by authorities in Dubai, reportedly at the request of Pakistan. International media described Qari Saifullah Akhtar as closely associated with the Taleban and linked to al-Qa'ida.(98) A Pakistani source described him as "an operational head of Al Qaeda in Pakistan".(99) He was reportedly handed over to Pakistani authorities on the following day and flown to Pakistan on 7 August after his office was raided and documents were removed. According to unnamed Pakistani intelligence officials he was flown to Lahore for interrogation.(100) On 8 August Pakistan Information Minister Sheikh Rashid Ahmed publicly confirmed the arrest of Qari Saifullah Akhtar but, according to the constitutional petition filed later, said that there was no specific case against him. He told *AFP* that Pakistani authorities were questioning Qari Saifullah Akhtar over "many terrorist cases".(101)

Qari Saifullah Akhtar's brother-in-law filed a constitutional petition in the Supreme Court on 13 October 2004, requesting it to order the detainee to be brought before the court, to allow family members to meet him and to ensure that he was not removed from the court's jurisdiction. According to his lawyer, all the respondents including the Ministry of the Interior, the Foreign Ministry, the Information Minister and the Directors of the ISI, Intelligence Bureau (IB) and FIA denied holding him and knowing his whereabouts. On 25 July 2006, the Supreme Court at short notice cancelled the hearing.

3.5.5. 'We got you cheap': rewards facilitate arbitrary detention

Tribunal member: *Do you have any theories about why the government and the Pakistani intel folks would sell you out and turn you over to the Americans?*

Algazzar: *Come on, man, you know what happened. In Pakistan you can buy people for \$10. So what about \$5,000?*

Tribunal member: *So they sold you?*

Algazzar: Yes. (102)

Amnesty International is concerned that the routine practice of offering large rewards for unidentified terror suspects has facilitated arbitrary arrests, detention and enforced disappearance. Amnesty International has received many reports of individuals being seized by Pakistani police or border officials, army personnel and private individuals and handed over without human rights guarantees to US law enforcement or intelligence personnel operating on Pakistani territory without reference to any law. From the information Amnesty International has received, these detainees were not lawfully arrested or charged and safeguards which should have applied to them were ignored.

The individuals arbitrarily arrested and detained in this manner are not identified terror suspects facing international arrest warrants, for whom rewards have been issued. (103) They are people of different nationalities captured, often apparently at random, and sold into US custody by people indifferent to their fate.

The USA began in early 2002 to distribute flyers offering substantial amounts of money for the capture of suspected enemies. One such flyer says:

"Get wealth and power beyond your dreams ... You can receive millions of dollars helping the anti-Taleban forces catch al-Qaida and Taleban murderers. This is enough money to take care of your family, your village, your tribe for the rest of your life. Pay for livestock and doctors and school books and housing for all your people." (104)

There is overwhelming evidence of Pakistanis, both officials and private individuals, selling people into US custody.

Deen Mohammad, an Afghan held in Guantánamo Bay who had had a grocery shop in Kabul, told fellow detainee Moazzam Begg in January 2005 that he had been sold after he fled to Pakistan. He reportedly said that he thought he had aroused suspicion because many of his customers in Kabul had been foreigners. (105) Another former detainee at Guantánamo Bay, UK national **Asif Iqbal**, said he was convinced that there was a paper trail showing huge amounts of money paid out by the USA for many of those now in Guantánamo Bay. (106)

Adel Kamil Abdallah, a Bahraini national, was handed over to US military personnel at Kohat, NWFP, on his return from Afghanistan in December 2001. He reported that US guards told him that "we got you cheap, for only \$5,000". He was flown by US forces to Kandahar and then to Guantánamo Bay. He was released after four years in detention in November 2005 and returned to Bahrain. (see section 3.5.1, 3.6.2 and 5.1.)

Nizar Sassi, a French national of Tunisian descent, said after his release from Guantánamo Bay and return to France that "I was sold for 5,000 dollars to the Americans by the Pakistanis." He had been caught by local people near the Afghan border and sold to US forces in December 2001. (107)

A Moroccan detainee, **Ahmed Errachidi** reported to his family from Guantánamo Bay that "bounty hunters" in Islamabad had seized him; as he speaks English he could follow the negotiations between his captors and US personnel which led to his being sold for \$5,000 into US custody. (108)

Jamal Belmar, a UK national released from Guantánamo Bay, told Amnesty International that he had met several people in detention who had been sold to the USA and that guards in Guantánamo Bay had confirmed this in conversation. The price for an Arab prisoner, he said, varied from \$4,000 to 5,000. Swedish national **Mehdi Ghezali** similarly told Amnesty International that "I was captured in a village near Peshawar. The villagers sold me to the Pakistani army who in turn sold me to the Americans in December 2001". A released Moroccan prisoner, **Brahim Benchekroune**, has publicly stated that the majority of prisoners at Guantánamo Bay were sold into US custody by Pakistanis. He described men with black suitcases full of money arriving in a detention centre in Pakistan and bargaining over the prisoners; after coming to an agreement of \$5,000 per head, they would all clap, he reported. Cooperation against terrorism, he said, proved a "lucrative business for the Pakistanis who were determined to arrest as many Arabs as possible". In some cases Pakistanis also sold prisoners held for offences unrelated to terrorism. A Yemeni, **Karama Khamis Khamisain**, was held on suspicion of drug trafficking in the same cell as Benchekroune and others who were suspected of links with al-Qa'ida. Benchekroune reported that the Pakistani captors directed Karama not to shave and to learn to say his prayers and do his ablutions. This was confirmed by Karama Khamis Khamisain

who told Amnesty International after his release that while being held in Quetta, Pakistani officials refused him shaving goods and instead gave him oil for his beard and kohl which he was told to use for his eyes, in the style adopted by many Taleban fighters. Benchechroune said that he only later understood that this change in appearance and behaviour was facilitated so that Karama looked and behaved like a practicing Muslim, and so could be sold as a terror suspect.(109)

Pakistani authorities have denied that anyone has been sold into US custody. Pakistan Information Minister Sheikh Ahmed Rashid is reported as saying in June 2005, "No one has taken any money."(110)

Analysts have pointed out that more than 85 per cent of detainees at Guantánamo Bay were arrested, not on the Afghanistan battlefield by US forces, but by the Northern Alliance fighting the Taleban in Afghanistan, and in Pakistan at a time when rewards of up to US\$5,000 were paid for every "terrorist" turned over to the USA. The determination of their status as "enemy combatants" by US authorities often depended on scant and unreliable evidence provided by their captors who usually did not remain available for US officials to verify the allegations. Analysts have concluded that in many cases these allegations were the sole ground for detention.(111)

Offering rewards for the capture of suspected criminals does not in and of itself violate international standards. However, Amnesty International is concerned about the pattern of arrest of terror suspects on the basis of unsubstantiated allegations by people who stand to benefit from the arrests. Such detainees have spent months or years as "enemy combatants" without being allowed to challenge the legality of their arrest, let alone rebut the alleged evidence against them in a court of law. This combination of doubtful grounds for arrest and detention without charge or trial in Pakistan adds to the gravity of the violations of human rights involved in the indefinite detention of people transferred to Guantánamo Bay.(112) The fact that Pakistan allowed people captured in its territory to be transferred to such detention without any judicial procedures and without ensuring that they would not face human rights violations entails that Pakistan has contributed to and facilitated such violations by its US ally.

3.6. Secret detention

3.6.1. Secrecy surrounding detention: the case of Mohammed Naeem Noor Khan

Mohammed Naeem Noor Khan, aka Abu Talaha, was subjected to enforced disappearance; it is unclear if he is still in Pakistani or in US custody. The 25-year-old computer specialist left his home in Lahore on 13 July 2004, telling his wife that he would return shortly. He has not been seen since. His family told Amnesty International later that he "had just moved to a small house on rent a few days earlier where he was living with his young wife whom he had married only one month earlier. On the day he was arrested he left his wife at home to pick up the air conditioner which his father had sent him near the airport. It was then that he never returned home. That is all we know regarding his arrest. Even this information has been given to us through third person and not directly. I am afraid we are in the dark like everyone else [as to his whereabouts]."

When he did not return home, his wife returned to her family in Karachi. His parents and sister in Karachi tried through various channels to ascertain his whereabouts. They said that they heard of his arrest in early August when a neighbour alerted them to a report in US newspapers about it.

Pakistani media did not report the arrest or enforced disappearance of Mohammed Naeem Noor Khan for some two weeks. International and local media later said that observers believe that the arrest was kept secret because the detainee had begun soon after his arrest to cooperate with intelligence agencies.(113) The US National Security Agency (NSA) and the CIA reportedly provided sophisticated tracking devices which assisted Pakistani authorities in locating Mohammed Naeem Noor Khan.(114) The material which Pakistani intelligence officers said they had found in his possession, including e-mail addresses and cell phone numbers, reportedly led to further arrests of terror suspects.(115) Pakistani intelligence officials reportedly said that Mohammed Naeem Noor Khan had told his interrogators that he had been recruited by al-Qa'ida to undertake its communication work.(116)

On 17 August 2004, the detainee's father, Hayat Noor Khan, filed a habeas corpus petition in the Rawalpindi bench of the Lahore High Court. The petition remains pending; the respondents did not appear in the first two hearings and then requested more time to respond. His family told Amnesty International in March 2006 that no date for another hearing had been set.

Unidentified intelligence officials reportedly said in August 2004 that Pakistani officials considered extraditing Mohammed Naeem Noor Khan and other suspects.(117) At the same time, Pakistani officials were reported to have said that nothing incriminating was found on Khan to connect him with any terrorism or the planning of such acts "hence we are not sure if he's to be prosecuted or not".(118) His lawyer has told the media that his client was arrested solely because he had been named in September 2003 by a Malaysian student held incommunicado in Pakistan, threatened with torture, and subsequently released.(119)

The fate and whereabouts of Mohammed Naeem Noor Khan remain unknown. His family told Amnesty International in March 2006 that they put their trust in President Musharraf's statements that no Pakistani national would be transferred to US custody. (see section 8.3.)

3.6.2 Conditions of detention: 'a feeling of complete hopelessness'

Moazzam Begg has described being held incommunicado and interrogated in an unofficial or secret detention site. On the second day after his arrest on 31 January 2002 in Islamabad, he was hooded by his Pakistani captors and taken by car to a prosperous looking house, "obviously in use as a normal house", in another sector of Islamabad.

Here he was interrogated by Americans in civilian clothes who did not identify themselves. One of them showed him Moazzam Begg's wife's purse, driving licence and mobile phone, making him fear for his family's safety. During the second interrogation, a female US interrogator asked about his British passport, and two British intelligence officers, who identified themselves as from British intelligence, were present. (see section 3.4 and appendix 1.)

Moazzam Begg appealed to the British agents to give him access to the UK High Commission, but one replied, "I can't help you there, I'm not a social worker". He later advised the detainee, "all you have to do is cooperate with the Americans. That would be the best thing for you". Moazzam Begg has claimed that in the course of that interrogation he overheard one of the US interrogators tell someone on the phone, "We have another one for Kandahar". He has stated, "I had a sudden feeling of complete hopelessness". During the following interrogation his US interrogator told him, "the British have washed their hands of you, you're not going to see them any more. So your only opportunity is to cooperate with us. We've released people in the past ... We can make life easier for you, or we can make life difficult. You can answer our questions here, or you can do it in Kandahar and Guantánamo".

Similarly **Adel Kamil Abdallah**, a Bahraini national arrested in December 2001 near the border with Afghanistan, reported how he and other nationals from Middle Eastern countries were denied access to their diplomatic representatives and taken to an unofficial place for interrogation by US personnel.⁽¹²⁰⁾ "We were questioned by the Pakistani intelligence services. They ... promised us that nothing bad would happen to us and that they would contact our embassies so that they can make the necessary travel arrangements for us to return to our countries." However, this did not happen. Instead, he has stated, he was taken for questioning in a private house.

"While at the Peshawar prison, the Pakistani officers took us for "routine" questioning ... to a villa where we were surprised to see in front of us, face to face, American interrogators. ... I was questioned by a man and a woman from the American intelligence services. We thought that we would be asked some general and routine questions and then be released. The Americans asked us about our names, nationalities, age, qualifications, the reason of going to Afghanistan, how we entered and when. After this questioning, they returned us to the prison ..." (see section 3.5.1, 3.5.5 and 5.1.)

In some cases, Pakistani officials told terror suspects that they would be seen by UN personnel. **Mehdi Ghezali**, a Swedish national seized in December 2001 by Pakistani villagers near Peshawar who gave him to Pakistani army personnel in return for a reward, told Amnesty International:

"They told me that they would allow me to meet with representatives of the UN. That's when they took photos of me and took my fingerprints. A woman was presented as a UN official. When I saw her again at the airport, I understood that she was not from the UN but an American soldier."

Other people detained in the "war on terror" have described being held in incommunicado detention, blindfolded and unable to tell where they were. Some, such as Australian national **Mamdouh Habib** have reported being held in a jail in or near Karachi. Many accounts mention frequent transfers between different cities in Pakistan, apparently for the purpose of interrogation. Journalists and human rights activists have told Amnesty International that most terror suspects deemed important were held in "safe houses" run by "the agencies" – which are believed to include the ISI and MI, under the administrative control of the Ministry of Defence.

3.6.3 Involvement of US personnel

Amnesty International is gravely concerned about reports that US intelligence agents have detained and interrogated terror suspects in secret places of detention in Pakistan. The human rights organisation Human Rights First has claimed that multiple sources assert that the USA maintains secret detention facilities in Kohat and Alizai.⁽¹²¹⁾ US intelligence agents are also alleged to have taken control of known places of detention in Pakistan (or parts of them) without declaring such places to be US detention centres or under their control and to have held terror suspects in incommunicado detention there. They are also alleged to have been aware of or participated in torture or other ill-treatment, and to have moved detainees to other unofficial or secret detention centres, including in Afghanistan.

The use of Kohat prison by US personnel has been reported by various sources. Journalists in Peshawar have told Amnesty International that ordinary detainees and staff were moved from sections of Kohat prison in late 2001. Human Rights First claimed that around that time, US officials freely questioned terror suspects at Kohat prison and determined which amongst them were to be moved to Guantánamo Bay.⁽¹²²⁾ The newspaper *Dawn* on 29 December 2001 reported that a six-member FBI team, assisted by top Pakistan military intelligence officials, flew in daily from Islamabad to interrogate 139 terror suspects of various nationalities who had been captured fleeing Afghanistan. At least three Arab detainees were reportedly taken to Islamabad for further questioning.⁽¹²³⁾ Javed Ibrahim Paracha, a former member of parliament from Kohat, alleged in January 2002 that 15 detainees accused of links with al-Qa'ida or the Taliban, including Shaikh Salah, were transferred from Kohat prison to the airport in a humiliating manner in the middle of the night. He said that Shaikh Salah was "handcuffed, shackled and stripped of almost all his clothes when he was being taken to the airport". At the airport the men were, Paracha alleged, handed over to US officials waiting in planes.⁽¹²⁴⁾ According to Pakistan media reports, in September 2003, US officials were given full authority over Kohat airport. ⁽¹²⁵⁾

3.6.4 Secret detention is banned under international law

Secret detention is prohibited under international human rights law. The UN Human Rights Committee, responsible for monitoring the implementation of the International Covenant on Civil and Political Rights to which the US is a state party, has stated that "provisions should be made for detainees to be held in places officially recognized as places of

detention and for their names and places of detention... to be kept in registers readily available and accessible to those concerned".(126) In July 2006, the Human Rights Committee called on the USA to "immediately abolish all secret detention and secret detention facilities".

The UN Special Rapporteur on torture has also said that "the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention."(127)

International human rights bodies have held that secret detention and enforced disappearances themselves constitute ill-treatment or torture, in view of the considerable suffering of people detained without contact with their families or anyone else from the outside world, and without knowing when or even if they will ever be freed.

If the USA has established secret detention facilities within Pakistan, the Pakistani authorities may have been complicit in human rights violations. In accordance with international law, a state which aids or assists another state in the commission of a violation of international law is internationally responsible if it does so with knowledge of the circumstances of the violation. In other words, if the Pakistani authorities have facilitated abduction of persons, knowingly provided an essential facility or placed its own territory at the disposal of the US or another state then this may constitute complicity.(128)

3.7 Recommendations

3.7.1 To the Government of Pakistan

Amnesty International calls on the Government of Pakistan to comply fully with its obligations under international law to respect and protect the rights of all detainees, and in particular to take the following measures to prevent arbitrary detention:

- end incommunicado detention and ensure all detainees have access to a lawyer, family members and medical care;
- end secret detention;
- ensure that all places where detainees are held are officially recognized;
- ensure that all places of detention where people are or may be deprived of their liberty are open to regular, unannounced inspection by appropriate independent bodies;
- publish up-to-date lists of all officially recognized places of detention;
- establish and maintain a central register of detainees.

The organisation also urges the Government of Pakistan to investigate all reports of arbitrary arrests and detentions, enforced disappearances, torture, ill-treatment and other violations of detainees' human rights with a view to bringing those responsible to justice.

3.7.2 To the US government

Amnesty International calls on the US government to:

- ensure that all officers comply fully with international safeguards which protect detainees from arbitrary arrest and detention, in particular the obligation to notify detainees of their rights during detention;
- end secret detention;
- ensure that all places where detainees are held are officially recognized;
- ensure that all places where people are or may be deprived of their liberty are open to inspection by appropriate independent bodies.

4. Arbitrary arrest, detention, torture and enforced disappearance of children

4.1 Arbitrary arrest and detention of children

Several children of various ages have been detained in Pakistan in the pursuit of "the war on terror". Some were arrested alongside their adult relatives, some were alleged to be terror suspects and some were held as hostages to make relatives give themselves up or confess.

Amnesty International is concerned that secrecy surrounds the fate of several of these children. On 25 July 2004 Tanzanian national **Ahmed Khalfan Ghailani** and several others were arrested during a raid in Gujrat, Punjab province. Amongst the detainees were three women and five children, including a baby and a 13-year-old Saudi boy, **Talha**. Nothing is known about the fate and whereabouts of the women and children.

Dr Aafia Siddiqui, a Pakistani neuroscientist and her three children, aged seven and five years and six months, were reportedly arrested in late March 2003 in Karachi for alleged links to al-Qa'ida members, as she was about to take a taxi near her mother's home. The circumstances of her arrest remain obscure. The newspaper *Dawn* printed two letters(129) from her uncle, Dr S.H. Farooqi, claiming that she had been abducted "by FBI-hired intelligence personnel". He said that a motorcyclist in plainclothes had visited her mother, Ismat Siddiqui, and told her to keep quiet about her daughter and that she and her children were all right. He also reported that Dr Aafia Siddiqui's elder sister, Dr Fawzia Siddiqui, had been told on 30 December 2003 by the Interior Minister in Islamabad that Dr Siddiqui had already been released. Dr Farooqi said the whole family lived in a "state of severe mental torture". In his second

letter he reported that Aafia Siddiqui's mother, sister and her sister's two children had been placed under house arrest and prevented from contacting family members. The fate and whereabouts of Dr Aafia Siddiqui and her children remain unknown.

The six children of Egyptian nationals **Farooq bin Saad** and his wife **Fatima** were arbitrarily detained with their parents. Sons **Abdul Rehman**, **Obaid** and **Abdullah Harris** and daughters **Aasia**, **Barah** and **Khadija** were reportedly all minors at the time of their arrest. The family was arrested from their home in Dwa Sarae village, Charsadda district, NWFP on 23 May 2005 for alleged links with al-Qa'ida. They were not allowed to take belongings, including documents, with them so could not prove that they were in the country legally. Farooq bin Saad has stated that he is an engineer and that he moved to Pakistan some 19 years ago and worked for an NGO. After 11 months of incommunicado detention, the family was handed over to the FIA on 18 April 2006 and charged under the Foreigners Act 1946 with illegally staying in Pakistan. They were brought before a magistrate on 20 April 2006 and remanded in custody. One of the boys, Abdullah Harris, told journalists that, "for a week, we were tied up in a room and constantly interrogated by our captors" who were asking the family about al-Qa'ida and the Taleban.(130)

Amongst the children arbitrarily detained in their own right was Tajikistani national, **Khalid Maroof**. He was seized on 1 October 2004 by tribesmen while fleeing after a landmine blast in Sarwekai, South Waziristan. Then 15 years old, he was believed by local tribespeople to have been part of a three-member group which planted the bomb. He was handed over to army custody and interviewed three weeks later in an army "safe house" – an unofficial place of detention - by journalists of the *Dawn* and *The News*(131). Khalid claimed that he had been abducted about a month earlier along with four other boys from near his school in Koibish, Urjinzabad, Tajikistan to be trafficked. He reported that they were taken in a van to Wana, South Waziristan. The other boys, Farooq, Khair Mohammad, Farruk and Farhad were sent to different places and apparently sold to local tribesmen. Khalid Maroof said that he was abandoned in Shakai, South Waziristan, perhaps, he suggested, because nobody wanted to pay for him. A local man picked him up and they were later joined by a Turkmenistani man. Following the landmine blast, which killed four local students, local tribesmen opened fire on them, killing the Turkmenistani and injuring Khalid Maroof who was caught by the tribesmen.

On 23 November 2004, another Tajikistani boy,(132) **Saeed Akbar**, then 12 years old, was arrested near Makin area, South Waziristan, by security forces along with 26-year-old **Abdul Qahar**, variously described as Tajikistani or Uzbekistani. They were reportedly taken to Peshawar for interrogation.

On 25 November 2004, army personnel presented the two boys, Khalid Maroof and Saeed Akbar along with Abdul Qahar, to the media in Peshawar as "foreign terrorists" linked to al-Qa'ida in statements that Amnesty International believes violated their right to be presumed innocent.(133) Corps Commander Peshawar, Lt.-Gen. Safdar Hussain said:

"They may look like children who cannot even wipe their own noses but they are the best people to be used for terrorist activities. If dogs could be used for tank busting during the Russian war, children could also be used for terrorist activities. Don't forget that these children have hurled grenades at the tribal peace committees and wounded two of their members".(134)

Nothing more was heard of the two boys until they were handed over to FIA custody on 18 April 2006. They were charged under the Foreigners Act and remanded on 20 April 2006 to judicial custody in Peshawar Central Prison. Nothing is known about the whereabouts of Abdul Qahar.

The President of the Peshawar District Bar Association, Haji Fida Gul, filed a bail petition on behalf of the two Tajikistani boys and the Egyptian family of Farooq bin Saad (see above). On 28 April 2006, the Peshawar High Court dismissed the bail applications saying that the Foreigners Act did not provide for bail and that none of them could provide documents to prove the legality of their stay in Pakistan.(135) In early May 2006, bail applications were filed in an additional district and sessions court in Peshawar. Later in the same month, the eight Egyptians and the two Tajikistani boys were handed into the care of Ibrahim Paracha, Chairman of the World Prisoner Relief Commission of Pakistan, which provided bail surety for them.

A 12-year-old boy, **Hafiz Abdul Basit**, has been in secret detention for over two years. During hearings of the habeas corpus petition filed by his father, the Deputy Superintendent of Police, Faisalabad, admitted the boy's arrest in January 2004 in a "sensitive case", but claimed he had been handed over to the District Police Officer. This officer denied holding the boy, saying he was in military custody. The Lahore High Court dismissed the petition and directed the Punjab Inspector General of Police to investigate the case.(136) His fate and whereabouts remain unknown.

The fate and whereabouts of a paralyzed 14-year-old boy were unknown for almost four months before his family was informed of his whereabouts and it took another month before they were permitted to see him. On 26 January 2004, a Pakistani newspaper reported that **Abdul Karim Khadr** was in detention in Rawalpindi. He had reportedly been arrested with about 17 other people after a day-long shootout on 2 October 2003 at Angoor Adda, near the Afghan border in South Waziristan. During this incident, eight people were reportedly killed, including Abdul Karim Khadr's father, Ahmed Saeed Rehman Khadr, an Egyptian-born Canadian. Abdul Karim Khadr himself was shot in the back, and taken by Pakistani soldiers to a hospital in Bannu from where he was later transferred to Rawalpindi.(137) Another 16-year-old boy, **Khalid**, was reportedly injured in the same incident on 2 October 2003 and was reportedly arrested. Amnesty International has no further details of his background, nationality, fate or whereabouts.(138)

The family of Abdul Karim Khadr filed a petition on 29 December 2003 in the Supreme Court of Pakistan to ascertain the whereabouts of father and son. Their lawyer, Hashmat Ali Habib, called a press conference in his home on 30 December 2003, which was broken up by a local administration official with a police contingent and plain clothes officers. They removed microphones and documents and announced that the press conference was over. Islamabad district administration official Asadullah Faiz told reporters that he had been sent by higher authorities to stop the press conference as the Khadr family had links with al Qa'ida.(139) He said the lawyer was also suspected of al Qa'ida links.

Abdul Karim Khadr's sister, Zainab Khadr, told Amnesty International that the family initially believed that both father and son had been killed. On 19 January 2004 the Canadian embassy in Islamabad told his mother that they had visited the boy; about a month later she visited the boy for the first time in a hospital in Rawalpindi where he was held under security guard. He was then transferred to the basement of a private house in Islamabad where he reportedly remained under military custody and where the family required ISI clearance to visit him. He was interrogated in custody although no charges were brought against him. The Canadian embassy provided emergency travel documents to Abdul Karim Khadr and his mother who left for Canada together on 9 April 2004.

Some of the juveniles arbitrarily arrested and detained in Pakistan were unlawfully transferred to US custody and later transferred to Guantánamo Bay. Clive Stafford Smith, lawyer for some 40 Guantánamo detainees, including alleged juvenile detainees, commented on statements in a radio interview by Lieutenant Commander Barbara Burfeind of the US Department of Defense who said there were no plans to detain juveniles at Guantánamo Bay.(140) He said,

"this was false when Lt. Cdr. Burfeind made the statement, and it remains false today. There are apparently nine juveniles in Guantánamo Bay, with five who have been released. To the best of our information (although this is not confirmed), none of these children is being held in Camp Iguana [which has less restrictions than other camps], and we know that some are being held in Camp V, which is the most onerous of the camps, with treatment that is shameful for adults, let alone children."

Clive Stafford Smith in July 2006 informed Amnesty International that more information about juveniles held at Guantánamo Bay had become available. According to his information, some 64 people have been held at Guantánamo Bay for offences they were suspected of committing while juveniles; between 17 and 24 of them were still under the age of 18 when they arrived at the detention centre. Only three of them, who were aged 10, 12 and 13 when they were seized, were separated from the adult population or given any unique treatment.

4.2 Torture of children in detention

Mohammed al-Gharani, a Chadian national born in Saudi Arabia, was reportedly only 14 years old when seized on 21 October 2001 during a raid on a mosque in Karachi. He said that he had come to Pakistan from Madina, Saudi Arabia, only one month earlier to learn to use computers on the advice of a Pakistani friend; in order to obtain a passport that would allow him to travel unaccompanied, he needed to be over 19, so he lied about his age. He said, "the army arrived and surrounded the building. They told us not to move and not to resist. They were speaking in Arabic. We went out. They took us to prison where we were interrogated and tortured."(141) He reported that in the Karachi prison he was hung by his wrists in such a manner that the tips of his toes were only just reaching the ground. A bag was placed over his head. He was naked except for his shorts. He had to remain in that position for 10 to 16 hours a day. If he moved, he was hit with a metal rod. He reported that this went on for 20 days and that the beatings were administered at random. He reported that while in prison he was sold to the USA for \$5,000, as confirmed to him by a Pakistani sergeant. Mohammed al-Gharani was handed over to US custody in late November 2001. He reported, "The first word I learned in English was 'nigger'. They kept calling me that and I didn't know what it meant. [Other detainees] would not tell me". He was taken to Kandahar and from there to Guantánamo Bay, still only 15 years old. He has tried twice in 2006 to kill himself, once by hanging and once by slitting his wrists. He has reportedly not received any letters from his family in the entire time that he has spent in US custody. His interrogators have reportedly told him that if he wants a letter he should cooperate.(142)

Yemeni national **Hassan bin Attash** was reportedly 17 years old when seized during a raid on his house in Karachi in early September 2002 by Pakistani intelligence agents. After four days in a Karachi Prison, he was taken to the so-called "Prison of Darkness" – a CIA facility now closed – in Kabul for about a week. He was then transferred on 19 September 2002 to Jordan where he was held for 16 months. During this time he was reportedly tortured while being interrogated about the activities of his brother, Walid bin Attash, whose fate and whereabouts are unknown. On 8 January 2004, Hassan bin Attash said that he was returned to Kabul's "Prison of Darkness" and later transferred to Bagram and Guantánamo Bay where he remains in Camp V.(143)

Another individual who may have been either 17 or 18 years old at the time of arrest in Peshawar in April 2002 is Mauritanian national **Mohammed Al-Amin**. He was believed to have travelled to Pakistan for further studies after taking up religious studies in Saudi Arabia. While in custody he was reportedly subjected to various forms of torture and other ill-treatment, including beatings, long periods of solitary confinement and denial of adequate food, to make him confess to being a Saudi national. After two months in detention in Peshawar, he was blindfolded, shackled, hooded and taken along with several other prisoners to the US airbase at Bagram where he was reportedly subjected to further torture and ill-treatment, including sleep deprivation and being tied by his hands to the ceiling for days on end. Two months later he was transferred to Guantánamo Bay where he is one of the detainees who in August 2005 embarked on a hunger strike in the course of which he was repeatedly and painfully force-fed.(144)

4.3 Child hostages

Other children were arbitrarily detained apparently to put pressure on their families to comply with the intelligence agencies. **Yusuf al-Khalid**, aged nine, and **Abed al-Khalid**, aged seven, the sons of alleged al-Qa'ida leader Khalid Sheikh Mohammad, (see appendix 3.) as well as their mother, were reportedly arrested on 11 September 2002 together with Ramzi Binalshibh in a raid on an apartment in Karachi where their father was believed to be hiding. It is unclear when the boys were transferred to US custody. While some Pakistani media reported that they were handed over immediately, (145) other sources claim that they were transferred to custody in the US over the weekend of 10 March, after the arrest of their father on 1 March, allegedly to force their father "to talk". (146) According to reports, CIA interrogators confirmed that the boys were staying at a secret location and were "encouraged" to talk about their father's activities. Their father was reportedly told about the boys' detention. (147) *Sunday Telegraph* journalist Olga Craig reported being told by CIA officials that "we are handling them with kid gloves. After all, they are only little children, but we need to know as much as possible about their father's recent activities. We have child psychologists at hand at all times and they are given the best of care." (148) Other US authorities have denied that Yousef and Abed were in the custody of US officials, either in the US or anywhere else, or that the boys had been interrogated by US officials. (149)

Amnesty International is not aware of any statement about the brothers from the Pakistani authorities. The organisation has had no response to an open letter to President Musharraf in February 2004, (150) in which it expressed concern at the secrecy surrounding the fate of several children taken into custody when their relatives were arrested for alleged links to al-Qa'ida.

Amnesty International is concerned about the arbitrary arrest and detention of children, in violation of international law, including the Convention on the Rights of the Child to which Pakistan is a state party. (151) Amnesty International is also concerned about children who are subjected to enforced disappearance whilst in the custody of the Pakistan and US authorities. Their fate and whereabouts must immediately be revealed to their families who must be immediately granted access to them, alongside lawyers and independent physicians.

Torture and other ill-treatment are prohibited under international law. The Convention on the Rights of the Child expressly provides that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment" (152) or be unlawfully deprived of his or her liberty; detention may only be a last resort and for the shortest appropriate time. (153) Children must be treated with humanity, taking into account their particular needs; they must be held separately from adults and be able to maintain contact with their families. They must have access to legal and other assistance, as well as enjoy other rights applicable to all detainees. (154)

4.4 Recommendations

Amnesty International calls on the Government of Pakistan to ensure that no child is denied any of the rights provided under international human rights law, including in the Convention on the Rights of the Child and other international standards, as well as the Juvenile Justice System Ordinance (JJSO) passed in July 2000. Pakistan is a state party to the Convention on the Rights of the Child, which requires the state to undertake a range of measures in the best interest of the child. The Juvenile Justice System Ordinance provides for a range of custodial safeguards for juveniles.

5. Torture and deaths in detention

5.1 Torture and other ill-treatment

Torture and other ill-treatment in the custody of law enforcement, security and prison personnel are endemic in Pakistan. (155) Lacking training and forensic and other facilities, law enforcement and security services rely almost exclusively on confessions. Torture, including rape, is habitually used to extract confessions. As documented by the HRCP, torture is also used to intimidate, humiliate, frighten and punish prisoners. (156)

The Constitution of Pakistan prohibits torture in a limited way: Article 14(2) provides, "*No person shall be subjected to torture for the purpose of extracting evidence*". International law prohibits torture absolutely at all times and in all circumstances.

The secrecy surrounding the detention of terror suspects provides conditions which make "abuse not only likely, but virtually inevitable". (157) Holding detainees in secret detention and transferring them to other countries for interrogation facilitates the practice of torture and ill-treatment. People suspected of belonging to terrorist organisations are considered valuable sources of information by Pakistan, the USA and other states cooperating in the US-led "war on terror." The Government of Pakistan nevertheless bears full responsibility for any torture or ill-treatment committed by its agents or at their instigation, or with their consent or acquiescence. Torture is usually carried out by Pakistani officials. In some cases it has been committed with the knowledge or in the presence of US personnel. In such cases, the USA carries responsibility for being complicit in acts of torture. (158)

Numerous detainees still held or released from Guantánamo Bay have reported that they were tortured or ill-treated in Pakistani custody. Torture is reported to include: beating; hanging a detainee upside down and beating him in that position, including on the soles of their feet; sleep and food deprivation; hooding; prolonged solitary confinement. Torture and ill-treatment were reportedly inflicted in many places of detention, although some former detainees have reported seeing rooms apparently specifically set up for torture. (159)

Ethiopian national resident in the UK, **Benyam Mohamed al-Habashi**, arrested on 10 April 2002 at Karachi airport by FIA agents and held until 19 July in Karachi, before being transferred to Islamabad, Morocco, Afghanistan and Guantánamo Bay, (see section 6.8 below) reported that he was hung up by his wrists, allowed to go to the toilet only

twice a day, given food only every other day, beaten with a leather strap and subjected to a mock execution by a guard holding a loaded gun to his chest. He said in his testimony, "I knew I was going to die ... I looked into his eyes and saw my own fear reflected there".(160) (see section 5.3 and 6.8.)

One of the most comprehensive testimonies was given by **Jumah al-Dossari** (32), a Bahraini national, arrested in Pakistan in late 2001 and held in Guantánamo Bay since January 2002.(161) The following extract describes the torture and ill-treatment he suffered in Pakistan before he was transferred to US custody.(162) (For the full account of his detention in Pakistan see Appendix 4.)

"My suffering and my tragedy started when I reached the Pakistani border on my way out of Afghanistan. There I met a unit from the Pakistani army who were there to kidnap people leaving Afghanistan. When I met them, I told them that I wanted to go to my country's embassy; they welcomed me with all their treachery, cunning and wickedness and started transferring me from prison to prison along the border and even the Pakistani military base in the border town of Kohat. ...

"They abused me personally and beat me several times during investigations. The worst tribulation for us was when they transported us from one place to another: they would tie us up in the most savage way, so much so that some of us got gangrenous fingers and our hands and feet swelled and turned blue. They would tie us up for long periods of time in military trucks, sometimes from daybreak until night, in addition to the hours that they spent transporting us in trucks. Often it took very long. All of this while we were still tied up in the same way and all of this time we were unable to use the toilet or perform our prayers. ...

"Some of the brothers went on hunger strike and I was one of them. I wanted to go to my country's embassy but I could not get up because I was so tired and hungry. If I stood up, I would fall down and faint. I almost died of hunger and I almost fell ill because the filth of the place. They put another kind of shackle on our feet, not chains but iron bars with a ring around our foot from which the 50cm bar protruded, then an iron joint from which a 50cm bar linked to the ring on the other leg. It was secured around the leg with a nail hammered in with an iron hammer instead of there being a lock and key. These shackles were always on our feet all the time so we could not sleep, walk, relieve ourselves, wash or remove our clothes. This is the state we were in the whole time we were in Kohat."

Zeeshan Siddiqui, a 25-year-old UK national of Pakistani descent, suffered damage to his eye during torture inflicted in detention in Pakistan. He had been arrested in Shabqadar, Charssada district, NWFP, on 15 May 2005 by an intelligence agency which told the press that "we think he is an al Qaeda man".(163) He complained several times during trial court appearances of torture by Pakistani intelligence agents seeking information about al Qa'ida and other terrorist networks. e In December 2005, a court in Peshawar ordered the provincial health department to conduct cornea grafting on Zeeshan Siddiqui when he requested urgent treatment for injuries to his left eye and impaired vision in his right eye following the reported beatings. His lawyer reported that Zeeshan Siddiqui was in a "miserable condition" on account of his eye ailment and feared that he would go blind without appropriate medical care. The court which saw his injuries did not take any action against the alleged perpetrators. No medical treatment was given for these injuries before he left the country in January 2006.

Slimane Hadj Abderrahmane, a Danish national with an Algerian father, was arrested in December 2001 in the tribal areas of Pakistan. He reported in detail the ill-treatment he and others were subjected to during transportation. After his first night in a village prison, he and dozens of other detainees were blindfolded, had their hands and feet tightly tied with ropes and were herded on to trucks. He reported that after several hours' drive, he could hardly move as his legs and hands were badly swollen. They had to stand for several hours in the open yard of Kohat prison, still tied with ropes. They were not given anything to eat or allowed to relieve themselves. After preliminary questioning by army personnel, he was placed in a cell in shackles. There were iron rings around his ankles to each of which iron poles were attached which had to be lifted when walking. Ten days later, he was additionally placed in handcuffs which were attached to the iron poles and brought before two US interrogators, who did nothing to end his ill-treatment. After 10 days in Kohat he was transferred to US custody; transferred to Kandahar and on 8 February 2002 to Guantánamo Bay, from where he was released in February 2004.(164)

Detainees have consistently reported having been blindfolded or hooded. **Adel Kamil Abdallah**, a Bahraini national captured in late 2001 near the border with Afghanistan, reported how he and other Arab detainees were handed over to US forces and taken to Kandahar in Afghanistan and the inhuman treatment they were subjected to during the transfer:(165)

"We were ... taken from our cells one by one. Handcuffed at the back and blindfolded, they put us on a bus. It was about 10 pm [on 28 December 2001] and it seemed that we were going towards the airport of Peshawar.. When we arrived at the airport, we heard the voices of American soldiers. Then we had our suspicions finally confirmed. We knew at once that we were being handed over to the American forces and that the myriad promises and the words of reassurance of the Pakistani officers were but traps of deception and betrayal. We were nonetheless surprised given that the Pakistani officials had cleared us from any wrongdoing after their investigations and reassured us that our returning to our countries was just a matter of time. ... We could not see anything as we were blindfolded. [The Americans] tightened our manacles and began treating us with violence. ...

"We were put in an American military plane like a big helicopter and were made to sit on the solid floor of the plane. Though we were blindfolded, we realised that it was not the three of us on the plane. There were other Arab brothers on board possibly arrested at different locations. We knew this from their voices. As I said

earlier, we could not see them as we were blindfolded. The Americans had also covered our heads in hoods as we were brought to the plane. The journey was very tiring because of the hard manacles and the way we were sitting or were made to sit on the plane." (see section 3.5.1, 3.5.5 and 3.6.2.)

Mehdi Ghezali, a Swedish national reportedly sold into US custody in December 2001, described preparations to fly from an unidentified airport in Pakistan to Kandahar:

"As we were about to take off, the Americans hooded the prisoners. The hood was made of some kind of sackcloth and it was compact. It was hard to breathe through it. One prisoner was asthmatic and the Americans pulled down his hood even further and tightened it."

Many of the prisoners reported nightmares and sleeplessness after their release and found it difficult to return to a normal life. "I think of what I have been through all the time", said Mehdi Ghezali, released in July 2004.

5.2 Deaths in custody

The secrecy surrounding the arrest and detention of terror suspects makes it impossible to ascertain how many have died in detention in the pursuit of the "war on terror".

The case of **Qari Noor Mohammad** indicates a lack of will by state officials to investigate the deaths in custody of people described as al Qa'ida suspects. On 13 August 2004, Qari Noor Mohammad, a Muslim cleric and city president of an Islamic party, was arrested at a mosque in Faisalabad by men in plain clothes apparently belonging to an intelligence agency. He was suspected of links with the al Qa'ida leadership and banned domestic organisations, and specifically, of providing funds and shelter to al Qa'ida fugitives. Two other men, **Maulana Obaidullah Garmani** and **Muhammad Imamudin**, an Afghan who had lived in Pakistan for many years, were arrested at the same time. The raiding team claimed to have seized files which recorded payments to banned militant organisations. The arrest was reported in national and international media on 14 August 2004.(166)

Police acknowledged the arrest of the three men on 17 August 2004.(167) On 18 August the police officer in charge of Kotwali police station reportedly took Qari Noor Mohammad to the local hospital and told doctors that he had fainted during interrogation. He was declared dead on arrival. Police publicly stated that Qari Noor Mohammad had died of heart failure.(168) A post-mortem report was reported as listing 52 injuries on the body, including 30 injuries to the genitalia, 10 of which were serious, while not stating the specific cause of death.(169) When his two co-detainees were released on 19 August, Maulana Obaidullah told the media that he had been tortured during interrogation by Pakistani intelligence personnel.(170)

After his death, police told the media that Qari Noor Mohammad had been arrested on 17 August under the MPO.(171) However, journalists were told that the case against Qari Noor Muhammad had not been recorded in the daily police diary and register of complaints as required by law. The relevant page of the register had been left blank and according to a newspaper report, "the high-ups had directed Kotwali police not to enter any case on it till further orders".(172) The officer in charge of the Kotwali police station said on 10 September that no detention order under the MPO against Qari Mohammad Noor had been entered into the record.(173)

To add to the confusion surrounding the case, Punjab province Law Minister Raja Basharat on 9 September told the Punjab Assembly that a complaint against unknown murderers of Qari Noor Mohammad had been registered, whereas the local police officials denied this.(174) It was only two days later, on 11 September 2004, that district police registered a police complaint of murder against unknown culprits. It stated that two police officers had found an injured person and taken him to the local hospital where doctors pronounced him dead. The body, the complaint said, was later identified as that of Qari Noor Mohammad. The complaint ignored that Qari Noor Mohammad's father-in-law at the end of August had described to police in detail the location, place and circumstances of the arrest, but this was ignored. An FIR was then registered on 18 August and sealed, that is placed in the custody of a senior police officer. On 18 October 2004, three men were arrested but released the next day as there was no evidence to connect them to the death.(175)

On 19 August 2004, the HRCP expressed concern at the death of Qari Noor Mohammad, apparently after torture in custody. To date no inquiry has been held into his death, and the perpetrators remain free and unpunished.

5.3. Complicity of foreign intelligence agencies

Amnesty International is concerned at reports that foreign officials may have been aware that detained terror suspects were being subjected to torture and other ill-treatment by Pakistani officials. Under international law it is a crime not only to be directly involved in the use of torture, but also to be complicit in torture committed by others.

Human Rights Watch in several reports in 2005 described the case of the brothers **Zain Afzal** and **Kashan Afzal**, US citizens of Pakistani origin, who during eight months of detention were interrogated by FBI personnel on at least six occasions about their alleged links to terrorists.(176) They were abducted in a midnight raid on 13 August 2004 by at least 30 Pakistani intelligence agents in plain clothes at their home in Karachi, taken away hand-cuffed and hooded, and held without charge at an unknown location. The brothers reported that they were routinely beaten with whips and sticks by Pakistani intelligence agents, not only to extract confessions but also if they asked for water or medicine.

The brothers reported that after three months in the first place of detention they were told that they would be going home. Instead they, along with scores of others, were blind-folded, shackled and taken aboard a plane. Zain Afzal

reported that, "my brother and I began to get worried. They said, 'you thought we were joking! You are going to Cuba'. They landed after about two hours in a city, probably Lahore. Zain Afzal said,

"we were taken downstairs to similar underground cells. I asked where we were but the guards said they did not know. ... Maybe two weeks later, I was blindfolded and taken into another room. When my blindfolds were removed I saw a Pakistani army man in plain clothes and two white men who flashed FBI badges and said that they had come from the US to investigate me. They asked me my life history all over again. ... The FBI officer said, 'We have been told you and your brother have al-Qaeda links.' ... I told the FBI that I was illegally detained and had been tortured. They said that they would try to help but that all decisions were taken by Pakistani authorities and Pakistan was beyond their jurisdiction".

The FBI agents apparently did nothing to end the torture or to facilitate access to US consular services. Zain Afzal reported that during another session with the FBI and the army officer some 7-10 days later, "I asked to be presented in court and to be represented by a lawyer. The FBI agents did not respond to the request for a lawyer or my demand to be presented in court and charged." On another occasion when he repeated his demand to be charged or released, Zain Afzal reports that he was told, "we are the court".

The Chicago-based sister of the two men told Human Rights Watch that FBI agents in late October 2004 "categorically stated" that her brothers were in their custody but that FBI agents visiting her later denied this. When queried by Human Rights Watch about the fate and whereabouts of the Afzal brothers, the US consul in Karachi in March 2005 said that "Due to Privacy Act considerations, we are unable to provide additional information on these two individuals. The safety and security of Americans overseas is of paramount importance to us, and we continue to work here and abroad to provide all possible assistance to our citizens".(177)

The brothers were released on 22 April 2005 in Lahore, reportedly after being threatened not to reveal what had happened to them. They were subsequently visited by Pakistani intelligence personnel who reminded them of their "promises" to stay silent. (see section 8.2.)

Pakistani national Dr **Ahmad Javed Khawaja** (65) was arrested with his brother and seven other male relatives on 19 December 2002 by a joint FBI-local police team from their home near Lahore. Punjab state officials stated categorically that the two Khawaja brothers had links with and had treated al-Qa'ida members.(178) The Khawaja brothers were detained until June 2003 under a combination of criminal charges and preventive detention orders but were released on 2 June 2003 after courts found no evidence against them.

After his release Dr Khawaja said on 4 June 2003 that he and other members of his family had been repeatedly interrogated by FBI agents in the first two months of detention. He said that the FBI was "on a witch-hunt against the Arab nationals" in Pakistan. He stated that FBI officials had interrogated both brothers about al-Qa'ida and had threatened "terrible" treatment at the hands of Pakistani agencies if they did not cooperate. "They even threatened ... to take our children to the US and try them as terrorists in the American courts."(179) Then Prime Minister Mir Zafarullah Khan Jamali on 22 December categorically denied that the FBI was involved in the arrest. "The operation was conducted by the Pakistan law enforcement agencies".(180)

Other detainees have alleged that intelligence personnel from the UK, Australia and Indonesia, as well as the USA were present during interrogation in Pakistan. They may have been complicit in arbitrary detention and acts of torture by Pakistani officials.

Australian nationals **Mamdouh Habib** (see section 6.4.3 and Appendix 1) and **Joseph [Jack] Thomas** have stated that while in Pakistani custody in Karachi, Australian consular and intelligence personnel respectively met them, reportedly refused to help them and were aware of their arbitrary detention and torture. (see section 5.4.) **Benyam Mohamed al-Habashi**, an Ethiopian national resident in the UK, reported that he was seen in Pakistani custody by UK intelligence agents. One of the agents, he stated, threatened him with being transferred to an Arab country to be subjected to further torture there. Indonesian intelligence personnel reportedly took part in the interrogation of six Indonesians arrested in September 2003 and detained without charge or trial in Karachi. (See section 6.7 and 6.8.)

5.4 Torture and other ill-treatment not only unlawful but counterproductive

International law prohibits torture and other cruel, inhuman or degrading treatment or punishment even "in times of emergency threatening the life of the nation" and allow for no justifications, exceptions or extraordinary circumstances in which this prohibition is lifted or relaxed. This reflects the international community's response to accounts of unimaginable cruelty inflicted by one human being on another, its moral abhorrence at such cruelty and its determination not to allow it to ever gain legitimacy.

Nevertheless, in the "war on terror", attempts have been made to justify torture by arguing that it may reveal and help prevent imminent terror attacks, lead to the arrest of other terror suspects or to build a case for criminal prosecution of terror suspects. Amnesty International believes that these arguments are flawed. Torture and other ill-treatment are universally recognized to be unlawful and immoral at all times, even in the context of armed conflict and if some military advantage is to be gained. This means that states have agreed that torture and other ill-treatment are immoral and acknowledge that human beings have inherent rights which cannot be taken away in any circumstances.

This universal recognition of the absolute prohibition of torture and ill-treatment is necessary as history has shown that where their use has been justified by "exceptional circumstances" this has proved difficult to contain. States that

violate international law and use torture as a tool of law enforcement in "extreme circumstances" have been found to employ other repressive techniques and to undermine the rule of law more generally.

Furthermore, the use of torture and other ill-treatment does not serve the purpose of putting an end to such terrorist attacks or winning "the war on terror." Evidence gained by the use of torture or other ill-treatment has often proved to be unreliable, and counter-productive to intelligence gathering. People are likely to "confess" anything to end their suffering. A recent example is the confession made by Ibn al-Shaikh al-Libi about a link between al-Qa'ida and the Iraqi leadership. He later withdrew the statement which was probably made under torture while he was held in Egypt, but not before it was used by the US administration in arguing for intervention in Iraq.

Torture or ill-treatment cannot contribute to building a criminal case against terror suspects. International human rights law prohibits not only torture but also the use of information obtained as a result of torture as evidence in any proceedings. The Pakistan Code of Criminal Procedure explicitly excludes the use of confessions made in police custody as evidence in court, on the presumption that police may be tempted to use duress to extract confessions.

In fair trials the possibility of duress or other denial of custodial rights used to obtain statements from detainees vitiates a criminal case. The appeal against the conviction of Joseph [Jack] Thomas was granted by an Australian court of appeal on the ground that the record of his interview should not have been admitted in evidence. He had been arrested on 4 January 2003 at Karachi airport and been blindfolded, hooded, held for two weeks in a cell which he described as a "dog kennel about the size of a toilet", deprived of food and water and threatened with electrocution and execution, strangled with the cord of his hood and told that his wife would be raped. Australian Federal Police (AFP) was present during part of his interrogations. They sought to arrange a lawyer to formally question him which Pakistani officials refused. He returned to Australia in June 2003. Some 17 months later he was arrested in Melbourne and charged with terrorism related offences. In February 2006, he was convicted of receiving funds from a terrorist organisation and possessing a false passport. The conviction and five year prison sentence were based on the record of the interview obtained by the AFP in Pakistan. On 18 August 2006, the Victoria Court of Appeal granted his appeal saying that the record of the interview should not have been admitted as evidence. The decision said that the confession had not been voluntary in the true sense of the term: "It was apparent to the applicant ... that, if he was to change his current situation of detention in Pakistan and reduce the risk of indeterminate detention there or at some other unidentified location, cooperation was far more important than reliance on his rights under the law."(181)

"The argument against using any form of torture is that it does not produce reliable intelligence – the interrogator does not know if the information gained is, in fact, the truth as the source knows it, intentionally misleading, or an attempt to end the abuse by saying what the source thinks the interrogator expects to hear" – Peter Bauer, former interrogator for the US army.

Peter Bauer was one of 20 US army interrogators and interrogation technicians who made a statement on interrogation practices to the US Committee on Armed Services. The interrogators represented "over 200 years of interrogation service and experience". They state that "abuse and torture" is to be "avoided at all costs" because it "can degrade the intelligence collection effort by interfering with a skilled interrogator's efforts to establish rapport with the subject".

Many senior officials in the US administration have come to share this view. Lt. General Kimmons, Army Deputy Chief of Staff for Intelligence stated, when announcing a new US Army Field Manual in September 2006, that "No good intelligence is going to come from abusive practices. I think history tells us that. I think the empirical evidence of the last five years, hard years, tell us that....Some of our most significant successes on the battlefield have been – in fact, I would say all of them, almost categorically all of them have accrued from expert interrogators using mixtures of authorized, humane interrogation practices, in clever ways...We don't need abusive practices in [the Field Manual]. Nothing good will come from them".

Moreover, governments who torture sink to the same moral level as groups who plan and carry out bombings in restaurants or railway stations or bring down buildings killing thousands. Attacks on civilians, on the one hand, and torture and ill-treatment, on the other, violate human rights. The infliction of one cannot excuse or justify the infliction of the other in return. In sum, the use of uncivilised practices to defend civilisation is a contradiction in terms. Rene van der Linden, President of the Council of Europe's Parliamentary Assembly stated that "kidnapping people and torturing them in secret – however tempting the short term gain may appear to be – is what criminals do, not democratic governments. ... In the long term, such practices create more terrorists and undermine the values we are fighting for."(182)

5.6 Recommendations

5.6.1 To the Government of Pakistan

Amnesty International calls on the Government of Pakistan to ensure that the practice of torture is ended as a matter of urgency and in all circumstances. In particular, Amnesty International calls on the Government of Pakistan to:

- establish and ensure implementation of effective system-wide measures to prevent torture and ill-treatment incorporating all the elements of Amnesty International's *12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State*;(183)
- officially and publicly condemn torture and ill-treatment and order that these practices cease, making clear that they are prohibited absolutely and will not be tolerated under any circumstances;

- systematically investigate allegations of torture and ill-treatment promptly and impartially, even where no complaint has been made;
- bring to justice those responsible for committing, ordering or authorizing torture and ill-treatment;
- ensure that any statement which is established to have been made as a result of torture or ill-treatment is not invoked as evidence in any proceedings, except against a person accused of torture or ill-treatment;
- ratify the International Covenant on Civil and Political Rights and the UN Convention against Torture and its Optional Protocol.

5.6.2 To the Government of the USA

Amnesty International calls on the Government of the USA to:

- officially and publicly condemn torture and ill-treatment and order that these practices cease, making clear that they are prohibited absolutely and will not be tolerated under any circumstances;
- systematically investigate allegations of torture and ill-treatment promptly and impartially, even where no complaint has been made;
- bring to justice those responsible for committing, ordering or authorizing torture and ill-treatment;
- ratify the Optional Protocol to the UN Convention against Torture.

6. The fate of victims of enforced disappearances

"I don't know what they [US authorities] have against them [the detainees]. Why don't they bring out the evidence and prove whatever they allege?" Farhat Paracha, wife of Saifullah Paracha, subjected for over one month in 2003 to enforced disappearance and currently in Guantánamo Bay.

International human rights law strictly and in all circumstances prohibits enforced disappearances. "Enforced disappearance" is defined in this report as the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or the concealment of the fate or whereabouts of the person deprived of liberty, which places such a person outside the protection of the law. Victims of enforced disappearance include the person deprived of liberty and any one who suffers harm as a direct result of an enforced disappearance.

Concern has been growing about the fate of people who were arbitrarily arrested, detained in secret and have become victims of enforced disappearance. The HRC noted in its report on 2004 that, "a relatively new form of violation of citizens' most fundamental rights ... was the phenomenon of disappearance, something that was not witnessed before or at least not to the extent now recorded".⁽¹⁸⁴⁾ Similarly, the Pakistani Senate's Functional Committee on Human Rights in July 2006 expressed concern about enforced disappearance.⁽¹⁸⁵⁾

The Government of Pakistan has failed to acknowledge that enforced disappearances have occurred. Enforced disappearances affect not only the victims but also the agencies carrying them out. They also weaken the trust of the public in the state's commitment to upholding the rule of law. In habeas corpus proceedings, state representatives have consistently denied knowledge of the fate and whereabouts of detainees, despite eyewitness accounts of arrests and even in cases where the persons held have subsequently reappeared. Interior Minister Aftab Ahmed Khan Sherpao, when questioned in 2005, said "Whatever the government is doing is in accordance with the law and we have the Anti-Terrorism Act which provides for various powers in this respect. ... We don't know which people these families are talking about and under what circumstances they were arrested".⁽¹⁸⁶⁾ He also said he was unaware of intelligence agencies holding detainees for long periods of time before producing them in court.⁽¹⁸⁷⁾

6.1 Possible extrajudicial executions

At least one person who had been detained and whose whereabouts were unknown has been discovered dead.

The body of journalist **Hayatullah Khan**,⁽¹⁸⁸⁾ a 32-year-old father of four, was found on 16 June 2006 near Mirali, North Waziristan after more than six months' enforced disappearance. His body was reportedly emaciated, he was hand-cuffed and had apparently been shot five times in the back of his head. He had been abducted by armed men in civilian clothing on 5 December 2005 while on his way to cover a rally in Mirali Bazaar protesting against a missile attack four days earlier. He was travelling with his brother who reported the abduction. Hayatullah Khan was working for the English language daily *The Nation*, the Urdu language newspaper *Ausaf* and the European Press Photo Agency. He was also the Secretary General of the Tribal Union of Journalists.

Hayatullah Khan was the first journalist to photograph pieces of shrapnel which local villagers said they had found in the rubble of a house in Haisori, North Waziristan, which was destroyed in a missile attack on 1 December 2005. Alleged al-Qa'ida operative Abu Hamza Rabia, an Egyptian national, his two Syrian bodyguards and two Pakistani boys, sons of the owner of the house, were reportedly killed in the attack. The shrapnel found at the site was reportedly stamped with the words "AGM-114", "guided missile" and the initials "US", and apparently belonged to a Hellfire missile. These missiles are used by the US Air Force's remote controlled Predator drones. Villagers told journalists that they heard at least two explosions and saw a white streak of light coming from an aircraft before the building was hit.

Pakistan government officials claimed that Abu Hamza Rabia and others were killed when making a bomb and denied that there had been an attack by a US drone – a version contradicted by Hayatullah Khan's evidence. Family

members told reporters that Hayatullah Khan had received anonymous threats for the last few months, warning him not to cover the security situation in the area. His brother said that Hayatullah Khan had said on the day before his abduction that intelligence agencies might take action against him for sending photographs of the shrapnel to media organisations.

Officials have made contradictory statements about Hayatullah Khan's whereabouts and their efforts to find him. On 14 December, NWFP Acting Governor Khalilur Rehman told journalists that several people had been arrested in connection with the abduction and that the journalist would be released within days.⁽¹⁸⁹⁾ However, on 18 December, the NWFP Governor's secretary told a delegation of the Khyber Union of Journalists that Hayatullah Khan would be "held longer" if they continued their protests.⁽¹⁹⁰⁾ Information Minister Sheikh Rashid reportedly denied any government involvement in the abduction, saying that Hayatullah Khan's family had asked the government not to put pressure on the kidnappers. This was strongly denied by family members.⁽¹⁹¹⁾

Local government officials said that they would investigate the abduction of Hayatullah Khan and suggested his personal enemies, criminals or local Taliban could be responsible for the abduction. However, Hayatullah Khan's relatives and other journalists working in the area have discounted these possibilities and have repeatedly expressed their conviction that intelligence agencies were holding Hayatullah Khan.⁽¹⁹²⁾

In March 2006, Hayatullah Khan's brother told the media that senior officials of a Pakistani intelligence agency had told him that Hayatullah Khan was now "outside their jurisdiction" and indicated that he might be in US custody, being interrogated about his links with al-Qa'ida or "being grilled by the US to confirm the death of [alleged al-Qa'ida operative] Abu Hamza Rabia in the missile attack" of 1 December 2005.⁽¹⁹³⁾ There was no indication as to where this was taking place. The same unnamed officials had reportedly assured the family earlier that Hayatullah Khan was fine. Hayatullah Khan's brother in April 2006 told the Committee to Protect Journalists (CPJ) that a Pakistani colonel, who did not wish to be named, had told him that Hayatullah Khan had been "taken by helicopter from a secret government holding place in Rawalpindi to Kohat and that he was turned over to the Americans soon after that. ... The colonel said that Hayatullah has been in American custody since about the first week of February. He said he was being held by the FBI or the CIA, but he did not know which one".⁽¹⁹⁴⁾ The CPJ said that both Pentagon and FBI sources had denied holding Hayatullah Khan, while the CIA declined to comment. In May, the US consul in Peshawar denied any involvement in Hayatullah Khan's enforced disappearance.⁽¹⁹⁵⁾ Urgent actions issued by Amnesty International on behalf of Hayatullah Khan have gone unanswered.

After Hayatullah's body was found, his brother said that in a meeting with local intelligence and government officials one month earlier he had been assured by North Waziristan Political Agent Zaheerul Islam that the family would get "good news" about Hayatullah by 20 June.⁽¹⁹⁶⁾ The family believe that Hayatullah Khan was killed after having escaped from custody and being recaptured. Eye-witnesses cited by his brother Ihsanullah said that the perpetrators returned to an identified official building.⁽¹⁹⁷⁾

After countrywide protests by journalists and by tribal groups, the federal government on 19 June 2006 announced a judicial inquiry under a Peshawar High Court judge and the provincial government set up a departmental inquiry. The former reportedly sent his report to the federal government on 18 August, while the provincial inquiry submitted its report on 9 September. Neither report has been made public. (see section 7.2 and 7.3.)

Amnesty International calls on the Government of Pakistan to ensure that the findings of both inquiries are made public. Amnesty International calls for those responsible for ordering or perpetrating Hayatullah Khan's enforced disappearance and death to be brought to justice in proceedings which meet international standards of fairness, and without resort to the death penalty.

6.2. Reappearances

Some of those subjected to enforced disappearance in Pakistani custody have subsequently been released.

Two sisters, **Arifa** and **Saba Baloch**, who disappeared after being arrested on 4 June 2005, were reportedly released in January 2006. **Gul Hamdana**, Arifa's mother-in-law, had already been released in 17 September 2005, over three months after they had been arrested together on 4 June 2005.

The young women were wanted by police after they left their home in Karachi in June 2004 to visit an estranged family member, the wife of their mother's brother, Gul Hasan, a convicted leader of the banned militant Sunni group, Lashkar-e-Jhangvi.⁽¹⁹⁸⁾ After the arrest in June 2004 of Gul Hasan, allegedly a member of Lashkar-e-Jhangvi, his wife went to stay with Gul Hasan's sister's family and became friendly with Arifa and Saba. When she returned home, she asked the girls to visit her and to accompany her on a visit to their grandmother. On 29 June 2004, the girls left their home to meet her. They left with Gul Hasan's family the following day. On 30 June 2004, their father Sher Muhammad Baloch filed a complaint at Badhdadi police station in Karachi alleging that they had been abducted and also contacted intelligence agencies.

The following year, on 10 June 2005, newspapers reported that the young women had been arrested on 4 June 2005 at Landaki, Swat district, NWFP along with Arifa Baloch's husband Saifullah Bilal Khan, a wanted Lashkar-i-Jhangvi leader reportedly in charge of the group's operations in the NWFP, and his mother Gul Hamdana. The arrests were reportedly made by officials of an unnamed intelligence agency on suspicion that the two women had trained to become suicide bombers and were planning a suicide attack. The media henceforth referred to them as the "would-be suicide bombers", Pakistan's "first female terrorist squad".⁽¹⁹⁹⁾

The Government of Pakistan consistently denied any knowledge of the whereabouts of the three women. State Minister for Interior, Wasim Shahzad, said: "Really, I have no idea where these two sisters are and where they are being kept." (200) However, their father said that in September 2005 Pakistan People's Party (PPP) leader Naveed Qamar had taken up the issue with the interior minister, who asked Qamar "to be patient", adding, that "he would soon hear about the issue". (201)

In hearings of the habeas corpus petition challenging the lawfulness of the four detentions, NWFP Deputy Advocate General stated that the provincial home department had no knowledge about where the sisters had been arrested or where they were detained. Similarly the federal interior ministry told the High Court in August that none of the federal agencies under its jurisdiction knew anything about the arrest and the whereabouts of the four detainees. On 22 August 2005, the Peshawar High Court disposed of the petition and observed that the intelligence agencies were under the supervision of the Ministry of Defence. It advised the petitioner to file a fresh petition making the ministry of defence respondent. To Amnesty International's knowledge no new petitions have been filed.

On 17 September 2005, Gul Hamdana was left at a bus stop in Peshawar. She did not reveal to the media where and in whose custody she had been held but said that Saba had a new born baby and that Arifa was in an advanced state of pregnancy and that they had all been treated well. She reported that she was told that the two sisters would be released soon. She was told not to disclose anything about their detention to anyone. The subsequent release of the sisters was independently confirmed by Amnesty International but has not been reported in the media. (see section 8.3.)

Afghan journalist **Sami Yousufzai** was released after two months' enforced disappearance in 2004. A stringer for the US magazine *Newsweek* who had been living in Pakistan for a long time, he was arrested on 21 April 2004 along with his Pakistani driver Muhammad Salim while accompanying US reporter Eliza Griswold near Bannu, NWFP, as they tried to enter North Waziristan. Eliza Griswold was expelled to the USA within days, Yousufzai and his driver were taken to an undisclosed location. Authorities later denied holding him. On 2 June 2004, while a habeas corpus petition was pending in the Peshawar High Court, he was released by the administration of the North Waziristan Agency to which he had been secretly transferred. (202) Brigadier Mehmood Shah, in charge of the security of the tribal areas, said that Yousufzai had been released "after the completion of his sentence". To Amnesty International's knowledge, he had not been charged, tried or convicted.

6.3 Criminal charges after enforced disappearance

Several persons who had been subjected to enforced disappearance have subsequently been charged with criminal offences under a variety of laws. In most cases these charges appear to be politically motivated.

6.3.1 Charges under the Foreigners Act

Two Algerian nationals, **Abu Al-Gayus** and **Abu Sufian**, who are married to Pakistani women, were arrested in 2004 by members of an intelligence agency on suspicion of links to al-Qa'ida. Their families were unaware of their whereabouts for over a year. In May 2005, they were brought before a judicial magistrate by officials of the Crime Investigation Department (CID) who said they had been charged under section 14 of the Foreigners Act with staying in Pakistan illegally. Their lawyer contended that they had been issued free entry visas valid till 2012 after marrying Pakistani women. A local court in Peshawar granted them bail in November 2005. (203)

In July and August 2006, 28 other foreign nationals were similarly released on bail after being held under the Foreigners Act. Before being charged under the Foreigners Act, all had been held by intelligence agents for different lengths of time in secret places of detention. (204)

6.3.2 Charges under the Frontier Crimes Regulation

Abdul Baqi, Daud Khan, Noor Mohammad, Mohsin Khan and Ashiq Ali, Afghan refugees settled in Peshawar, were arrested by officials of an intelligence agency from their homes on 13 June 2003 for alleged links with al-Qa'ida. Their whereabouts remained unknown. The brother of Abdul Baqi filed a habeas corpus petition in the Peshawar High Court but when informal contacts suggested that the five men had been transferred to the Khyber Agency in June 2004 and held under the Frontier Crimes Regulation (FCR), 1901, the Court on 13 January 2005 dismissed the petition as the tribal areas are outside its jurisdiction. The men were sentenced to three years' imprisonment under section 40 of the FCR, even though they had not been residents of the tribal areas. In July 2005, the FCR Tribunal ordered their release.

In NWFP, dozens of Afghans have been unlawfully detained, then held under the FCR once intelligence agencies have completed their interrogation. In June 2005, the FCR Tribunal ordered the release of 11 Afghans allegedly picked up some three years earlier. Their whereabouts had been unknown for one and a half years. When habeas corpus petitions were filed in the Peshawar High Court they were transferred to the tribal administration of the Khyber Agency which sentenced them to three years' imprisonment under the FCR. (205)

An unknown number of individuals in the tribal areas are being held under the collective responsibility clause of the FCR, which allows relatives of suspects to be detained for up to three years. People held under the collective responsibility clause are arbitrarily deprived of their liberty in violation of international standards, as their imprisonment relates to crimes others may have committed, and they are denied basic fair trial guarantees. A number of releases have been announced recently. On 3 July 2006, 15 tribesmen, including three tribal *maliks* [leaders], were released in Miramshah by the administration as a "goodwill gesture" in response to a month-long ceasefire announced by the tribesmen. Eighty-five others had been released the previous week and the administration announced it would release more in the future. (206) At the same time, around 100 tribal elders in South Waziristan were released on directions of

the NWFP Governor.(207)

6.3.3 Other criminal charges

Journalist **Mukesh Rupeta** and freelance photographer **Sanjay Kumar** were seized on 6 March 2006 by personnel allegedly from an intelligence agency attached to the military. The two men had filmed at Shahbaz airforce base, Jacobabad, which has allegedly been used by US forces. Sindh Home Minister Rauf Siddiqui told protesting journalists in Karachi that "the government has no information about Rupeta".(208) Following a public statement by Mukesh Rupeta's employer, *Geo TV*, on 20 June, the two men were handed over to Jacobabad airport police station late on 21 June 2006, where they were formally arrested and charged under the Official Secrets Act. On 22 June, they were brought before a judge who remanded them for seven days in police custody. He directed that Mukesh Rupeta be transferred to hospital for immediate medical treatment but did not take note of allegations of torture and unlawful, secret detention. Mukesh Rupeta showed clear signs of torture; his wife and children reportedly did not recognize him when he was brought to the courtroom. He said, "I cannot tell you what they did to me. I thought I would be killed".(209) On 23 June 2006, the two men were granted bail and released; the case against them is pending.

Khawar Medhi Rizvi,(210) a journalist, was arrested by the FIA along with French journalists Marc Epstein and Jean-Paul Guilloteau of the French weekly *L'Express* and two local people in Karachi on 16 December 2003 after they had returned from Balochistan.(211) The French men were released in January 2004 but he and the two local men "disappeared", apparently in military custody. During two hearings of a habeas corpus petition filed by Khawar Medhi Rizvi's family at the Sindh High Court in Karachi, state officials denied holding him. After more than 40 days of secret and arbitrary detention, Khawar Medhi Rizvi and the other two men were brought before a magistrate in Quetta on 26 January 2004 and remanded to police custody. Khawar Medhi Rizvi was charged with sedition, criminal conspiracy and "cheating by impersonation"; he was accused of faking a documentary film of a Taleban training camp using actors. The other men were charged with abetment. President Musharraf publicly described the journalist as "a most unsympathetic man [who] doesn't deserve any sympathy whatsoever because he is trying to bring harm to the country".(212) Amnesty International said at the time that such statements undermine the presumption of innocence necessary for a fair trial. Khawar Medhi Rizvi was released on bail on 29 March 2004. Trial hearings continued to the end of 2004 when he left the country. On 23 March 2005, an anti-terrorism court in Quetta dismissed the charges against him and the two other accused who had remained in detention until then.(213)

6.4. Unlawful transfers to other countries

Many of those arbitrarily arrested and detained for alleged terrorist activities or links were subsequently handed over to other countries, mostly to the USA. Amnesty International believes that Pakistani authorities have deliberately obscured their unlawful rendition of detainees to US custody.

The term "rendition" describes the illegal transfer of individuals from one country to another, by means that bypass all judicial and administrative due process. In the "war on terror" context, the practice is mainly – although not exclusively – initiated by the USA, and carried out with the collaboration, complicity or acquiescence of other governments. The rendition network serves to transfer people into US custody, where they may end up in Guantánamo Bay, detention centres in Iraq or Afghanistan, in secret CIA facilities known as "black sites" or into the custody of other states.

Most of the known victims of rendition were initially detained in Pakistan. It is not clear whether Pakistani officials were aware that some of those unlawfully handed over to US custody would be subjected to renditions. However, by transferring the detainees into the custody of the USA while there was growing evidence that that state was committing systematic human rights violations in the "war on terror", Pakistan must be considered to be complicit in the human rights violations suffered by the victims of rendition.

At the beginning of Pakistan's cooperation with the USA in the "war on terror" the Interior Minister reportedly said that any Arabs found to have links with al-Qa'ida would be handed over to the US FBI. (214) In September 2004, Information Minister Sheikh Rashid Ahmed denied that any captured militants had been handed over to the USA(215) – despite the overwhelming evidence to the contrary. In June 2005, President Musharraf was reported as saying that foreign "terrorists" had been handed over to US custody when their countries refused to take them.(216)

President Musharraf and other officials have repeatedly stated that no Pakistani nationals suspected of terrorist activities or links had been unlawfully handed over to US custody. Again, there is evidence to the contrary.

Many individuals taken into US custody were not formally handed over after due legal process, but were sold into US custody, sometimes by local police or border officials. Pakistani authorities have not only failed to take measures to stop such transfers in return for money, but have also denied that they have taken place.

Officials have reportedly stated that some 700 people have been arrested and handed over to the USA.(217) It is not clear if all 700 who were arrested were handed over to the USA. *The Friday Times* in March 2003 reported that the ISI had briefed the media in Islamabad that since the beginning of the "war on terror" Pakistan had arrested 440 terror suspects in 131 raids in different parts of the country, and that of these, 382 had been "extradited", mostly to US custody.(218)

Amnesty International believes that the number of people handed over to US custody by Pakistan could number several hundred. Lawyers analyzing data made available by US authorities have shown that around 66 per cent of the detainees in Guantánamo Bay were captured in Pakistan – that is, just under 500 people. In addition, international organisations have documented that about two dozen persons subjected to enforced disappearance were originally captured in Pakistan and handed over to US custody where they remain in secret detention centres.

The secrecy surrounding the transfer of people suspected of involvement in terrorism has made it very difficult for families to track the whereabouts of their relatives, for human rights organisations to press for respect for the detainees' human rights and for the general public to know about human rights violations of detainees. In some cases, details of arrest and transfer to US custody only came to light when detainees contacted their families through the International Committee of the Red Cross (ICRC) or when they were released from custody.

6.4.1. Requirements of extradition in Pakistani law

The Extradition Act, 1972, which governs extradition procedures from Pakistan to all other countries provides that people can only be extradited if they have committed offences which constitute an offence in Pakistan, are listed in the schedule of offences appended to the Act, and are not political in character. Once another country submits a request for the surrender of an alleged offender, a magistrate investigates whether there is substance in the allegation. Extradition takes place only if the offence was committed on the territory of the requesting country. If there is *prima facie* evidence of such an offence, the magistrate submits a report to the Federal Government, which retains full discretion as to whether to extradite the suspect or not. The person to be extradited has the right to appeal to the higher judiciary against an extradition order.

Pakistan has not concluded an extradition treaty with the USA, but in 1973 reaffirmed the extradition treaty, dating from the colonial period between the United Kingdom and the USA which came into force on 24 June 1935. It allows for extradition of a suspect to the USA only if the offence was committed on US territory.

Pakistan is also bound by rules of customary international law which prohibit the handing over of anyone in any manner whatsoever to a country where they would be at risk of serious human rights violations – the principle of *non-refoulement*. Amnesty International considers that before a person is involuntarily sent to a particular country, they should have access to a competent, independent and impartial court, which should make the final decision, in a fair proceeding, about the presence or absence of a risk of torture, other ill-treatment, indefinite detention, unfair trials, enforced disappearance or other human rights violations. In the face of allegations that a person will be at such a risk in the country to which they will be sent, the burden of proof should be on the sending authorities to show that they would not be at risk.

Amnesty International believes that in practically all cases of "war on terror" detainees arrested in Pakistan being transferred to other countries' custody, this was done in circumvention of Pakistan's Extradition Act, and often in violation of the principle of *non-refoulement*. That they were transferred without any legal process is evident from testimonies of those subsequently released, from official statements about transfers which do not refer to any legal process and from the speed with which detainees were handed over.

6.4.2 Detainees transferred by Pakistan to US custody

By far the largest number of detainees unlawfully transferred to other countries' custody were handed over to the USA. They were sold or otherwise transferred by Pakistan to US custody and then held either in the US Naval Base at Guantánamo Bay, Cuba, or in secret places of detention. These secret detainees have by some groups and media been called "ghost prisoners" – they are victims of enforced disappearance. They have had no access to legal counsel, to visits or to the courts. None have been charged, tried or undergone any judicial procedures regarding their detention. They have not been able to challenge the lawfulness of their detention. While the ICRC has had access to detainees in Guantánamo Bay and Bagram airbase, some detainees have been hidden from them. These secret detainees have by some groups and media been called "ghost prisoners" – in effect they have been subjected to enforced disappearance. The ICRC also has no access to persons held in secret detention in so-called "black sites" run by the USA's CIA. Some individuals were transferred to their home countries – Indonesia, Malaysia, China and Afghanistan – in violation of the principle of *non-refoulement*. Some became the subject of rendition to third countries.

6.4.3. Detainees sent to Guantánamo Bay

In the context of the "war on terror", the USA has held more than 750 foreign nationals in Guantánamo Bay, Cuba, many of whom have been held there for well over four years. As of August 2006, there were more than 400 detainees still held in the base without charge or trial.

Prisoners at Guantánamo Bay have been described by the US administration as the "worst of the worst" and "very dangerous people".(219) An analysis of the profiles of Guantánamo detainees published in February 2006 by lawyers Marc Denbeaux and Joshua Denbeaux on the basis of released US government documents, concludes that of 517 detainees then held at Guantánamo Bay, 66 per cent of those whose capture was identified (56 per cent of the total) had been arrested in Pakistan, at a time when the USA offered large sums for the capture of suspected enemies.(220) After analyzing the grounds on which the detainees were determined to be "enemy combatants", the study concludes that "the large majority of detainees never participated in any combat against the United States on a battlefield" and that the purported nexus of the individuals with a prohibited group in many cases is insubstantial.(221) Most Pakistani detainees were arrested in Afghanistan, the majority by members of the Afghan Northern Alliance. (See Appendix 2: Pakistanis in Guantánamo Bay.) A review of those held in Guantánam

Amnesty International believes that all those held in Guantánamo Bay are arbitrarily detained and that the totality of their conditions – harsh, indefinite, isolating and punitive – amount to cruel, inhuman or degrading treatment in violation of international law. In May 2006, the UN Committee against Torture told the USA that indefinite detention without charge was a violation of the Convention against Torture. Over three years ago, the ICRC made public its concerns that the indefinite detention regime was having a serious impact on the psychological health of a large number of the detainees. In June 2006, three of the detainees apparently hanged themselves. Others have attempted suicide.

Amnesty International takes no position on the guilt or innocence of those detained at Guantánamo Bay; the organisation insists that all detainees held in Guantánamo Bay must be able to enjoy the full range of human rights. The rights to life, the security of the person, the protection of law and to freedom from torture and ill-treatment cannot be suspended in any circumstances.

Among those captured in Pakistan and now in Guantánamo Bay is a journalist held apparently solely for his legitimate journalistic activities. Cameraman **Sami al-Haj**, (222) a Sudanese national who worked with the television station *Al-Jazeera*, was arrested in December 2001 by the Pakistani army near the Afghan border and was handed over to the USA on 7 January 2002. He was transferred to Guantánamo Bay on 13 June 2002, where he remains. (223) He suffers from throat cancer. His lawyer has stated that he has been denied treatment for his illness, been subjected to torture, including sexual torture, and that he is suicidally depressed. According to his lawyer, his interrogators have threatened to harm his family, especially his child, and have been pressing him to confess to a link between al-Qa'ida and *Al-Jazeera*. (224)

Some detainees are apparently in Guantánamo Bay because of mistaken identities, facilitated by the fact that many people in Pakistan and Afghanistan have similar or identical names. **Abdur Sayed Rahman** was arrested in January 2002 from his village home near the Afghan border. During 36 days in Pakistani detention, he was asked by Pakistani officials if there was anyone in his village with the same name. He answered that he was not aware of anyone by the same name and was told that police "were looking for someone else, but now they had me. So they were going to throw me in jail to make the report look right." He was transferred to Kandahar and then to Guantánamo Bay where he was told that he was Abdur Rahman Zahid, the former Taliban Deputy Foreign Minister. During interrogation he was reportedly told by an American that he was wrongfully detained and would be released soon. Instead he was accused in further interrogations of being a security guard at an Afghan jail and at a Combatant Status Review Tribunal hearing was described as a military judge under the Taliban, responsible for torturing, maiming and killing Afghan nationals. Abdur Sayed Rahman said he was a poor and uneducated chicken farmer and concluded: "I have no idea why someone would make this accusation as it is not true. I can only speculate that it was someone from a rival village close to my village in Pakistan. However, I have no proof because I am here at Guantánamo Bay". (225)

Mamdouh Habib, an Australian national of Egyptian descent, told Amnesty International that on 5 October 2001 he was travelling on the same bus between Quetta and Karachi when two German men were ordered off the bus by several men in civilian clothing. He volunteered to stay with them as they had little English. The three men were handcuffed, blindfolded and driven to a nearby house where they were held for three days; they were then driven to a large detention centre, apparently guarded by men in military uniforms. Mamdouh Habib was kicked and denied blankets at night but not otherwise tortured. After 12 days in detention, a guard announced that he would be taken home; instead he was flown to Islamabad. He was held in Pakistani detention, threatened and beaten to force him to sign a confession. He was reportedly seen by an Australian consular staff member who reportedly refused to help him. After about two weeks in Islamabad, he was shackled, blindfolded and taken to the airport with the promise of being flown home. Instead, he was handed over to some 15 US officials, stripped of his clothes, photographed, sedated and flown to Egypt. He was held there for about six months before being taken to Afghanistan, then Guantánamo Bay. He was released without charge in January 2005. (see section 5.3 and Appendix 1.)

6.4.4 Unable to return home after release from Guantánamo

Many of the detainees in Guantánamo Bay face an uncertain fate once released from detention. The names of around 490 detainees were released in April 2006 under the US Freedom of Information Act. Among them are 141 men, not identified by name, who were cleared for release, some to their home countries, some to the "control" of their home countries, some to an unclear destination. However, a number of these men would be at risk of human rights violations if they were returned to their home countries.

Among those who are cleared for release are a number of people arrested in Pakistan and unlawfully transferred to US custody. Several testified to having been sold in Pakistan into US custody. (226) Amongst them were 15 men from amongst a group of 22 Uighurs, Chinese Muslims from Xinjiang Uighur Autonomous Region (XUAR) of northwest China, who have been detained in Guantánamo Bay for more than four years. These 15 men were in late 2003 cleared for release as they were deemed to pose no threat to the USA. They were again exonerated by the Combatant Status Review Tribunal in 26 March 2005, which declared them to be No Longer Enemy Combatants (NLECs).

Two of the Uighurs, **Abu Bakker Qassim** and **A'del Abdul Al Hakim** filed habeas corpus petitions for release after being found to be non-combatants. On 22 December 2005, US district judge James Robertson ruled that the continued detention of the two men was "unlawful". (227) However, he had "no relief to offer" because the government had found no country to accept the men. At the same time he had no authority to let them enter the USA. (228) He rejected the idea of allowing them restricted asylum in the USA and said the government had taken too long to arrange for the detainees' release. In January 2006 the men's lawyers asked the Supreme Court to decide whether a federal court has the power to provide a remedy for those imprisoned at the US base at Guantánamo Bay. On 17 April 2006, the Supreme Court declined to hear the request of the Uighurs. The habeas corpus petitions of the five men were scheduled to be heard on 8 May 2006 by the US Court of Appeals for the DC Circuit.

However, three days before the scheduled hearing the two men, together with three other Uighurs were transferred to Albania. They live in a refugee centre outside Tirana, reportedly isolated from the local population whose language they do not speak, and without access to any other Uighurs. (229) They were granted asylum on 13 July 2006 by the Albanian government. China reportedly protested and demanded that they be handed over, accusing them of being

members of the East Turkestan Islamic Movement (ETIM), which China accuses of waging a violent separatist campaign and to be linked to al-Qa'ida. The other Uighur detainees remain in Guantánamo Bay.

Others captured in Pakistan and declared NLECs who cannot return to their countries include Algerian national **Fethi Boucetta** who had reportedly sought asylum in Pakistan and was arrested when police came to his house reportedly looking for someone else and took him instead. Egyptian NLEC **Ala Abdel Maqsud Muhammad Salim**, arrested in Pakistan in 2002 while working for an Islamic relief organisation, has petitioned US federal courts to direct the US government not to return him to Egypt.

Only 10 Guantánamo Bay detainees had been charged for trial by military commission by early August 2006.(230) Four of these men were arrested in Pakistan. All are charged with conspiracy. They are Algerian nationals **Sufyan Barhoumi**, **Ghassan Abdullah al-Sharbi**(231) and **Jabran Said Bin Al-Qahtani**, who were arrested on 28 March 2002 in Faisalabad in the same raid in which Abu Zubaydah (see below) was captured, and Ethiopian national/British resident **Benyam Mohamed al-Habashi**, arrested on 10 April 2002 at Karachi airport allegedly in possession of a forged passport.

6.4.5 Other persons subjected to enforced disappearance

While some detainees were transferred to Guantánamo Bay, the fate and whereabouts of an unknown number of other such victims remain unknown. The list of Guantánamo Bay detainees released on 19 April 2006 by the US Defense Department contains none of the senior al-Qa'ida or Taleban suspects, the so-called "high value detainees". They are, however, reported to have been arrested and handed over to US custody, the majority by Pakistani officials. These detainees may be held in US-controlled secret detention sites or in foreign facilities under some form of US control.

Out of 26 such persons listed in a December 2005 Human Rights Watch report, 21 were arrested and reportedly handed over by Pakistan to US custody.(232) Similarly, of 28 cases listed in a report by the Center for Human Rights and Global Justice, 20 had been arrested and handed over to US custody by Pakistan.(233) The two lists include 18 of the same people – the total number on both lists is 23. Most of these detainees held by the US in unknown places of detention are men of Middle Eastern origin. (Details of their arrests and detention are in Appendix 2.)

On 16 September 2006, US President Bush acknowledged the existence of secret CIA detention centres. He announced the transfer of 14 detainees so far held in secret CIA custody to military custody at Guantánamo Bay. He said that they would be tried by military tribunals if the US Congress passes new legislation to establish such tribunals. Of the 14 detainees, the majority had been arrested in Pakistan.(234) (see appendix 3.)

As the identities and details of arrest and detention of these individuals have been examined in detail by Amnesty International and other human rights organisations, they will not be extensively re-examined in this report.(235) Instead the focus will be on describing the Pakistani authorities' attitude to these transfers, and particularly on their efforts to conceal unlawful actions.

6.5 Denials and secrecy

The following two cases are described in some detail to show how secrecy and contradictory official statements were used by Pakistani officials to conceal arbitrary detention, torture and ill-treatment, enforced disappearance and possible transfer to US custody without any legal procedures. These cases are typical of many others.

6.5.1 The case of Mustafa Setmariam Nasar

Mustafa Setmariam Nasar, a Syrian man with Spanish nationality by marriage, was reportedly arrested on 1 November 2005 in a raid in Quetta, Balochistan, along with Abdul Hanan, a Pakistani activist of the Islamist group Jaish-e-Mohammad, while a third man, a Saudi national, Shaikh Ali Mohammed al-Salim, was reportedly killed in the subsequent shootout.(236)

In November 2004, the US government had announced a US \$5 million reward for information leading to his capture but did not apparently obtain an arrest warrant or indict him. US counter-terrorism officials said Nasar was wanted not for his role in any specific attack but for his wealth of information and his "encyclopaedic knowledge of al-Qaida-affiliated militants operating in Europe and elsewhere".(237) He was indicted in September 2003 in Spain for training al-Qa'ida "sleeper" agents and has been linked to the 2004 attack in Madrid. Following the attacks on London in 7 July 2005 where Mustafa Setmariam Nasar had lived from 1995 to 1998, news reports said that Spanish security sources had warned four months earlier that he had identified London as a likely target and may have set up a "sleeper" cell there.

Pakistani officials played down the importance of the arrest and denied any knowledge of the identity of the arrested foreigner. Information Minister Sheikh Rashid Ahmed said on 3 November 2005 that he believed neither the arrested man nor the man killed were "high-value targets". He said, "they are Arabs but their nationality is not yet known".(238) He added that it was "totally irresponsible" and "speculation" to state otherwise as "the identification which the arrested person is disclosing does not fit him. Therefore [the identification] will take time".(239)

However, provincial officials confirmed the arrest of an important al-Qa'ida suspect in Quetta. "Yes, security officials have picked up a most wanted terrorist," a senior official of the provincial government was reported as saying on 3 November.(240) Police denied any knowledge of his identity. "We have no knowledge about the person arrested in Quetta on Monday", Inspector General of Police in Balochistan, Chaudhry Mohammad Yaqoob said.(241) The security agencies that made the arrest did not involve police in their action, he said.(242)

Unnamed US officials were on 4 November reported to have confirmed Nasar's arrest.(243) *NBC News* also quoted unnamed US counter-terrorism officials as saying that Nasar had been arrested and that his capture was an "intelligence bonanza". They added, "he is all pen, no action, but the man has amazing access to a lot of other key players".(244) Three US counter-intelligence officials in early November stated that one of the arrested men was Mustafa Setmariam Nasar and that details of his arrest were being withheld to allow Pakistani and US intelligence agents to take advantage of names, addresses and other information material obtained from him.(245)

Al Jazeera television said on 3 November that it had received a statement that two people had been arrested, and said it believed one of the arrested men was Mustafa Setmariam Nasar.(246)

Mustafa Setmariam Nasar's arrest was never officially confirmed by Pakistani officials. The USA reportedly sent photos and DNA traces to help identify him.(247) Spain's ambassador to Pakistan said that Spain had sought information about Nasar's reported arrest but had received no response.(248)

Nasar's Spanish wife reportedly told the Spanish newspaper *El Mundo* that she had been informed by a "totally reliable source" that her husband was being "held and interrogated by non-Pakistani authorities".(249) On 2 May 2006, the *Associated Press* reported that US law enforcement officials had confirmed in the preceding week that Nasar had been arrested in November in Quetta and might have been handed over to US custody. US officials stated that they had no information of Nasar being held in either Guantánamo or Bagram. An unnamed senior Pakistani official said on 2 May 2006 that Nasar had been flown out of Pakistan "some time ago" and that Syria had requested his handover. Another unnamed Pakistani official confirmed that after his arrest Nasar had been interrogated by Pakistani and US officials.(250) In late May, Pakistani intelligence officials confirmed that Nasar had indeed been handed over to US agents in March after repeated US requests.(251) US officials in Washington have not confirmed that Nasar is in US custody and have declined to comment.(252)

It is unclear where Nasar is currently detained. A former CIA official was quoted as saying that "because he's considered a potentially valuable source of intelligence...[y]ou won't be seeing him at Gitmo (Guantánamo Bay) or in public".(253) A senior analyst was quoted as saying that he believed Nasar to be held at an undisclosed location in the Middle East along with other high-value prisoners.(254) In April 2006, Amnesty International received information that Mustafa Setmariam Nasar had been sent to Syria, by or through agents of the ISI; the BBC in late May 2006 quoted *El Mundo* as reporting on 5 May that Nasar had been handed over to Syria.(255)

6.5.2 The case of Abu Faraj al-Libi

Pakistani officials stated on 4 May 2005 that Abu Faraj al-Libi, a Libyan national,(256) had been arrested on 2 May 2005 in Mardan, NWFP, along with another person described by Pakistani officials as a key al-Qa'ida operative who carried a US reward of several million dollars.(257) According to reports, ISI staff disguised in *burqas* [loose women's garment covering the whole body] stopped a motorcycle bearing two men one of whom was also hiding in a *burqa*. In the ensuing chase, al-Libi hid in a house but was forced out when a gas canister was thrown inside. Some reports speak of four other people of unknown nationality being captured.(258) US officials said the arrests had been leaked prematurely by Pakistani officials.(259) Observers believed the delay to be deliberate to allow interrogators to gain information leading to the arrest of other suspects.(260)

Al-Libi and his associate(s) were immediately flown to Islamabad and held at an undisclosed location, according to Information Minister Sheikh Rashid.(261) He was reportedly "broken" after hours of repeatedly being asked only two questions, "where is bin Laden?" and "what were your plans?"(262)

According to US counter-terrorism officials, al-Libi was the al-Qa'ida operations chief and the number three in its hierarchy; security experts have questioned this description, saying that it "completely overestimated his role and importance. He was never more than a regional facilitator between al-Qa'ida and local Pakistani Islamic groups".(263) Pakistani officials have also linked him to two assassination attempts on President Musharraf's life in December 2003 and, according to Interior Minister Aftab Ahmed Sherpao, on Prime Minister Shaukat Aziz.(264) Shaukat Aziz said that al-Libi had been sought for some time.(265) On 4 May, US President George W. Bush described al-Libi as a "top general of bin Laden. He was a major facilitator and a chief planner for the al-Qa'ida network".(266)

It is contested whether US personnel participated in the arrest.(267) It is similarly contested whether US intelligence participated in the interrogation of al-Libi. Brigadier Javed Iqbal Cheema, head of the Interior Ministry's Crisis Management Cell, denied any US participation in interrogations, saying "No one else is involved for the time being".(268) An unnamed Pakistani intelligence source said that they interrogated al-Libi together with US intelligence(269) and one Pakistani intelligence official was quoted as saying, "US intelligence agents have been part of the operation to catch al Libi. Al-Libi is being interrogated jointly by a US and Pakistani team".(270) A US counter-terrorism official was reported as saying that Pakistani and US officials were cooperating "very closely" in the investigation.(271)

Pakistani officials continued to deny any intention of handing al-Libi over to US custody. Foreign Minister Khurshid Kasuri said on 12 May 2005 that al-Libi would not be handed over to US custody "at present" as Pakistan had a "very strong vested interest" in him, given his alleged involvement in the attempt on President Musharraf's life. He added, "but we had have a track record of ... sharing intelligence with our friends, and we have very strong links with the United States".(272) He said there was no chance he would be handed over to the US before being prosecuted in Pakistan.(273) Similarly Interior Minister Aftab Ahmed Sherpao said categorically on 13 May 2005 that al-Libi would be tried under the Anti-Terrorism Act for the many terrorist acts he had allegedly committed in Pakistan. He also stated that no country had requested his custody.(274)

On 31 May 2005, President Musharraf said that Pakistan had handed over al-Libi to the USA having completed his interrogation but that he did not know where al-Libi currently was. He said, "we have extracted all the information and intelligence from him and I presume that he may have been deported already to the US ... We don't want him in Pakistan". Asked why he was handed over when he had been involved in attacks on the President, he said that there were "bigger issues involved and ... we may come to his trial later".(275) Asked to confirm President Musharraf's statement, US State Department spokesman Richard Boucher said he could not confirm it.(276) He said on 31 May that al-Libi's extradition had not been discussed with Pakistani authorities yet.(277) US security officials said that al-Libi was flown out of Pakistan and given to US custody on 1 June, a day after President Musharraf's statement was broadcast.(278)

On 6 June, Pakistani authorities said that they had handed over al-Libi to US custody in response to a request from US authorities, saying that he had been taken out of Pakistan in a plane by US officials and taken to an unknown place. His whereabouts since his transfer to US custody are unknown.(279) One Pakistani intelligence official said he did not know where al-Libi was taken while another said he would be taken to a US detention facility where other suspects are held so that interrogators could "verify very quickly" information he had given to Pakistani authorities. On 7 June 2005, the *Associated Press* quoted an email from a US military spokesman based in Afghanistan, Colonel James Yonts, saying that al-Libi had been taken directly from Pakistan to the USA. No other official comments were given. The identity, fate and whereabouts of the other person or people arrested with al-Libi have never been disclosed. Abu Faraj al-Libi is one of the 14 detainees whose transfer from a secret CIA prison to Guantánamo Bay was announced by US President Bush on 16 September 2006.

6. 6 Unlawful transfer of Pakistani nationals

Pakistani officials have on several occasions stated that no Pakistani terror suspect had been transferred to US custody. In May 2004 an Interior Ministry official was quoted as saying that no Pakistani had been handed over to the USA by the present government.(280) Foreign Minister Khurshid Mehmood Kasuri in August 2005 gave categorical assurances that no Pakistani national had been handed over to US custody.(281)

However, there is evidence that some Pakistani nationals may have been handed over to US custody.

Musaad Aruchi was reportedly arrested in Karachi on 12 June 2004 by Pakistani paramilitary forces in an "operation supervised by the CIA". The operation reportedly employed sophisticated American intelligence telephone and internet intercepts and computerized identification systems and was reportedly funded by the CIA.(282) Information contained in computer files, e-mail addresses and cell-phone text messages seized by Pakistani intelligence after his arrest and interrogation contributed to a terror alert in early August 2004 in the USA and other arrests in Pakistan.(283) Pakistani intelligence officials reportedly said that Aruchi was held by Pakistani authorities at an airbase for three days, before being handed over to the USA; he was then flown in an unmarked CIA plane to an undisclosed location.(284) His current whereabouts are unknown.

Ali Abdul Aziz Ali, alias Ammar al-Balochi(285) who allegedly transferred money to the September 2001 hijackers in the USA, was reportedly arrested on 29 April 2003 in Karachi, Pakistan. Pakistani media quoted Pakistani intelligence officials saying that on 2 May 2003 they had handed over Ali Abdul Aziz Ali, Waleed Mohammad bin Attash and Abu Ammar to US custody (either FBI or CIA) after concluding their own interrogation. The intelligence sources said they were not certain if the men had been flown out of the country.(286) US authorities have neither confirmed nor denied his being in their custody. However, in the trial of Uzair Paracha (son of Saifullah Paracha, see section 3.5.4.) in the New York District Court in 2005, sworn statements from Ali Abdul Aziz Ali "during his interrogation by US forces" indicate that he remained in US custody at a secret location.(287)

A Pakistani national who was subjected to enforced disappearance and transferred to US secret custody is **Majid Khan** who had lived with his family in Baltimore, USA, since 1996. He is alleged to have had links to Khalid Sheikh Mohammed (see below) and to Dr Aafia Siddiqui (see below). It is believed that Majid Khan was arrested in early 2003. Both the exact date and location of his arrest are obscure. His brother Ahmed Khan has reportedly said that both he and Majid Khan returned to Pakistan in 2003 to get married; Majid Khan then reportedly returned to the USA and went back to Pakistan the same year, where after some three months he was arrested.(288) The family has stated that they have not seen Majid Khan since 2003. Pakistani media have not mentioned his arrest. Uzair Paracha (see above) was arrested by FBI agents in New York on 28 March 2003 for allegedly impersonating Majid Khan to create the impression that Majid Khan had not left the USA. In November 2005 Uzair Paracha was convicted of providing material support to terrorists and in July 2006 sentenced to 30 years' imprisonment. In the trial a sworn statement by Majid Khan was admitted in which he stated that Uzair Paracha had been unaware of alleged terror links of Majid Khan. Both Ali Abdul Aziz Ali and Majid Khan are amongst the 14 detainees whose transfer from a secret CIA prison to Guantánamo Bay was announced by US President Bush on 16 September 2006.

Another Pakistani national who may be in US custody is **Dr Aafia Siddiqui**, a PhD in neuroscience from the USA, who was detained along with her three children in March 2003 in Karachi. (For details of her arrest see above.) An Interior Ministry spokesman in May 2004 said that she had been handed over to US custody, allegedly because she had "kept her [US] nationality".(289) Responding to an FBI report according to which Dr Aafia Siddiqui was in Pakistan, the Interior Ministry spokesman expressly denied this, saying she was in US custody. Another spokesman was quoted as admitting that Pakistani intelligence had also interrogated her, but had found no links to al-Qa'ida.(290)

In March 2003, the FBI announced it wanted to question her in connection with al-Qa'ida.(291) In a meeting with Dr Siddiqui's sister on 30 December 2003, Minister Faisal Saleh Hayat said that to his knowledge she had been released

and would be contacting them soon.(292)

Following an article in the Urdu press that Dr Siddiqui and her children had been sent to the USA, her mother Ismet Siddiqui flew to the USA to locate her daughter. On arrival in New York she was detained and questioned by the FBI, New York Police Department and Homeland Security and subsequently subpoenaed to appear before a grand jury. Both the US Attorney General and the FBI denied that Dr Aafia Siddiqui was in US custody and that they had any knowledge of her whereabouts.(293) To date the fate and whereabouts of Dr Aafia Siddiqui and her three children remain unknown.(294)

6.7. Transfers of detainees to home countries

Several non-Pakistani terror suspects have been transferred to their countries of origin, apparently without any legal proceedings and with no regard to the principle of *non-refoulement* to countries where a person may be at risk of torture or other ill-treatment, arbitrary detention and enforced disappearance. In all the countries listed below, Amnesty International has expressed concern about such human rights violations.

6.7.1 To Indonesia and Malaysia

In September 2003, six Indonesian and 13 Malaysian students were arrested by Pakistani intelligence in separate raids on two Islamic seminaries in Karachi. They were held incommunicado, without charge, in secret places of detention for several months, then deported to their countries of origin, apparently without regard to the principle of *non-refoulement*.

Rusman Gunawan, an Indonesian university student and the brother of Riduan Ishamuddin, alias Hambali, a terror suspect,(295) was arrested on 1 September 2003 by Pakistani intelligence agents at Abu Bakar University in Karachi.(296) On 20 September another Indonesian student and five Malaysians were arrested. On 22 September four more Indonesians were arrested from the same seminary and eight other Malaysian students at the Darasatul Islamia in Karachi.

Pakistani intelligence personnel claimed that the students had links with the Indonesian Islamist organisation Jamaah Islamiya and to al-Qa'ida, and had formed an al Qa'ida sleeper cell in Pakistan. According to a Pakistan Interior Ministry spokesman, Indonesian intelligence (but apparently not Malaysian) personnel took part in interrogating the detainees but did not ask for them to be deported to their country of origin nor ensured consular access.(297) One of the Indonesian students, Furqon Abdullah, said in June 2004 that the USA had played a role in the Indonesian students' capture in Pakistan.(298) According to some media reports, the 19 students were interrogated by joint Pakistani-US teams.(299) Officials of both seminaries said in late September 2003 that the students had had valid student visas and were properly registered.(300)

On 25 September 2003, the Malaysian government stated that the Malaysian students, all aged in their 20s, were believed to be leaders-in-training of regional terror network, Jamaah Islamiya (JI). The following day, a Pakistani official said that the authorities had no plans to charge the Malaysian students and would deport them.(301) The 13 Malaysians were eventually deported on 10 November and detained by Malaysian police on arrival. Five of the students were on 9 December 2003 ordered to be detained under the Internal Security Act (ISA) for two years, while another four were freed under "Restricted Order" also for two years. The remaining four were released. The five students detained under the ISA were released on 21 March 2005.(302)

On 11 December 2003, the six Indonesian students were deported to Indonesia as Pakistani authorities said that they considered them a danger to the country's internal security.(303) On 17 December, two of them -- David Pintario bin Walam Arlamyjah and Anwar Siddiqui bin Basthoni -- were released as there was no evidence against them.(304) The other four were arrested on arrival in Indonesia and charged under the law on Anti-Terrorism, with financing and providing training for terrorist activities. Their trial began in June 2004.

6.7.2 To Turkey

In May 2006, the Turkish newspaper *Milliyet* reported that **Mehmet Yilmaz** was handed over by Pakistan to Turkey at an unspecified date.(305) He and another Turkish man, **Mahmut Kaplan**, who was also transferred by Pakistan to Turkey, are on trial in Gaziantep, southeast Turkey, accused of belonging to an illegal Islamic organisation. *Dawn* reported in April 2006 that Turkish national **Mohammad Yousaf**, a suspected al-Qa'ida fighter arrested on 28 January 2006 in South Waziristan, was handed over to Turkey on 27 April 2006 after two months' interrogation at an undisclosed location.(306) **Levent Karagulle** and his wife **Intisar Saatcioglu**, arrested on 24 January 2006 in Lahore, were returned to Turkey on 13 June and 31 January 2006 respectively after being held without charges. Levent Karagulle was briefly detained on his return to Turkey. There were suggestions that their detention in Pakistan was a case of mistaken identity as their house in Lahore had earlier been rented by a Middle Eastern family.(307)

6.7.3 To Afghanistan

On 26 October 2005, in the "first extradition of Taleban suspects since the fall of the Taleban", (308) 14 suspected Taleban members were transferred to Afghanistan. They were: **Abdul Latif Hakimi**, a spokesman for the Afghan Taleban insurgents, arrested on 4 October 2005 in Quetta along with five associates and held at an undisclosed location; **Mohammad Yasar**, reportedly Taleban head of information and culture, arrested on 12 August 2005 along with his family (who were released two days later) in Nowshera district, NWFP; and 12 unnamed Taleban members of lower rank. They were reportedly flown blindfolded to Afghanistan(309) where, according to Afghan officials, they were to be tried for their roles in the violence against the present Afghan government.

Although the men's transfer to Afghanistan was described in the media as "extradition", the process does not appear

to have conformed to the requirements of Pakistan's extradition law and international standards. While the media said that Afghanistan had formally requested the two Taliban leaders' extradition shortly after their arrest,(310) Pakistan's Information Minister Sheikh Rashid Ahmed reportedly said that Pakistan would consider whether to hand Hakimi over to Afghan or US authorities after his interrogation.(311) Similarly, Interior Minister Sharpa said days after Yasar's arrest, that the government would decide his fate on the basis of his interrogation.(312) Both Hakimi and Yasar appear to have been held in unlawful detention, without access to a lawyer.

6.7.4 Transfer of a juvenile to Egypt

In March 2004, the UK-based Islamic Observation Centre reported that two sons of alleged terror suspects arrested in Pakistani had been handed over to Egyptian custody some four months earlier and were detained in Egypt on unknown charges.(313) **Khalid Murjan Salim**, (17) was reportedly arrested on 2 October 2003 in South Waziristan. His father, Murjan Salim, is reportedly active in an Egyptian Islamist group. **Hamzah Midhat Mursi**, (19) is the son of a Pakistani mother and Hamza Midhat Mursi alias Abu Khubab, a chemical engineer allegedly responsible for the development of chemical weapons for al-Qa'ida. He was reportedly arrested in Peshawar, held for about three months, then deported to Egypt. Amnesty international has been informed that Hamza Midhat Mursi was subsequently released while juvenile Khaled Murjan Salim remained in detention.

6.8 Renditions from Pakistan to countries in the Middle East

In some cases terror suspects have been secretly transferred into the custody of states – including Egypt, Jordan and Syria – where physical and psychological brutality feature prominently in interrogations. Among those known to have been transferred to Middle Eastern countries after being handed over by Pakistan to US custody are **Benyam Mohamed al-Habashi**, **Mamdouh Habib**,(314) **Jamil Qasim Saeed Mohammed** and **Ibn al-Shaikh al-Libi**.

Yemeni national **Jamil Qasim Saeed Mohammed** was reportedly handed over to the USA on 26 October 2001 and flown out of Karachi airport in secret aboard a US Gulfstream jet. He was reportedly taken to Jordan. His current whereabouts are unknown. Amnesty International has never received a response to its requests to the US authorities for information on the case.(315)

Benyam Mohamed al-Habashi (27), an Ethiopian national resident in the UK, was arrested by Pakistani officials on 10 April 2002 at Karachi airport for allegedly travelling on a false passport. Within 10 days of his arrest, he was interrogated by US and Pakistani officials in a Karachi detention centre. When he insisted on his right to see a lawyer and later refused to answer questions, they reportedly told him, "the law has been changed. There are no lawyers. You can co-operate with us the easy way, or the hard way. If you don't talk to us, you're going to Jordan. We can't do what we want here, the Pakistanis can't do exactly what we want them to do. The Arabs will deal with you".(316) On 21 July 2002, he was taken to Islamabad military airport where he was shackled, blindfolded and dressed in a tracksuit before being forced into an aircraft which flew him to Morocco where he was allegedly tortured.(317) On 22 January 2004 his captors told him he was "going home"; instead he was flown to Kabul where he was held in "the Prison of Darkness" for four months. He alleges that he was tortured there and interrogated by US officials. He was transferred to Bagram air base at the end of May 2004 where he was forced to sign confessions and on 19 September 2004 to Guantánamo Bay where, he says, he has been "routinely humiliated and abused and constantly lied to". In February 2005, he was placed in Camp V, a part of the facility where pre-trial and other detainees are held in isolation. He is one of the 10 prisoners at Guantánamo Bay who have been formally charged for trial by the now-stalled military commissions.(318)

If the purpose of such transfers was to obtain reliable information about terrorism-related issues by means of harsher interrogation methods, the case of **Ibn al-Shaikh al-Libi** demonstrates the questionable efficacy of this approach. Statements extracted from him during his interrogation in Egypt about links between al-Qa'ida and the Iraqi leadership were repeatedly used by the US administration in late 2002 and 2003 to argue for intervention in Iraq. However, the CIA and the US Defence Intelligence Agency (DIA) had already in September 2002 and February 2002 declared al-Libi to be an "unreliable source"; in January 2004 it became known that he had withdrawn these statements, and had reportedly made them only to escape further brutal treatment.

7. Impact on families of enforced disappearances

The families of those whose fate and whereabouts are unknown are also considered victims of enforced disappearance. It is widely acknowledged that enforced disappearance takes a heavy toll on the families of those who have been seized. Relatives experience extreme anxiety about their loved ones, frustration in the face of official denials and contradictions, harassment when pursuing their search, social exclusion because of their association with alleged terror suspects and economic hardship.

To be unaware of the fate and/or whereabouts of a family member for a prolonged period of time and to fear for his or her life and safety may in itself amount to cruel, inhuman or degrading treatment or punishment.(319) The knowledge that torture is routinely used in Pakistan adds to the fear of the relatives.

7.1 Anxiety

Family members of some victims of enforced disappearance have told Amnesty International of the excruciating anxiety they have had to bear since their loved ones were taken away. Zainab Khadr said that for almost four months she and her mother did not know if her 14-year-old brother Abdul Karim Khadr, a Canadian national, was alive, injured, in custody or dead after he could not be found following a reported shootout on 2 October 2003 in Angoor Adda, South Waziristan. Every state agency they approached, either directly or in the course of hearings of their habeas corpus petition, denied holding him or having any information about his whereabouts. Zainab Khadr told Amnesty International that on 19 January 2003 the Canadian Embassy in Islamabad rang her mother to tell her that

they had seen her son who had sustained a spinal injury and was paralyzed. Around the end of January 2003, the mother was finally permitted to visit her son in a hospital in Rawalpindi where he was held, apparently in military custody.

Many relatives of non-Pakistanis who were transferred to other countries are also concerned about where their loved ones may eventually be transferred when released. Many of these men come from Middle Eastern countries, but have wives and children in Pakistan. Transfer to their home countries may not only place them at risk since they are marked as "terrorists", but will also tear apart families that have already suffered years of anguish.

7.2 Frustration

Fear is exacerbated by frustration, when state agencies consistently deny any knowledge of the whereabouts of persons believed to have been seized. Ihsanullah Khan is the brother of Hayatullah Khan, a journalist seized by unidentified gunmen on 5 December 2005 in North Waziristan after he had recorded photographic evidence about the killing of an alleged al-Qa'ida suspect on 1 December which appeared to contradict the official version of the incident. (see section 6.1 and 7.3.) He has described that lobbying to find the whereabouts of his brother has taken over his life and that of Hayatullah Khan's wife and children. Ihsanullah reported that the Political Agent of North Waziristan had assured in May him that the family would receive some "good news" by 20 June. Instead his body was found on 16 June 2006.

7.3 Harassment

Other relatives have described to Amnesty International the harassment they have had to endure when pursuing the search for their loved ones through the courts. The parents and sister of Mohammed Naeem Noor Khan (see section 3.6.1 and 8.3.) told Amnesty International that after his enforced disappearance his father, a flight attendant with Pakistan International Airlines (PIA), was grounded, though not dismissed from the company. Their relatives in Canada and Dubai have been questioned about Muhammed Naeem Noor Khan. Family members in Karachi have been threatened by people who came to the family home in Karachi (see section 3.6.1 and 8.3.) and threatened that his siblings would be abducted and lose their jobs if a habeas corpus petition on behalf of Mohammed Naeem Noor Khan was not withdrawn. They did not identify themselves but only said that they had come from Islamabad. They said that if the petition was withdrawn, family members could speak to him right away on their mobile phone. They also divulged information about the family which indicated that they were under constant surveillance. Neighbours and friends of Mohammed Naeem Noor Khan have been informally questioned about his friends, activities, bank balance and political views. The family reported that many of their former friends had distanced themselves from them.

7.4 Social exclusion

Relatives of people subjected to enforced disappearance have told Amnesty International of the social exclusion they have experienced. Farhat Paracha, whose husband Saifullah Paracha was detained on 5 July 2003 in Bangkok (see section 3.5.1.) and was for some time subjected to enforced disappearance, told Amnesty International of the emotional, financial and social cost of his enforced disappearance. She said that the events had "emotionally devastated the whole family" and economically damaged a well-established business which she tries to keep going. With regard to her family she said, "can you imagine the mental agony and anxiety we experienced as a family when this happened and there was no response from anyone? Can you imagine the helplessness we are feeling as a result of not having any response from anyone. How am I supposed to explain this to the children?" All three children have begun to feel insecure: Muneesa (21) is at college, Mustafa (14) and Zahra (11) are at school. "They are no longer carefree children, but have become suspicious and worried." "All friends of the family have backed off, everyone is scared to know us. This has also badly affected the children. We feel so isolated now".

7.5 Economic hardship

When persons who are the main breadwinners of their family are subjected to enforced disappearance, this lays a heavy economic burden on their families. In December 2004 Amnesty International met the family of two Mauritanian nationals, Mustafa Abu Abdullah and Adil Amin, who had been arrested in late 2001 and early 2002 respectively in a village on the outskirts of Peshawar. The two men, having fought in Afghanistan until the defeat of the Soviet forces, had settled in the village and married two daughters of a local *mullah* [cleric] around eight years earlier. The *mullah*, their father-in-law, told Amnesty International, that the men were "honoured guests" at the time and welcome in the village. The two men have five and four children respectively. Mustafa started a small business exporting honey to Afghanistan and Adil was a salesman in a carpet shop. According to their father-in-law, neither man was connected to any political group or participated in any political activity. After Pakistan joined the US-led "war on terror", Mustafa was arrested from his home in late 2001 by a large party of police and security personnel; Adil was arrested by police in the Hayatabad area of Peshawar six months later, leaving behind a wife who was then several months pregnant with their fourth child.

The family did not hear of the whereabouts of the two men for a long time. About a year later, a person released from custody in Bagram told them that Adil was held in US custody in Bagram; they received a first letter dated 29 August 2004 from Mustafa from Guantánamo Bay which was forwarded by the ICRC. They later received a similar letter with regard to Adil's detention in Guantánamo Bay.

The elderly *mullah* has looked after his two daughters and their nine children. He is the only one in the family who is earning and while he used to teach children in the past to earn more money, he said, "I am now too old to do any other work in addition to my work at the mosque. How will I look after the children once all of them are going to school?" The family lack understanding of where Guantánamo Bay is and asked Amnesty International delegates, "where is Guantánamo Bay? Will they come back? Will we ever see them again?"

8. Ineffective remedies

"We have seen an erosion of due process in the pursuit of the war on terror", I.A. Rehman, director of the HRCP.

When an enforced disappearance is believed to have occurred, relatives can either file a complaint with the police, who are then obliged to investigate, or assert their right to habeas corpus by filing petitions in provincial high courts. In the context of Pakistan's pursuit of the "war on terror", both options have proved ineffective. Many relatives use informal channels for tracing the whereabouts of people who have been detained, usually without success.

8.1 Informal channels

In many instances relatives try all the informal approaches they can before seeking relief through the courts.

Masood Janjua, a Rawalpindi-based businessman, and **Faisal Faraz** from Lahore have not been seen since 30 July 2005 while taking a bus journey from Rawalpindi to Peshawar where they had planned to go on a preaching tour. Masood Janjua was involved with the Hamza Foundation, contributed to relief in Bannu, NWFP, after the earthquake in October 2005, and ran a charitable hospital. Their enforced disappearance coincided with a country-wide crackdown in mid-2005 in which some 700 to 800 clerics and religious students were arrested on suspicion of involvement in terrorist activities.

On 7 September 2005, Masood Janjua's wife, Amina, registered a complaint with the Westridge police station in Rawalpindi to try and obtain information about her husband's whereabouts. However, the police investigation did not yield any result. Masood Janjua's father is a retired Lt.-Colonel and tried all his contacts in the civil and military authorities to trace his son informally. He approached one of his son's friends who is an ISI officer at the ISI Hamza Camp, who told him that there was no need to worry as Masood was safe and looking for land in the Dhir area of NWFP and that he had told Masood to phone his family. No phone call came. Masood's father wrote to President Musharraf on 7 December 2005. An officer from the Ministry of Interior came to the family home on 3 January 2006 asking questions and promising to locate Masood within a fortnight. The father also submitted an appeal to the President at a meeting of the President with army personnel in January 2006. The office of the President informed him on 31 May 2006 that Masood Janjua was not held by any government agency. On 17 February 2006, the father met the Secretary of the Ministry of the Interior and was told that his son had not been found. In response to an application filed on 2 January 2006, the father was told on the phone by an ISI official that that agency was not holding him. However, he was informed by an unnamed source that Masood is alive.

On 27 June 2006 Interior Minister Aftab Ahmed Sherpao promised Masood's wife Amina a written response within a week. Nothing came. Meanwhile the Chief Justice of Pakistan on 20 December 2005 directed the Punjab police authorities to respond after a journalist had submitted a complaint to him but despite a reminder in June 2006, received no clarification as to Masood's whereabouts.

Amina Janjua filed an application in the Supreme Court on 20 July 2006 requesting it to direct the heads of ISI, Military Intelligence and the Federal Investigation Unit (FIU) to reveal the whereabouts of her husband and expressed her fear that his welfare activities in Bannu may have been misunderstood. In a hearing in August, the Supreme Court directed the Punjab Inspector General of Police to explain why police had failed to recover Masood Janjua. In late August Amina Janjua additionally applied to the Chief Justice to locate her husband.

Also in August, the mother of Faisal Faraz filed constitutional petition after a complaint filed with police in Lahore and a petition to the Director of the ISI had failed to yield any information about his fate and whereabouts. The two men's whereabouts remain unknown.

8.2 Inadequate action by members of the criminal justice system

In the majority of cases monitored by Amnesty International, police have refused to register First Information Reports (FIR) on the basis of which a police investigation begins. In some cases police have said that they have no competence to do so as the victims were reported by relatives to have been captured or abducted by intelligence agencies.

The Afzal family alleges that the Karachi police refused to register their complaint about the enforced disappearance of the Afzal brothers, (see section 5.3.) as "this was a matter involving the intelligence agencies".(320) Similarly Samiullah Khan approached the local police station to lodge a complaint after his sons, Faisal and Fahad Sami, and a friend were seized on 10 November 2005 from a shop in Karachi by plain clothes intelligence personnel. He was told that police could not register a criminal complaint if the young men had been picked up by an intelligence agency. While two of the young men were released the next day, **Faisal Sami** remains missing. When a journalist questioned the police station concerned six months later, police said that Faisal Sami was registered as "missing" but that he had not been found.(321)

Courts hearing habeas corpus petitions have sometimes ordered police to file and investigate complaints of enforced disappearance. In March 2006, the Peshawar High Court disposed of the petition filed by the father of **Muhammad Shafiq** arrested by an intelligence agency at his garment shop in Swat on 28 September 2004 after all state agencies had denied knowledge of his whereabouts. It reprimanded police for refusing to register his father's complaint, and ordered it to do so and investigate it promptly.(322)

In a few cases the higher judiciary has taken action when police were found to have been involved with enforced disappearances. On suspicion that Afghan national **Nazir Ahmed** might be held at Civil Lines police station, Rawalpindi, the Rawalpindi bench of the Lahore High Court, on hearing a habeas corpus petition on 18 August 2006

sent a court bailiff to the police station. He found Nazir Ahmed there but police officers refused to hand him over claiming that he was involved in an assassination attempt on the President. No criminal complaint had been filed against Nazir Ahmed and his arrest was not registered in the police diary as required by law.(323) On the following day, the High Court directed that criminal charges be brought against the police officers involved in contravening court orders and verbally abusing the bailiff. On 20 August, police claimed that Nazir Ahmed had tried to escape police custody and was caught with explosives and incriminating documents. He was then charged under the Anti-Terrorism Act.(324) On 21 August the Inspector General of Police requested the court to dismiss the matter as relevant police officers had been charged with "wrongful confinement". Instead the court ordered that he personally investigate the circumstances in which a terrorism charge had been brought against the detainee. The Chief Justice of Pakistan expressed his displeasure with police saying that "nobody on earth would believe the police story of arresting a person in a terrorism case who was already in police custody for the last two years without any charge".(325)

However, courts have sometimes ignored the unlawful detention of terror suspects. **Muhammad Zaheer**, a former Pakistan Air Force serviceman was arrested on 2 December 2004 in Swat after being injured in a clash with police after a bank robbery. He was taken to a hospital in Rawalpindi from where he was taken away some days later by two named ISI officials. The police superintendent investigating the robbery case repeatedly requested local ISI officials to return Muhammad Zaheer to police custody as the inquiry was complete but could not proceed in the absence of the accused. He received no response. Meanwhile Muhammad Zaheer's brother filed a habeas corpus petition. Muhammad Zaheer was on 17 June 2006, after 19 months of enforced disappearance brought by Swat police before an Anti-Terrorism Court which granted them remand of Muhammad Zaheer. Three days later he was transferred to Timergarah prison.(326) The Anti-Terrorism Court which had earlier begun to try him in absentia, did not question where and in whose custody he had been held for 19 months but simply resumed the trial. After he was brought before the Anti-Terrorism Court, the Peshawar High Court dismissed the habeas corpus petition, also without questioning his long unlawful detention.

8.3 The right to habeas corpus undermined

The right to be brought before a court and be able to challenge the legality of one's detention (habeas corpus) is crucial to the very concept of the rule of law and the prohibition of arbitrary detention. It is a peremptory rule of customary international law, namely binding on all nations and even in times of national emergency persons deprived of their liberty must be able to challenge the lawfulness of their detention.

The Constitution of Pakistan provides that the higher judiciary is responsible for the protection of human rights. It gives the Supreme Court the power to take up any matter it considers of public importance with regard to the enforcement of human rights.(327) The provincial high courts have the power to issue orders to provincial authorities with regard to the enforcement of fundamental rights upon receipt of a complaint from any person.(328) The right to seek the enforcement of fundamental rights by the high court may not be curbed.(329)

The Constitution of Pakistan provides the right to habeas corpus in Pakistan in Article 199 which says: "(1) *Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law, - ...*

(b) on the application of any person, make an order -

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner...".

While the Constitution of Pakistan provides that "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 other person for the time being in Pakistan"(330) and that "[a]ll citizens are equal before law and are entitled to equal protection of law",(331) the right of habeas corpus is not available to all people in Pakistan. It is restricted to those living within the jurisdiction of the country's high courts and does not apply to people in the designated tribal areas of Pakistan. The Federally Administered Tribal Areas of Pakistan (FATA) are recognized in Article 1 of the Constitution to be part of Pakistan, but the Constitution also lays down a rigorous separation in terms of law, institutions and human rights protection between the FATA and the rest of the country. The criminal code of Pakistan does not apply to the FATA and Article 247(7) of the Constitution excludes the FATA from the jurisdiction of the country's high courts and the Supreme Court. In practice this means that no resident of the FATA can exercise the right of habeas corpus. When Hayatullah Khan was abducted in December 2005 near Mirali in North Waziristan, his family could not ascertain his whereabouts by approaching a high court but had to resort to informal contacts. In some cases, detaining authorities also appear to have deliberately moved detainees into the tribal areas to place them outside the jurisdiction of high courts.

In practice the right to habeas corpus has been gravely undermined both by state agencies and by the unwillingness of high courts to insist on the realization of that right. Many relatives of people who have been subjected to enforced disappearance in the "war on terror" have filed habeas corpus petitions in the provincial high courts. Amnesty International is not aware of a single case in which this process has led to the recovery of person subjected to enforced disappearance. Many people do not attempt to obtain relief from the judiciary for fear that the person detained will suffer reprisals as a result.

Some relatives have expressed to Amnesty International their sense of helplessness and disappointment with the higher judiciary. The HRCP stated in its annual report for 2004, "these cases of disappearance [observed in 2004] brought to light the inadequacies of the habeas corpus process because the superior courts could offer no relief if the agency/force/department named as respondents denied the arrest or detention of the missing persons".(332) Similarly the *Herald* concluded its survey of such cases by saying, "The judiciary appears to have lost the will to defend unarmed people against their own secret agents".(333) Statistics appear to bear this out. A report in October 2005 indicated that in the Peshawar High Court alone, 17 habeas corpus petitions relating to 27 men and three women had

been filed over the previous two years, all of which were unsuccessful, after the respondents, including the Ministries of the Interior and Defence, denied any knowledge relating to these individuals. An unknown number of similar petitions filed in district and sessions courts under section 491 of the Code of Criminal Procedure had been similarly dismissed.(334)

State agencies called before provincial high courts to provide information have routinely denied holding the person or knowing of his or her whereabouts. As a result, habeas corpus petitions have been dismissed in dozens of cases. The *Herald* of December 2004 lists four cases in which courts in NWFP had dismissed habeas corpus petitions over the previous year. Among them is **Sohail Rehman**, a Canadian resident, who was picked up on 12 May 2004 by a group of men from his father's house in Dera Ismail Khan. A relative, Zahid Iqbal was taken away in the same raid; the same night the house of another relative, Allah Nawaz Khan, was also raided and Khan's sons, Kashif Jamal and Mohammad Asif and their cousin Mohammad Farooq taken away. None was charged with any criminal offence and efforts by their relatives to trace them were frustrated by persistent denials from all state agencies about any knowledge of their whereabouts. Zahid Iqbal was dropped off at a bus stand in Rawalpindi 10 days later; Farooq and Asif were left at the same spot on 7 June and Kashif Jamal was subsequently released as well. During hearings of the habeas corpus petition filed by Sohail's father, Dr Abdur Rehman, the two young men released earlier, Farooq and Asif, were heard *in camera* by the presiding judge. Information revealed in subsequent hearings suggested that the two men had informed the judge that they had been held near Chaklala airbase, supervised by people in military uniform and questioned about the identities of various people. They were reportedly unable to identify the interrogating agency. In subsequent hearings, the representative of the Defence Ministry repeatedly sought and obtained adjournments when he said that he awaited comments from the army headquarters. Finally, after he stated that none of the agencies under the Defence Ministry knew of Sohail's whereabouts, the court on 1 July dismissed the petition as "infructuous" [barren]. The fate and whereabouts of Sohail Rehman remain unknown.(335)

In some cases in which state agents have denied detaining a person, senior government officials have acknowledged their detention. The habeas corpus petition filed by the father of Mohammed **Naeem Noor Khan** (see section 3.6.1 and 8.3.) is still pending in the Lahore High Court but all state agencies have denied holding him. At the same time, a senior Pakistani intelligence official was reported as saying that "The arrest of Mohammed Naeem Noor Khan opened up a floodgate of information".(336) His detention is also referred to in other statements. Then Information Minister Sheikh Rashid Ahmed said after the arrest of Qari Saifullah Akhtar that it was not connected to the capture of two other senior al-Qa'ida operatives, Ahmed Khalfan Ghailani and Mohammed Naeem Noor Khan.(337) A report listing Pakistan's achievements since joining the "war on terror" in 2001, prepared by the security agencies prior to President Bush's visit in 2006, also lists Naeem Noor Khan amongst the killed or captured terror suspects.(338)

In other cases, people whose detention was denied by state agents in the high court were later released. Such cases include the sisters Arifa and Saba Baloch and Arifa's mother-in-law Gul Hamada. (see section 6.2.)

In a number of habeas corpus proceedings, state officials appear to have hidden responsibility for arrests and detention behind internal bureaucratic structures. In July 2006, the federal Defence Ministry confirmed in a sworn affidavit filed in the Sindh High Court that it had no operational but only administrative control over the two intelligence agencies, ISI and Military Intelligence, and hence could only pass on court directives to them for compliance without being able to enforce them.(339) The representative of the Ministry said the task of locating and recovering persons did not fall within the Ministry's responsibility, nor did it have the mandate to ascertain the veracity of any statements made by the ISI or Military Intelligence. This statement has been met with widespread surprise and criticism. A commentator in *Dawn* observed that this left the question unanswered who exercised operational control over the intelligence agencies and was responsible for arbitrary detention and enforced disappearances and asserted that the public had a right to know.(340)

The Sindh High Court emphasized on 20 July 2006 that the government was responsible for tracing the whereabouts of individuals who were subject to enforced disappearance.(341) It asked to be informed of the controlling authority of various agencies which had been implicated and of where responsibility for enforced disappearances rested. In a subsequent hearing, the Defence Ministry submitted a confidential but unsigned letter purportedly from Military Intelligence which stated that it did not hold the men allegedly in their custody; the Defence Ministry representative also said that the name of the local Military Intelligence representative could not be revealed as that might open him to attacks.(342)

In some cases judges have expressed impatience with state representatives' denial of any knowledge about detainees' whereabouts. During hearings of the habeas corpus petition in the Peshawar High Court challenging the lawfulness of the detention and seeking to ascertain the whereabouts of Arifa and Saba Baloch, Saifullah Bilal Khan and Gul Hamdana, (see section 6.2.) the presiding judge reportedly expressed his disbelief that the provincial government was not aware of arrests made in the province, as asserted by the Deputy Attorney General (DAG). During a hearing on 12 August 2005, the judge directed the DAG to contact the federal interior ministry and the intelligence agencies and file a report within four days about the whereabouts of the four detainees. When the DAG requested 15-20 days for that purpose, the judge reprimanded him, saying that in matters of habeas corpus no time could be wasted and that keeping a person in incommunicado detention amounted to kidnapping. Being directed by the judge to immediately contact the respondents on the telephone, the DAG returned to say that he had been unable to contact the Interior Ministry. The judge observed that if the government claimed ignorance about the whereabouts of the four detainees and it was later found that they were in the custody of any state agency, strict action would be taken in accordance with law. He also criticised the NWFP police force for facilitating arrests and then denying knowledge of any raid. The judge observed that even if police were not present during an arrest, it was their responsibility to trace the detainees. On 16 August 2005, the federal Interior Ministry told the court that none of the

federal agencies under its jurisdiction knew anything about the arrest and the whereabouts of the four detainees. On the basis of written denials, the Peshawar High Court on 22 August 2005 disposed of the petition. To Amnesty International's knowledge the court did not take any action when Gul Hamdana was released from custody on 17 September 2005 or when the two young women were released in early January 2006. No efforts were made to ensure the protection of fundamental rights by using judicial powers to initiate cases under public interest provisions of the Constitution or contempt of court provisions.

In some cases, people were released from enforced disappearance while habeas corpus petitions were pending, after state agents had denied having them in their custody. Dr **Amir Aziz Khan**, arrested on 21 October 2002 in Lahore and whose whereabouts remained unknown until he was released in Lahore one month later, was never produced before the Lahore High Court where a habeas corpus petition filed by his mother was pending. Following his release, the High Court disposed of the petition "as it had become infructuous" – without questioning the truthfulness of state agents' earlier depositions and the lawfulness of the arrest and detention.

The ineffectiveness of courts to protect the rights of people subjected to enforced disappearance was illustrated in the case of **Alamzeb**, managing director of Petro Chemicals Ltd. in Peshawar. In a petition filed in June 2005 relating to his arrest in April 2005, the Peshawar High Court offered to issue orders to the authorities if the petitioner, his wife, could inform the court which agency had arrested her husband and where he was held – information that she was seeking from the court. All state agents had earlier denied his arrest and knowledge of his whereabouts.(343) The petition was dismissed.

Even when eye-witnesses can identify the arresting agency, courts have been unable to hold that agency to account. **Shafiq Ahmed** (28) was picked up by intelligence personnel and police in the crowded market of Swat on 28 September 2004. Over a dozen witnesses testified in court, but when the officials of the agency involved denied the arrest, the habeas corpus petition was dismissed.(344)

While state agents have clearly lied or withheld the truth in cases relating to the fate and whereabouts of terror suspects, at times judges have also appeared to facilitate evasion. A retired Supreme Court judge told Amnesty International that judges could use more compelling methods to obtain the truth, such as asking state agents to make their statements in the form of sworn affidavits. Judges also have the power to use contempt of court legislation in cases of failure to obey writs of habeas corpus issued by courts. To Amnesty International's knowledge, this power has not been used to ascertain the fate and whereabouts of persons held. I.A Rehman, director of the HRCP, told Amnesty International that even when relatives suspected or had evidence that state respondents had lied in court, they were not able to pursue the case. He said, "the stakes are too high for people to insist on justice". Instead many relatives pursue informal channels in the hope of finding someone who can be persuaded or bribed to use his or her influence to ascertain the fate and whereabouts of victims of enforced disappearance of their loved ones.

Amnesty International calls on the higher judiciary in Pakistan to exercise its powers more fully for the enforcement of human rights, many of which have been violated in the "war on terror". As the ultimate guardians of the rule of law, entrusted with the promotion and protection of human rights, the higher judiciary is, more than other organ of the state, called upon to contribute to ending the practice of enforced disappearances in the "war on terror" and in other contexts. Amnesty International also urges that the right to habeas corpus be extended to the designated tribal areas of Pakistan.

9. Excessive use of force and possible extrajudicial executions

Amnesty International is concerned that the clandestine nature of the conduct of the "war on terror", particularly in the tribal areas of Pakistan, may conceal many human rights violations. The organisation recognises that the Pakistani government has a right and a responsibility to maintain law and order and to bring to justice those suspected of criminal offences. However, Amnesty International is concerned that Pakistani and US law enforcement and security forces may have used excessive force, and may have extrajudicially executed a number of individuals, some suspected of links with al Qa'ida and others apparently unconnected with any terrorist activities. In the cases described below, Pakistani or US forces appear to have used lethal force without making any attempt to first arrest terror suspects.

The right to life is an absolute human right, enshrined in the Universal Declaration of Human Rights, and a rule of customary international law binding on all nations. The UN has developed more detailed and specific standards which state that the use of force by law enforcement officials must be exceptional and used only in proportion to the danger.

9.1 The case of Amjad Farooqi

Amjad Farooqi, alias Amjad Hussain,(345) reportedly a close associate of al-Qa'ida suspect Abu Faraj al Libi (see above), was described by government officials as the "lynchpin of al Qa'ida".(346) From early 2004, joint search teams reportedly tried to track him down. On 26 September 2004, Amjad Farooqi was killed and seven other people, including two women and three children, were arrested after security forces raided a house in Nawabshah, Sindh province. When security forces surrounded the house, Farooqi reportedly tried to escape but was shot dead by security forces who reportedly made no attempt to arrest him at any stage of the incident. The identity of the people arrested was not disclosed nor where they were taken. Interior Minister Aftab Ahmed Sherpao praised the killing of Amjad Farooqi as a "surgical strike" and major achievement for the paramilitary Rangers.(347)

President Musharraf also welcomed the killing, reportedly saying, "any terrorist who leaves this world, I am very happy". (348) Although some security officials reportedly regretted Farooqi's death as he had valuable information about militant networks, local newspapers alleged that he was killed, possibly in a fake encounter, because he could

have provided incriminating evidence of links between local Islamist groups, with connections to al Qa'ida, and Pakistani intelligence agencies.(349) The HRCP said the death had raised doubts(350) and other analysts have pointed to the "glaring absence of an attempt to capture Farooqi alive" as he appeared to have died in a "pre-planned shootout".(351)

9.2 The tribal areas

"Our operation against Al-Qa'ida in the tribal areas will continue unabated. This is contributing substantially to peace in the world. ... They have to be eliminated, whether through political means or military means." President Musharraf, BBC, 20 May 2006.

Amnesty International's report on human rights violations in the tribal areas of Pakistan in 2004 said that: *"The secrecy surrounding the operations to the almost complete 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".*(352)

Since then, there have been further reports which suggest that security forces in the tribal areas may have been pursuing a policy of killing terror suspects rather than attempting to arrest them and bring them to justice. During a widely reported public meeting in Lahore in March 2006, President Musharraf said of foreign fighters, "I warn that they should quit Pakistan or we'll kill them all".(353) Lt.-Gen. Safdar Hussain, who directed the operation in South Waziristan in early 2004, was reported as saying that if an absconding tribal fighter did not surrender, "I will eliminate him, just like I did [tribal fighter] Nek Mohammad".(354) (See below.)

Pakistani authorities have repeatedly asserted that the operation in the tribal areas is not a military operation, but that armed forces are acting to support the civilian administration.(355) Actions such as those carried out during the law enforcement operations in the tribal areas are therefore governed by international human rights law and standards.

9.2.1. Number of possible extrajudicial executions

The number of possible extrajudicial executions in the tribal areas is unclear. Military spokesman Major-General Shaukat Sultan told the press in April 2006 that since July 2005, some 324 militants, including 76 foreigners and "a small number of civilians" as well as 56 soldiers had been killed in 39 major operations in North Waziristan where 31,000 regular troops and 14,000 paramilitary soldiers were deployed. In the operation in Miramshah in March (see below), he said, 145 militants, including 23 foreigners had been killed.(356)

Local people have challenged the official characterization of victims as "militants", often claiming that they were in fact tribal people, including women and children, unconnected to any terrorist activities or groups. The HRCP commented on the violence in the tribal areas in 2004, "nobody could be sure about the exact number of casualties on either side and whether the labels put on ... the dead were correct".(357)

9.2.2 Use of lethal force

In addition, Amnesty International is gravely concerned about the increased resort to the use of missiles fired from helicopter gunships by Pakistani security forces against terror suspects in the tribal areas, which appears to suggest that resort to intentional lethal force has been made without consideration as to whether it was unavoidable and less extreme measures could be applied in the circumstances.

A Cobra helicopter gunship attack on 12 April 2006 reportedly killed at least nine terror suspects near Miramshah, North Waziristan. According to reports one of the victims was Egyptian national Mohsin Musa Matwalli Atwah, wanted for his alleged involvement in attacks on US embassies in East Africa. The other victims were four unnamed foreign nationals and four local tribesmen.(358)

9.2.3 Security operations in North Waziristan in March 2006

Security operations conducted by the military in North Waziristan in early March 2006 were marked by a lack of transparency and conflicting reports of events, and illustrated the urgent need for independent observers to monitor such operations.

The newspaper *Dawn*, quoting official sources, reported that in the early morning of 1 March 2006, some 12 helicopters, including six gunships, and commandos from the army's Special Services Group attacked Dandy Saidgai in Miramshah, North Waziristan. At least 40 tribal people were killed, including at least two children, and some 30 others injured, including women and children.(359) Another newspaper said that "according to official claims the latest operation killed at least 200 militants in a single precision attack on March 1 on Saidgai".(360)

Eyewitnesses were quoted as saying that helicopters first attacked residential buildings and vehicles in the streets, and that ground troops then moved in to conduct search operations which met with armed resistance from tribal people. They also said that one of the targeted houses had been used by foreign fighters some time earlier but had been empty at the time of the attack.(361) One soldier was reportedly killed in fighting after the helicopter attack. *Dawn* quoted local sources as contradicting official claims that the majority of victims had been foreign militants: A doctor was reported as saying that amongst the injured were women but not a single foreigner.(362)

Following attacks on 4 March by tribal fighters on government buildings and installations, the army responded with a night-long bombardment by helicopter gunships reportedly equipped with night vision. At least 21 people were killed in Miramshah and some 25 people in Mirali in the bombardment, while two soldiers were killed and four others injured in

subsequent fighting between ground troops and local fighters.(363) Official sources said that around 140 fighters had been killed on 4 March in different places.(364) On the following day, security forces regained control over government buildings and installations which tribal fighters had occupied. Hundreds of families left Miramshah on foot at the time of the fighting as all vehicle movement had been banned. Several *madrassas* were destroyed in the following days by helicopter.

On 11 March 2006, 10 tribal people were reportedly killed and three injured when Cobra helicopters dropped five bombs on a *madrassa* in Khatty Kalli, North Waziristan, followed by artillery fire. According to local residents, the dead included two children and three foreigners, possibly from Chechnya.(365) According to army spokesman Major-General Shaukat Sultan, 25 to 30 foreign militants and their local supporters were killed in the attack on the *madrassa*.(366)

On 24 March 2006, Cobra helicopters were used in an attack on Tith Nary, North Waziristan, which according to official sources killed 18 to 20 fighters, including some foreign fighters of unidentified nationality. In the ensuing gun battle one soldier was killed and two others injured.(367) Since the attacks in March, violence in the region has reportedly sharply increased, partly because, according to local sources, radical clerics called on tribesmen to take up arms against the government.(368)

Statements about the identity and status of the victims were contradictory. Speaking of the attack on 1 March, Political Agent for North Waziristan, Zaheerul Islam, said that "most of the people who had converged on the FC [Frontier Constabulary] Fort refused to accept that the Saidgai Village operation had targeted Afghan, Uzbek, Chechen and Chinese Uighur miscreants".(369) Jamiat-ul-Ulema-i-Islam (JUI) leader Maulana Fazlur Rehman challenged the government to prove that even a single foreign fighter had been killed in the tribal areas, while the all-FATA Agency Councillors' Alliance, representing the seven tribal agencies, in May 2006 denied government claims of killings and arrests of foreign fighters in the tribal areas, emphasizing that none had been shown to the public.(370) The Secretary General of the FATA Lawyers Forum on 13 March said, "it is innocent civilians that were being targeted in North and South Waziristan. There is no proof that 45 people killed in the Saidgai operation just before the visit of US President Bush were foreigners". He demanded that an independent investigation be set up to ascertain the facts.(371) *The Friday Times* received no reply to its question to the Political Agent as to why no photographs of any foreign militant had been given to the media, as has been done after other incidents. The journalist reporting these conflicting versions spoke of a "fog of war in Waziristan".(372)

9.2.4 US forces in the tribal areas

Although Pakistani officials have consistently denied that foreign forces are allowed to operate in Pakistan either in "hot pursuit" or in deliberate operations, there is strong evidence that US forces have on several occasions conducted armed operations in the tribal areas of Pakistan, at times using excessive force and allegedly carrying out extrajudicial executions.

9.2.4.1 The events of 13 January 2006

While several earlier reported attacks by US forces were widely ignored, an attack on Damadola in Bajaur Agency on 13 January 2006 created an uproar in Pakistan. On that day, between 13 and 18 people were killed when missiles were fired into three houses.(373) Reports indicate that "Hellfire" missiles were fired from an unmanned Predator drone (unmanned aircraft used for surveillance) believed to have been operated by the CIA.(374) Their intended target appears to have been Ayman al-Zawahiri, a high ranking al-Qa'ida operative, who was not reportedly amongst the dead.(375)

Reports about the identity of the victims remain contradictory. While the Pakistani government expressed regret for the deaths of "18 innocent local people", (376) the head of the Bajaur administration said that up to five foreign militants had been killed and their bodies had been removed.(377) Security officials were subsequently quoted in Pakistani media as saying that the dead included Abdur Rehman al-Maghribi, the Moroccan son-in-law of al-Zawahiri, Midhat Mursi al-Sayid Umar, an Egyptian explosives expert, and Abu Obaidah al-Masri, al-Qa'ida's chief of operations in Afghanistan's Kunar province.(378) As no bodies were produced other than those of non-militant victims, it is unclear on what basis this identification was made. Pakistani journalists who interviewed local people said that the victims were all unarmed people, including five women, five children and eight men, and that reports of militants killed in the attack were intended to justify an attack based on faulty intelligence. Journalists investigating the incident were harassed and threatened. Two journalists, Haroon Rashid of the *BBC World Service*, Urdu service, and Iqbal Khattak of the Peshawar-based *Daily Times*, were detained for two hours on 14 January 2006 as they were about to file their stories.

The member of the National Assembly for Bajaur, Haroon ur-Rashid, who was in the area at the time of the attack, said he had known all the victims personally and categorically denied reports of bodies of militants being taken away. Sirajul Haq, a minister in the NWFP government, said that "we can say with full authority that those who were killed were all innocent permanent residents of the village Damadola; an independent probe would confirm that no foreigner was in the vicinity of the neighbourhood targeted by the US missiles."(379)

The Pakistani government condemned the loss of civilian lives in the attack and on 14 January 2006 said it had lodged a protest with the US ambassador in Islamabad. However, international media reported that the State Department had not received a formal protest.(380)

Pakistani officials have denied being informed of the attack in advance. Interior Minister Aftab Ahmed Khan Sherpao stated that "the US planes apparently acted on wrong information while trying to target some top al Qaeda leaders,

thereby killing Pakistani civilians."(381) Information Minister Sheikh Rashid Ahmed and other cabinet ministers on several occasions categorically stated that the US authorities had not informed the Pakistani government before the 13 January attack.(382)

These denials are undermined by repeated official admissions of regular intelligence sharing between the two countries and local observers' reports of a US presence on the ground, including in the tribal areas of Pakistan. Unidentified US military sources quoted in US media said that the attack had been planned and executed by a combination of CIA officers and Pakistani officials: "This could not have happened without Pakistani involvement".(383) Later an official source in Pakistan reportedly admitted that Pakistani intelligence officials knew of the strike in advance, and that a US military source in Afghanistan had confirmed US-Pakistani cooperation in counter-insurgency operations, including in the 13 January attack.(384) Residents in the tribal areas have similarly expressed their doubt that US forces could have carried out the attack without the knowledge and agreement of Pakistani intelligence. National Assembly member Haroon ur-Rashid pointed out that US drones were circling the area for at least three days before the missile attack and that such incursions into Pakistan airspace would have been observed by Pakistani forces who would have been obligated to ascertain and approve their mission or to ask them to stop.

US intelligence officials who spoke on condition of anonymity to US media defended the attack saying that they did not believe civilians had been killed. They said, if not Zawahiri, "some very senior Al Qaeda types might have been [killed]" though they failed to identify who that might have been.(385) Senator McCain (Republican, Arizona) said on *CBS*: "I can't tell you that we wouldn't do the same thing. We have to do what we think is necessary to take out al Qaeda, particularly the top operatives."(386)

Important questions about the 13 January 2006 attack remain unanswered relating to the Pakistani government's prior knowledge of the attack and their acquiescence or possible complicity in its commission. US forces appear to have permission to use drones over Pakistan territory and to retrieve them if they crash. Several observers believe that US intervention in Pakistan could not have occurred without at least tacit permission by Pakistan. However, *NBC* reported sources as saying that the CIA had all the necessary approvals to fire missiles in Pakistan when an al Qaeda target was located and does not require Pakistani authorities' approval. It noted that "several times in recent months, Predators had been used to fire at suspected militant targets, including sites described as training camps inside Pakistan territory." (387)

9.2.4.2 Reported US attacks that provoked no protest

Pakistani authorities did not publicly protest when US missiles killed people in the following incidents:

- On 17 June 2004, Nek Muhammad, a tribal fighter and alleged al-Qaeda sympathizer, three of his close tribal associates and two local boys were killed in the village of Dhok in South Waziristan. Local villagers reported seeing a white streak of light in the sky before the missile hit the house where Nek Muhammad sat in the courtyard with his companions. While Major-General Shaukat Sultan claimed that the Pakistan army alone planned and executed the operation on the basis of intelligence information, local tribesmen's assertion that the missile was guided by Nek Mohammad's use of a satellite phone suggests that the US either carried out the attack or assisted in its execution as the Pakistani forces do not reportedly possess the requisite technology.
- On 7 May 2005, Haitham al-Yemeni, a Libyan national and alleged al-Qaeda explosives expert, and Samiullah Khan, a Pakistani, were killed in Toorikhel, Mirali area, North Waziristan.(388) Pakistan officials initially said that Haitham al-Yemeni had been killed by a car bomb. Information Minister Shaikh Rasheed Ahmed denied an *ABC* report he had been killed using a US drone, and suggested that the killing happened on Afghan territory: "if something happened in Afghanistan, we don't know."(389) The CIA has neither confirmed nor denied the operation.
- On 5 November 2005, six persons, reportedly the wife, three daughters and two sons of Abu Hamza Rabia, an Egyptian national alleged to be an al-Qaeda operative, were killed in a house in North Waziristan. Their identities could not be confirmed. Pakistani officials claimed that the victims were Uzbekistani nationals killed while making bombs. Local residents were quoted as saying that the victims were Arabs and that drones had been observed over the area before the attack.(390)
- On 1 December 2005, Abu Hamza Rabia, an alleged al-Qaeda operative, his two Syrian bodyguards and two local children were killed in the village of Haisori, near Mirali Bazaar, North Waziristan. On 2 December President Musharraf confirmed that Abu Hamza Rabia had been killed along with four others. Information Minister Sheikh Rashid Ahmed claimed that he was killed when bomb making material accidentally exploded, (391) despite debris of a US missile being found and photographed (see Hayatullah Khan, section 6.1.) and despite local people reporting seeing a bright white light and an aircraft overhead before the impact. Days later he claimed that Abu Hamza Rabia's identity had been confirmed by DNA tests(392) despite the fact that the bodies of the victims had not been found. Officials later said that they had confirmed his identity from intelligence and message intercepts. According to US media reports, citing US intelligence sources, the attack had been carried out by missiles launched from a Predator drone operated by the CIA(393), but the CIA declined to comment. US National Security Adviser Stephen Hadley on 4 December refused to confirm Rabia's death but said that the USA had provided intelligence and cooperated with Pakistani forces. Pakistani intelligence officials said that US assistance played a "critical role in tracking down Rabia and "eliminating the threat". Hadley also asserted that any intelligence operation against a senior member of al-Qaeda would not be an "assassination": "This is law enforcement, this is not assassination".(394)
- On 7 January 2006, missiles fired from a helicopter at the house of a local cleric in Miramshah, North Waziristan, reportedly killed eight persons, including two women and two children and injured nine relatives. The Pakistan media reported that US soldiers on board the helicopter had taken away at least two members of

the family whose whereabouts remain unknown. A US drone was reported by local people to have hovered over the area for at least three days before the incident.

9.2.4.3 Recent reported US attacks

Despite widespread protests after the incident in Damadola of 13 January 2006, such possible extrajudicial killings have not stopped. The following incidents have been reported:

- On 11 February 2006, two women were killed and four children injured in a tent village at Bangidar, North Waziristan, when hit by a rocket fired by US-led coalition forces from Afghanistan, apparently in retaliation against an earlier attack on their post on Afghan territory. Lieutenant Mike Cody said, "the coalition forces identified this [the fire] as coming from the border and coordinated with the Pakistani military and fired artillery rounds at the point of origin".(395) He said he was not aware of casualties on either side of the border.(396)
- On 8 May 2006, US helicopters reportedly injured at least three mine workers near Angoor Adda in South Waziristan and eight others were reportedly missing after the attack. US officials claimed to have killed four suspected terrorists in Afghanistan.(397) Pakistani officials were quoted as saying that the attack was carried out by US helicopters firing missiles on Pakistani territory.(398)
- Before dawn on 10 June 2006, between 18 and 20 terror suspects, including 10 foreign fighters, possibly Uzbekistani, Tajikistani and Chechen nationals, were reportedly killed by a missile in a compound, possibly a training facility, near Dattakhel village, North Waziristan, close to the Afghan border. Official sources and eye witnesses reportedly stated that US forces had carried out the attack.(399)

9.2.4.4. US justification for the use of lethal force

The US government has explained its use of lethal force in the "war on terror" after an incident in Yemen. In January 2003, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions described the killing of six men from a US drone in Yemen in November 2002 as "truly disturbing" and "an alarming precedent", (400) adding that in her opinion the attack "constitutes a clear case of extrajudicial killing".(401) The USA dismissed her findings, stating that "enemy combatants may be attacked unless they have surrendered or are otherwise rendered hors de combat", and that any "Al Qaida terrorists who continue to plot attacks against the United States may be lawful subjects of armed attacks in appropriate circumstances".(402)

In December 2004, the new Special Rapporteur stated: "Empowering Governments to identify and kill 'known terrorists' places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative had been exhausted. While it is portrayed as a limited 'exception' to international norms, it actually creates the potential for an endless expansion of the relevant category to include any enemies of the State, social misfits, political opponents, or others. And it makes a mockery of whatever accountability mechanisms may have otherwise constrained or exposed such illegal acts under either humanitarian or human rights law."(403)

Amnesty International similarly rejects the US view of the world being in effect a "war zone" in which persons which it considers to be "enemy combatants" can be killed with impunity.

9.3 Amnesty International's concerns

While Amnesty International does not have detailed and independent information, the nature of the reported attacks and declarations from Pakistani and US officials suggest that lethal force has been used as a matter of choice rather than as a last resort, as required by international standards.(404) If the killings were deliberate and unlawful, for example in lieu of arrest and in circumstances in which the suspects did not pose an immediate threat, the killings would be extrajudicial executions in violation of international human rights law. Under international law and standards, extrajudicial executions are always unlawful, and "a state of war or threat of war, internal political instability or any public emergency may not be invoked as a justification of such executions".(405)

Every time that lethal force is used, the incident should be investigated fully to determine whether excessive force was used and whether any resulting killing was unlawful. Under the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,(406) all suspected cases of extrajudicial killings must be subject to "a thorough, prompt and impartial investigation" and suspected perpetrators be brought to justice. To Amnesty International's knowledge, neither the Pakistani nor the US administration has initiated such an investigation into any of the incidents described above.

10. Recommendations

Pakistan was elected to the newly established UN Human Rights Council, whose members pledged to uphold international human rights standards, in May 2006. In its first decision, the Council unanimously adopted the draft International Convention for the Protection of All Persons from Enforced Disappearances.(407) This draft Convention bans enforced disappearances and declares systematic disappearances a crime against humanity. It has been referred to the UN General Assembly for final adoption later this year.

While recognizing that some of the enforced disappearances and connected human rights violations perpetrated in Pakistan may have been carried out by Pakistani officials at the behest of the USA or in the presence of or by the US officials, Amnesty International emphasizes that Pakistan as a sovereign state bears full responsibility for all human rights violations committed on its territory and with its knowledge and consent.

Amnesty International calls on the Government of Pakistan to apply its constitutional and domestic legal

safeguards, honour its international commitments and fulfil the requirements of international laws and standards by urgently addressing human rights violations committed in the "war on terror". In particular it calls on the Government of Pakistan to:

- End the practice of arbitrary arrest, incommunicado detention and enforced disappearances;
- Stop the use of torture and other ill-treatment;
- End extrajudicial executions;
- Stop unlawful transfers of detainees to other countries in violation of the principle of *non-refoulement* and in circumvention of Pakistan's extradition law;
- Stop undermining the rule of law, in particular by failing to fulfil court orders in habeas corpus cases and by withholding information from courts;
- Bring to justice in a fair trial those responsible for committing, ordering or authorizing torture and ill-treatment or enforced disappearance, without recourse to the death penalty.

Appendix 1. Updates on previous Amnesty International reports

Amnesty International has addressed violations committed in the pursuit of the "war on terror" in Pakistan in the past. Its report *Pakistan: Transfer to US custody without human rights guarantees*,⁽⁴⁰⁸⁾ issued in June 2002, found that at least 100 people suspected of links to al-Qa'ida or the Taliban had been arbitrarily arrested and detained and that dozens had been transferred to US custody without respect for human rights guarantees since Pakistan joined the "war on terror". In an open letter to President Musharraf in February 2004 Amnesty International raised its concern about arbitrary arrests, detention and enforced disappearances.⁽⁴⁰⁹⁾ In March 2004 Amnesty International expressed its concern about possible extrajudicial executions in the tribal areas of Pakistan.⁽⁴¹⁰⁾ Amnesty International has also issued a number of public statements and Urgent Action appeals on specific cases of enforced disappearances. The organisation has not received any response from the Government of Pakistan to any of the issues raised in these publications.

In the four years since its first report drew attention to enforced disappearances⁽⁴¹¹⁾ in 2002, Amnesty International has been able to follow the fate of some of the individuals then highlighted.

Abdul Salam Zaeef, former ambassador of the Taliban in Islamabad, was arrested on 1 January 2002 by Pakistani intelligence personnel and handed over to US custody at Peshawar airport. He was then transferred to the USS *Bataan*, then to Bagram and Guantánamo Bay. He was released and returned to Afghanistan in 11 September 2005. Relatives reported that they were informed of his whereabouts in August 2002 after his transfer to Guantánamo Bay, eight months after his enforced disappearance. Abdul Salam Zaeef was reportedly tortured and ill-treated at every stage of his detention.⁽⁴¹²⁾ He said that he was held for over three years in US detention without charge, apparently solely for the purpose of repeated interrogations about the whereabouts of Osama Bin Laden and Mullah Omar. He said, "I am 100 percent sure they knew I was not involved in those attacks" - referring to the events of September 2001 - "they only wanted information from me".⁽⁴¹³⁾

Moazzam Begg, a British national, was arrested on 31 January 2002 by Pakistani and US agents from his home in Islamabad, interrogated by US officials while in Pakistan, and later handed over and flown to a detention facility in Kandahar, then to Bagram and finally Guantánamo Bay. During his detention he was subjected to torture and other ill-treatment, suffered great anxiety about the fate of the family he left behind in Islamabad, was subjected to long spells of solitary confinement and death threats, and had to witness the killing of two fellow detainees. After three years in detention, he was transferred to the United Kingdom in January 2005 and released without charge.⁽⁴¹⁴⁾

Abu Zubaydah, a Palestinian, was arrested on 27 March 2002 in Faisalabad by a joint US-Pakistani team. After interrogation by Pakistani intelligence officials he was handed over to US custody. His interrogation was described to a journalist as follows:

"Abu Zubaydah, say CIA and other U.S. government sources, is not being tortured, but a variety of methods are being used to encourage him to talk. Typical military interrogation tactics would include depriving him of sleep, changing the temperature of his cell and 'modulating caloric intakes' - spookspeak for withholding food and then providing it as a reward."⁽⁴¹⁵⁾

The US 9/11 Commission Report on the 11 September 2001 attacks revealed that it had been "authorized to identify by name only ten detainees whose custody has been confirmed officially by the US government."⁽⁴¹⁶⁾ One of the 10 was Abu Zubaydah. However, the Commission did not say whether the detainees were or had been in direct US custody or where they were or had been held. Nor did it say whether any of the detainees had at any point been transferred between the USA and other countries. Concerned people, including relatives and human rights monitors, were left in the dark about the whereabouts, fate, and well-being of the detainee.⁽⁴¹⁷⁾ He is amongst the 14 detainees transferred to Guantánamo Bay in September 2006.

Mamdouh Habib, an Australian national of Egyptian descent, was arrested on 5 October 2001 while on a bus from Quetta to Karachi from where he had intended to fly home. He was then transferred to Islamabad. He became one of the first known subjects of rendition to a third country. He was transferred to Egyptian custody where he was held in incommunicado detention, blindfolded for months, beaten, subjected to electric shocks and injected with unknown drugs and had dogs set upon him. From Egypt, Mamdouh Habib was transported to Afghanistan, and from there to

Guantánamo Bay where he was detained without charge and with no access to a lawyer for almost three years until his release without charge on 28 January 2005. He told Amnesty International that at every stage of his detention he endured physical and psychological torture and other ill-treatment, ranging from a kick "that nearly killed me" to electric shocks and threats that he would never see his family again.

Appendix 2. Pakistanis in US custody

The precise number of Pakistani prisoners currently held in Guantánamo Bay is not clear, as different officials have given various figures. A US Justice Department list issued in April 2006 contains names of 67 Pakistanis.(418) On 16 June 2006, Foreign Minister Khurshid Kasuri told the National Assembly that 60 Pakistani prisoners had been released from Guantánamo Bay in the past, that six were still being held, and that the two of these were being considered for release. He said that US authorities had granted Pakistan consular access to all Pakistani detainees in Guantánamo Bay.(419) Also in June 2006, Interior Minister Aftab Ahmad Khan Sherpao said that 29 Pakistani detainees were still held there, of whom the USA had agreed to soon release eight.(420) Earlier, in May 2006, at the South Asian Association for Regional Cooperation (SAARC) Interior Ministers' Conference in Dhaka, he had said that 35 Pakistanis were still being detained in Guantánamo Bay and that "the identification of seven or eight has not been disclosed so far".(421) He said that by then 67 Pakistani prisoners had been returned from Guantánamo Bay.(422) A delegation visiting Guantánamo Bay in August 2006 said that six Pakistanis were currently detained there and that Pakistan was seeking their return. In an affidavit submitted by Foreign Minister Khurshid Kasuri in August to the Sindh High Court, he said that the government kept track of all Pakistani detainees and that five detainees had recently been transferred to Afghanistan.(423) He did not indicate who these individuals were, where they had been taken or in whose custody they were in Afghanistan.

It is not known how many Pakistani nationals are held by US forces in Afghanistan. There are occasional reports of their release. For instance on 31 July 2006, three Pakistani nationals were reportedly flown in a US Air Force plane from US custody in Bagram airbase to Peshawar. They were handed over to Pakistani security officials at Peshawar airport; officials said that they were taken to an undisclosed location for debriefing. Their identities, place of arrest and length of detention are not known.(424) In August 2006, the director of the National Crisis Group Management Cell said that 20 Pakistanis were in US custody in Bagram.(425)

According to reports, US officials asked the Pakistani authorities to monitor people sent back from Guantánamo Bay.(426) The Interior Minister Aftab Khan Sherpao was quoted in October 2005 as saying that "the people who returned from Guantánamo Bay were arrested and interrogated by joint interrogation teams. Most of them have been released."(427) About 35 men returned from Guantánamo Bay in September 2004 were initially held in Adiala Jail, Rawalpindi, then in their home provinces. None of the former Guantánamo detainees were charged with any criminal offence in Pakistan but were apparently held unlawfully without reference to any law. In May 2005 the Interior Ministry ordered their release but the HRCP in its annual report said that there was some uncertainty if this order had been fully complied with.(428) In June 2005, 17 such prisoners were released from a Lahore jail.(429) It is not known if and when detainees held in other provinces were released. In May 2005, the federal Interior Ministry directed the provinces to ensure their rehabilitation to prevent their returning to armed struggle.(430) It is not known what measures were taken.

In March 2005, a group of some 180 Pakistanis detainees held in Adiala Jail, Rawalpindi, including those returned from Guantánamo Bay and from Afghanistan, took the jail superintendent hostage and demanded their release, claiming they had been unlawfully held for months. Jail authorities assured them that applications for their release had been forwarded. In the following weeks an unknown number of the detainees were released. According to the report of the HRCP, one of the Guantánamo Bay returnees was found dead in Adiala Jail in January 2005. Fellow prisoners staged a hunger strike alleging torture and unlawful detention. No investigation of the incident is known to have been undertaken. The HRCP also reported that some of the Guantánamo Bay returnees who had developed psychological disorders during detention in Guantánamo Bay were not given any treatment in Adiala Jail nor allowed to meet family members, which added to their distress.(431)

Appendix 3. Non-Pakistani persons subjected to enforced disappearance

Amongst the non-Pakistanis arrested in Pakistan and subjected to enforced disappearance are the individuals named below. US President Bush announced in September 2006 that 14 people so far held in secret places of detention would be transferred to Guantánamo Bay; the first seven on this list are amongst them.

Ramzi Binalshibh, a Yemeni national, allegedly one of the conspirators of the September 2001 attack on the USA, was arrested on 11 September 2002 in Karachi by Pakistani military and police units, along with the two sons of Khalid Sheikh Mohammad.(432) He was handed over to US custody and on 16 September flown out of Pakistan. The US government acknowledged his detention and the detention of nine others in the 9-11 Commission Report.

Abu Zubaydah, a Palestinian, was arrested on 27 March 2002 in Faisalabad by a joint US-Pakistani team.(433) After interrogation by Pakistani intelligence officials he was handed over to US custody.(434)

Khalid Sheikh Mohammed, a Kuwaiti national of Baloch parents, was reportedly arrested in a joint US-Pakistani operation on March 1, 2003 in Rawalpindi.(435) He was reportedly interrogated first by Pakistani intelligence and on or around 9 March transferred to US custody at Chaklala Airforce Base in Rawalpindi and subsequently flown to Bagram Airbase, Afghanistan.(436) A habeas corpus petition filed by his sister is still pending in the Sindh High Court.

Mustafa al-Hawsawi, a Saudi national and allegedly an al-Qa'ida financier, was arrested in a joint US-Pakistani intelligence operation(437) along with Khalid Sheikh Mohammad on 1 March 2003 in Rawalpindi. He was handed over

to US custody and flown to Afghanistan.(438)

Waleed Mohammed bin Attash, a Saudi national of Yemeni descent, allegedly involved in bombing the USS *Cole* in Yemen, was reportedly arrested on 29 April 2003 along with five other suspects on the highway near Karachi by paramilitary Rangers.(439) He was reportedly initially interrogated by Pakistani intelligence officials before US officials interrogated him in the presence of Pakistani officials.(440) He was transferred to US custody.(441)

Ahmed Khalfan Ghailani, a Tanzanian national, was reportedly arrested in Gujrat, Punjab province on 24 July 2004 along with several family members and associates. He had reportedly been indicted in the USA in connection with the 1998 US Embassy bombings in East Africa. He was transferred to "CIA custody" in early August 2004.(442) Pakistani security officials were quoted in January 2005 as saying that he had been transferred to the USA "several months ago".(443)

Abu Faraj al Libi, a Libyan national, was arrested on 2 May 2005 in Mardan, NWFP. He carried a US reward of several million dollars. He was flown to Islamabad and reportedly handed over to US custody on 1 June 2005 after interrogation by Pakistan and probably US intelligence personnel.

Yassir al-Jazeeri, possibly a Moroccan national, described by Information Minister Sheikh Rashid as "one of the top seven" al-Qa'ida officials,(444) was reportedly arrested on 15 March 2003, in Lahore, according to some reports by a joint Pakistani intelligence-FBI team,(445) according to others not in the presence of US personnel but with the help of FBI intelligence.(446) He was reportedly taken to an undisclosed location.

Abdul Rahim al-Sharqawi, aka "Riyadh the facilitator", possibly Yemeni, was reportedly arrested in Karachi in January 2002, and believed transferred to US custody at an undisclosed location.(447)

Adil al-Jazeeri, an Algerian national and suspected al-Qa'ida "facilitator", was reportedly arrested on 17 June 2003 in the presence of FBI officials, in Peshawar.(448) On 13 July, he was reportedly handed over US custody and flown out of Peshawar on a US plane.(449) He may have been taken to the US Air Base in Bagram, Afghanistan, for further interrogation.(450) In June, an unidentified Pakistani intelligence official was quoted as saying that the detainee was being subjected to "some tough questioning".(451)

Abu Naseem a Tunisian national, was arrested on 17 June 2003, in Peshawar, allegedly for facilitating al-Qa'ida operations.(452)

Abdul Aziz and **Abu Faisal**, of unknown nationality, were reportedly arrested on 14 and 12 December 2001 respectively, according to a chart with names of detained al-Qa'ida members presented by a spokesman of the US embassy in Islamabad.(453)

Appendix 4. Testimony of torture by Jumah al-Dossari

Jumah al-Dossari is a Bahraini national, arrested in Pakistan in late 2001 and since January 2002 held at the US detention facility at Guantánamo Bay.(454)

"My suffering and my tragedy started when I reached the Pakistani border on my way out of Afghanistan. There I met a unit from the Pakistani army who were there to kidnap people leaving Afghanistan. When I met them, I told them that I wanted to go to my country's embassy; they welcomed me with all their treachery, cunning and wickedness and started transferring me from prison to prison along the border and even the Pakistani military base in the border town of Kohat.

"I passed through several small jails where there was a lot of abuse. I had previously met several people when I was on the border, they were of different nationalities. They had left Afghanistan and the Pakistani army abused us and gave us the worst and most nasty kind of food. They put me in a cell which was 4m x 4m in which there were 59 prisoners without mattresses, blankets or a bathroom; there was only one bucket in the cell for everyone to relieve themselves in without a screen. Because there were so many of us in such a small place, we sat without moving and we were so close together that we almost felt suffocated.

"We remained in this situation for several days. They did not give us any food except for a few hard loaves of bread. The men started paying them to buy us food. They stole the money and only brought us a little food. In the Pakistani jails, they stole money from most of the prisoners and even our personal belongings, including clothes, shoes and watches. They stole many passports from the prisoners who were of many nationalities and we were abused.

"They abused me personally and beat me several times during investigations. The worst tribulation for us was when they transported us from one place to another: they would tie us up in the most savage way, so much so that some of us got gangrenous fingers and our hands and feet swelled and turned blue. They would tie us up for long periods of time in military trucks, sometimes from daybreak until night, in addition to the hours that they spent transporting us in trucks. Often it took very long. All of this while we were still tied up in the same way and all of this time we were unable to use the toilet or perform our prayers. We would pray by gesticulating and pray without purifying ourselves. We had no food and drink. Some of the brothers were ill and had to relieve themselves while they were tied up. Their urine would spill onto some of us.

"When they put us in cells and we objected to the abuse, they frightened us by drawing their weapons at us. On one occasion, a soldier shot at us to frighten us and terrorise us; the bullet hit the ceiling of the cell. Our situation remained

bad.

"Once when we were being transported, there was a fight between some prisoners and the Pakistani army. The bus that this happened in was in front of the bus I was in. The bus rolled over in front of us and the two sides started shooting at each other as some of the prisoners had taken weapons from the Pakistani soldiers. The Pakistani army started shooting everywhere. Bullets flew over our heads and wounded many of the prisoners and the Pakistani soldiers. They also killed a number of people on both sides.

"Then the Pakistani army abused us all until things settled down at the Pakistani army base in the mountain town of Kohat. They gave us the worst kind of food: very, very awful beans. There were a few of them at the bottom of a dirty bucket half filled with water and half filled with oil, without any salt. Some of the brothers went on hunger strike and I was one of them. I wanted to go to my country's embassy but I could not get up because I was so tired and hungry. If I stood up, I would fall down and faint. I almost died of hunger and I almost fell ill because of the filth of the place.

"They put another kind of shackle on our feet, not chains but iron bars with a ring around our foot from which the 50cm bar protruded, then an iron joint from which a 50cm bar linked to the ring on the other leg. It was secured around the leg with a nail hammered in with an iron hammer instead of there being a lock and key. These shackles were always on our feet all the time so we could not sleep, walk, relieve ourselves, wash or remove our clothes. This is the state we were in the whole time we were in Kohat. It was very cold and the blankets they gave us were the worst thing I have ever seen: they all had insects, fleas and dust on them. They never kept us warm. Having them was the same as not having them, in fact not having them would have been better. They never gave us a mattress to sleep on. Then they told us that a human rights organisation wanted to meet us and would send us back to our countries.

"They really did hand us over – to American forces. They took us to a special place in the same prison where we were met by American intelligence officers who interrogated us. We went one by one to several small rooms for interrogation; they took our pictures and fingerprints and questioned us. Some of these investigators insulted the prisoners and insulted Islam, Muslim scholars and many things happened that I do not need to mention. Then after two days, they took us to another room and gave us clothes they had been given by the American forces: they were jumpsuits made in Kuwait, as was written on the back in Arabic.

"They brought us American shackles and started to break the bar shackles, however the shackle on my foot would not break because the nails fixed into the shackle were very strong. My shackle did not break, nor did the shackles of two other prisoners. Then at exactly 11 o'clock – from that time on, the Americans only ever transported us at night, they took me with the prisoners to the Kohat military base airport after they had tied our hands behind our backs, tied our legs and blindfolded us. Then they put us in military trucks. When we reached the airport, an American military plane, American soldiers and an American interpreter who spoke Arabic were waiting for us. They took one by one and handed us over to the American soldiers. The deal was done and they sold us for a few dollars and they were not interested in us."

Appendix 5. Amnesty International's 14-Point Program for the Prevention of "Disappearances"

The "disappeared" are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed, and whose custody is denied.(455) "Disappearances" cause agony for the victims and their relatives. The victims are cut off from the world and placed outside the protection of the law; often they are tortured; many are never seen again. Their relatives are kept in ignorance, unable to find out whether the victims are alive or dead.

The United Nations has condemned "disappearances" as a grave violation of human rights and has said that their systematic practice is of the nature of a crime against humanity. Yet thousands of people "disappear" each year across the globe, and countless others remain "disappeared". Urgent action is needed to stop "disappearances", to clarify the fate of the "disappeared" and to bring those responsible to justice.

Amnesty International calls on all governments to implement the following 14-Point Program for the Prevention of "Disappearances". It invites concerned individuals and organisations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to stop "disappearances" and to work for their eradication worldwide.

1 Official condemnation

The highest authorities of every country should demonstrate their total opposition to "disappearances". They should make clear to all members of the police, military and other security forces that "disappearances" will not be tolerated under any circumstances.

2 Chain-of-command control

Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit "disappearances". Officials with chain-of-command responsibility who order or tolerate "disappearances" by those under their command should be held criminally responsible for these acts.

3 Information on detention and release

Accurate information about the arrest of any person and about his or her place of detention, including transfers and releases, should be made available promptly to relatives, lawyers and the courts. Prisoners should be released in a way that allows reliable verification of their release and ensures their safety.

4 Mechanism for locating and protecting prisoners

Governments should at all times ensure that effective judicial remedies are available which enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to

obtain the release of anyone arbitrarily detained.

5 No secret detention

Governments should ensure that prisoners are held only in publicly recognized places of detention. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally. The information in these registers should be made available to relatives, lawyers, judges, official bodies trying to trace people who have been detained, and others with a legitimate interest. No one should be secretly detained.

6 Authorization of arrest and detention

Arrest and detention should be carried out only by officials who are authorized by law to do so. Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the event.

Governments should establish rules setting forth which officials are authorized to order an arrest or detention. Any deviation from established procedures which contributes to a "disappearance" should be punished by appropriate sanctions.

7 Access to prisoners

All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

8 Prohibition in law

Governments should ensure that the commission of a "disappearance" is a criminal offence, punishable by sanctions commensurate with the gravity of the practice. The prohibition of "disappearances" and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

9 Individual responsibility

The prohibition of "disappearances" should be reflected in the training of all officials involved in the arrest and custody of prisoners and in the instructions issued to them. They should be instructed that they have the right and duty to refuse to obey any order to participate in a "disappearance". An order from a superior officer or a public authority must never be invoked as a justification for taking part in a "disappearance".

10 Investigation

Governments should ensure that all complaints and reports of "disappearances" 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 methods and findings of the investigation should be made public. Officials suspected of responsibility for "disappearances" should be suspended from active duty during the investigation. Relatives of the victim should have access to information relevant to the investigation and should be entitled to present evidence. Complainants, witnesses, lawyers and others involved in the investigation should be protected from intimidation and reprisals. The investigation should not be curtailed until the fate of the victim is officially clarified.

11 Prosecution

Governments should ensure that those responsible for "disappearances" are brought to justice. This principle should apply wherever such people happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime. Trials should be in the civilian courts. The perpetrators should not benefit from any legal measures exempting them from criminal prosecution or conviction.

12 Compensation and rehabilitation

Victims of "disappearance" and their dependants should be entitled to obtain fair and adequate redress from the state, including financial compensation. Victims who reappear should be provided with appropriate medical care or rehabilitation.

13 Ratification of human rights treaties and implementation of international standards

All governments should ratify international treaties containing safeguards and remedies against "disappearances", including the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Declaration on the Protection of All Persons from Enforced Disappearance, and comply with the recommendations of intergovernmental organisations concerning these abuses.

14 International responsibility

Governments should use all available channels to intercede with the governments of countries where "disappearances" have been reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate "disappearances". No one should be forcibly returned to a country where he or she risks being made to "disappear".

(This 14-Point Program was adopted by Amnesty International in December 1992 as part of the organisation's worldwide campaign for the eradication of "disappearances".)

Appendix 6: Amnesty International's 12-Point Program for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State

Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) are violations of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law. Yet they happen daily and across the globe. Immediate steps are needed to confront these abuses wherever they occur and to eradicate them. Amnesty International calls on all governments to implement the following 12-point programme and invites concerned individuals and organisations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and other ill-treatment and to work for their eradication worldwide.

1. Condemn torture and other ill-treatment

The highest authorities of every country should demonstrate their total opposition to torture and other ill-treatment. They should condemn these practices unreservedly whenever they occur. They should make clear to all members of the police, military and other security forces that torture and other ill-treatment will never be tolerated.

2. Ensure access to prisoners

Torture and other ill-treatment often take place while prisoners are held incommunicado – unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention

In some countries torture and other ill-treatment take place in secret locations, often after the victims are made to "disappear". Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers, the courts, and others with a legitimate interest, such as the International Committee of the Red Cross (ICRC). Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, and to ensure the prisoner's safety.

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture or other ill-treatment and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. Prohibit torture and other ill-treatment in law

Governments should adopt laws for the prohibition and prevention of torture and other ill-treatment incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and other ill-treatment and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

6. Investigate

All complaints and reports of torture or other ill-treatment should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The scope, methods and findings of such investigations should be made public. Officials suspected of committing torture or other ill-treatment should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

7. Prosecute

Those responsible for torture or other ill-treatment should be brought to justice. This principle applies wherever those suspected of these crimes happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments should exercise universal jurisdiction over those suspected of these crimes, extradite them, or surrender them to an international criminal court, and cooperate in such criminal proceedings. Trials should be fair. An order from a superior officer should never be accepted as a justification for torture or ill-treatment.

8. No use of statements extracted under torture or other ill-treatment

Governments should ensure that statements and other evidence obtained through torture or other ill-treatment may not be invoked in any proceedings, except against a person accused of torture or other ill-treatment.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment.

10. Provide reparation

Victims of torture or other ill-treatment and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing safeguards against torture and other ill-treatment, including the International Covenant on Civil and Political Rights and its first Optional Protocol; and the UN Convention against Torture, with declarations providing for individual and inter-state complaints, and its Optional Protocol. Governments should comply with the recommendations of international bodies and experts on the prevention of torture and other ill-treatment.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture or other ill-treatment are reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture or other ill-treatment. Governments must not forcibly return or transfer a person to a country where he or she would be at risk of torture or other ill-treatment.

(This 12-point programme sets out measures to prevent the torture and other ill-treatment of people who are in governmental custody or otherwise in the hands of agents of the state. It was first adopted by Amnesty International in 1984, revised in October 2000 and again in April 2005. Amnesty International holds governments to their international obligations to prevent and punish torture and other ill-treatment, whether committed by agents of the state or by other individuals. Amnesty International also opposes torture and other ill-treatment by armed political groups.)

(1) Quoted in The Washington Post, 8 September 2006.

(2) This report does not address the human rights issues related to domestic Islamic activists arrested and tried under Pakistan's Anti-Terrorism Act of 1997, which raises serious fair trial concerns. It focuses exclusively on those suspected of links with international terrorism, while keeping in mind that the issues are interlinked in that many Islamist groups in Pakistan are believed to have helped al-Qa'ida and Taleban members in Pakistan or to have links with them. Amnesty International uses the term "terror suspect" to describe people detained as a result of counter-terrorism measures in the context of the "war on terror".

(3) The News, 12 July 2005.

(4) An exception is Imran Khan of the Tehrik-e-Insaf (Movement for Justice) party who on several occasions criticized the "state policy of disappearances". He cast doubt on officials describing people as al-Qa'ida operatives, saying that "just because the government calls someone Al-Qaeda, doesn't mean they are Al-Qaeda ... The problem is that people are abducted in Pakistan, they are not presented in a court of law, they are not allowed to prove their innocence, there are so many people that have disappeared..." (AFP, 8 August 2004.) More recently, Pakistan People's Party (PPP) spokesperson Farhatullah Babar in August 2006 expressed concern about several hundred enforced disappearances and called on the government to address the problem. (Daily Times, 24 August 2006.)

(5) Since enforced disappearances have been reported in increasing numbers, some national media have begun to cover the issue. The editor-in-chief of The Friday Times, Najam Sethi, wrote that it was "becoming increasingly difficult to believe that this policy of illegal detention and torture is not officially sanctioned at the highest level of the very national security establishment in Islamabad that constantly decries the same practice by Delhi's national security establishment in Kashmir". (The Friday Times, 23-29 June 2006.) The monthly magazines Herald and Newline have also focused on enforced disappearances.

(6) Some of these cases are detailed in urgent action appeals on Amnesty International's website: www.amnesty.org.

(7) HRCP, The state of human rights in 2004, 2005.

(8) The UN Security Council recalled, in its Declaration on the issue of combating terrorism, adopted in resolution 1456 of 20 January 2003, that states "must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law". UN Security Council, Declaration on the issue of combating terrorism, annexed to resolution 1456(2003), 20 January 2003, para. 6.

(9) Touquir Hussain, "US-Pakistan engagement: The war on terrorism and beyond", Regional Studies, Institute for Regional Studies, Islamabad, winter 2005, p.9.

(10) The Friday Times, 12-18 May 2006. Other US officials agree: Christine Fair said US officials acknowledge that "Pakistan has provided more support, captured more terrorists, and committed more troops than any other nation in the GCTF (Global Counterterrorism Force)." Christine Fair, The Counterterrorism Coalitions: Cooperation with Pakistan and India, quoted in Touquir Hussain, p. 9.

(11) It is generally estimated that around 13,000 madrassas (religious schools) in Pakistan provide free religious education, shelter and food for about one million children, mainly boys from poor families. They are financed by charities and function autonomously.

(12) Including renewed negotiations about the \$5 million sale of F-16 fighter planes to Pakistan which had come to a halt over US concerns about Pakistan's nuclear program. (Dawn, 10 July 2006.)

(13) Pakistani analysts have spoken of "Pakistan's ambiguous, often starkly contradictory roles as both source and suppressor of Islamic violence". (Washington Post, 26 August 2006.)

(14) BBC, 12 August 2006.

(15) AFP, 20 February 2006.

(16) Allegedly by using Indian diplomatic missions in Afghanistan to fund and arm dissident Baloch fighters. (Newline, June 2006.)

(17) The seven Federally Administered Tribal Areas are Khyber, South Waziristan, North Waziristan, Mohmand, Bajaur, Orakzai and Kurrum.

(18) The Friday Times, 30 June 2005, which goes on to say that fighters may have simply moved on or gone underground while others ascribe the calm to the fact that the area is in "full control" of the militants who have imposed "Taleban-style governance". (Daily Times, 31 March 2006.)

(19) Political Agents hold wide executive and judicial powers under the Frontier Crimes Regulation, 1901, the law regulating the Federally Administered Tribal Areas.

(20) Daily Times, 25 May 2006. President Musharraf admitted that "extremism and Talebanisation are spreading". (Reuters, 26 May 2006.) Taleban based in Pakistan and Afghanistan share Pashtun ethnicity, history, social norms and religious beliefs.

(21) According to the Pakistan Electronic Media Regulatory Authority, 49 illegal FM stations were in May 2006 broadcasting in the provincially and federally administered tribal areas, mostly run by clerics. (BBC, 16 May 2006) but provincial and federal authorities claimed ignorance of such FM stations. (BBC, 23 May 2006.) In July 2006, the government reportedly took 156 illegal FM stations off the air, many in the tribal areas. (Dawn, 20 July 2006.) It is not known how many remain in operation.

(22) see Pakistan: Unlawful executions in the tribal areas, AI Index: ASA 33/013/2006.

(23) Washington Post, 19 April 2006. The paper quoted a Western diplomat as saying, "In some areas, it's beginning to look like they are setting up a government within a government." (Washington Post, 20 June 2006.)

(24) Daily Times, 12 June 2006, Reuters, 26 March 2006.

(25) New York Times, 6 September 2006.

(26) Reuters, 8 September 2006.

(27) Newsline magazine, June 2006; "Recruitment for the 'jihad' in Afghanistan continues unabated and suicide bombers are indoctrinated and sent across the border to fulfil their mission of achieving martyrdom". (Dawn, 11 June 2006.)

(28) Awami National Party (ANP) leader Asfandiyar Wali Khan said in May 2006 that "insurgency is rampant only in areas of Afghanistan adjoining Pakistan" and claimed that Pakistani agencies were "involved in the ongoing war and lawlessness in areas on both sides of the Durand Line" and supplying arms to them. (BBC, 24 May 2006.) He also said in the Senate that the violence in Balochistan and the Waziristan was fuelled by Afghan interference. (The Friday Times, 24 – 30 March 2006.)

(29) Newsline, June 2006.

(30) The Friday Times, 19-25 May 2006.

(31) Henry Crumpton, US State Department Coordinator on Terrorism commended the Pakistani government as a "vital security ally", but days later, on 6 May in Kabul said that Taleban and al-Qa'ida leaders were probably hiding in Pakistan and that Islamabad was "not doing enough in the war on terror". (Editorial in The Friday Times, 12-18 May 2006.)

(32) Army spokesman Major General Shaukat Sultan, quoted in Daily Times, 25 May 2006. On 6 March 2006, President Musharraf criticised President Karzai for in February 2006 leaking the list of wanted Taleban leaders allegedly living in Pakistan (The Friday Times, 10-16 March 2006.) and called these "ridiculous numbers" and added that "two-thirds of them [names and addresses on the list] are dead numbers and I'm quoting this with full authority". (Dawn, 1 March 2006.)

(33) The New York Times, 8 September 2006.

(34) Interior Minister Aftab Ahmed Sherpao said on 7 March 2006 that "infiltrators" from across the border were taking shelter in Waziristan and urged Afghan authorities to stop the movement of their nationals. (The Friday Times, 10-16 March 2006, Dawn, 2 March 2006.)

(35) The US demand for access to Dr A.Q. Khan, who confessed to having passed on nuclear technology to Libya, Iran and North Korea and was pardoned by President Musharraf is an irritant in bilateral relations. In late May 2006, the US called for a re-opening of the probe into the nuclear transfers amidst concerns about Iran's acquisition of nuclear technology. Pakistan in the same month declared that the probe was closed despite US and IAEA requests for interviews. (AFP, 25 May 2006.) President Musharraf has repeatedly ruled out allowing "outsiders" access to Dr Khan. (BBC, 21 June 2006.) The Senate of Pakistan in June passed a unanimous resolution condemning the US House of Representatives observations as a "character assassination of Dr AQ Khan". (BBC, 2 June 2006.) Pakistan is also strongly opposed to possible US intervention in Iran linked to that country's nuclear program.

(36) For an analysis of the ATA, which has been amended several times since it was passed in 1997, see Amnesty International document Pakistan: Legalizing the impermissible: The new anti-terrorism law, AI Index: ASA 33/034/1997 . (In all subsequent references to Amnesty International documents, only the index number of the document (AI Index) is given which can be found on the website of the organisation.)

(37) The Lahore High Court on 1 September 2006 when assessing the lawfulness of the detention of Hafiz Mohammad Saeed. (Dawn, 2 September 2006.)

(38) The HRCP stated that in 2004 nine al-Qa'ida suspects and 39 militants were killed in anti-terrorist operations and about 350 "al-Qa'ida suspects/militants/sectarian troublemakers" were arrested. HRCP, The state of human rights in

2004, 2005. However, these figures include members and suspected associates of domestic Islamic groups.

(39) Herald, October 2005.

(40) The list includes as those killed or arrested by Pakistani agencies, Hamza Rabia, Amjad Farooqi, Abdul Rahman al-Maghribi, Khalid Sheikh Mohammad, Abu Faraj al-Libi, Khalid bin Attash, Abu Zubaida, Ramzi Binalshibh, Ahmed Khalfan Ghailani and Naeem Noor Khan.

(41) The News, 1 March 2006.

(42) It is unclear if 700 people have been arrested and handed over to US custody, or if only some of the 700 arrested have been handed over.

(43) Major-General Shaukat Sultan, talk at Chatham House, London, Pakistan's struggle against extremism and terrorism, 28 June 2006.

(44) Pak Institute for Peace Studies, More than 1,000 Al-Qaeda suspects arrested from Pakistan, May 2006, <http://www.pips.com.pk/Pakistan/AlQaeda.asp>

(45) The News, 2 August 2004, reported more than 550 terrorist suspects arrested by Pakistani security services since 2001, without specifying their nationality. Analyst Touquir Hussain mentions that all the al-Qa'ida leaders were captured in Pakistan while a total of over 700 terrorist suspects were arrested. "US-Pakistan engagement: the war on terrorism and beyond", Institute for Regional Studies Islamabad, Regional Studies, winter 2005, p. 3-24.

(46) Article 10 of the Declaration on the Protection of all Persons from Enforced Disappearance. Principle 12 of The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(47) Article 10 of the Declaration on the Protection of all Persons from Enforced Disappearance. Principle 12 of the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment.

(48) Khaleej Times, 5 February 2005.

(49) BBC, 10 August and 11 August 2005.

(50) BBC, 23 June 2006.

(51) Not clear if ethnic Uzbek or Uzbekistani national.

(52) Dawn, 27 July 2006, AFP, 26 July 2006.

(53) Reuters, 26 July 2006.

(54) Dawn, 3 August 2006.

(55) Moazzam Begg, Enemy combatant: A British Muslim's journey to Guantánamo and back, 2006. He had been working on education and water projects in Afghanistan when the bombardment began and relocated to Islamabad.

(56) In his first night in detention, Moazzam Begg still had his mobile phone and rang a friend in Pakistan and his father in Birmingham, UK, saying that he had been seized in the presence and on the orders of US agents. Amnesty International was informed by Moazzam Begg's father within days of this phone call. See: Pakistan: Transfer to US custody without human rights guarantees, AI Index: ASA 33/014/2002.

(57) Dawn, 5 May 2005.

(58) Pakistan Link, 3 October 2005.

(59) The Friday Times, 28 March – 3 April 2003.

(60) Dawn, 24 June 2002.

(61) The Friday Times, 28 March – 3 April 2003.

(62) For details of the raids in March 2002 in Punjab, see: Pakistan: Transfers to US custody without human rights guarantees, AI Index: ASA 33/014/2002.

(63) Dawn, 1 April 2002.

(64) Dawn, 10 April 2002.

(65) Dawn, 10 April 2002 and The FridayTimes, 12-28 April 2002.

(66) AP, 12 April 2002.

(67) Pakistan TV, 29 March 2002.

(68) Reuters, 2 April 2002.

(69) "We have not, up to this point, asked to be able to conduct joint operations in Pakistan," General Franks told reporters in Washington. (AFP, 28 March 2002) "I think there was co-operation between assets of our government and assets of the [Pakistan] government." (Reuters, 29 March 2002.)

(70) Reuters, 29 March 2002.

(71) Adel Kamil Abdallah: The memoirs of Adel Amin of Bahrain: The Guantánamo Returnee, 2006. Adel Kamil Abdallah stated that he had travelled to Afghanistan in order to help displaced Afghans for whom he had raised money. After his capture he was flown by US forces to Kandahar and then to Guantánamo Bay. He was released in November 2005.

(72) HRCP, The state of human rights in 2004, 2005.

(73) Herald, October 2005.

(74) Dawn, BBC, 9 September 2005. His father in September 2005 said his son had no links with any religious or political group or party, had not met anyone in NWFP but had travelled with his uncle to Peshawar, Abottabad and Swabi. He suggested that the intelligence agencies may have mistaken him for someone else. (Dawn, 12 September 2005.)

(75) The Sunday Times, 7 August 2005.

(76) Dawn, 19 May 2005. In a letter to The Telegraph, London, published on 5 October 2005, Zeeshan Siddiqui said that the so-called "diary of hate" allegedly found on his computer was a "fake and a fabrication", without being able to identify who had spread this story.

(77) He was criminally charged on 18 May by the Crime Investigation Department (CID) for possessing a fake identity card and under the Foreigners Act for illegally staying in Pakistan. Siddiqui's lawyer pointed out that Zeeshan Siddiqui had not been arrested by the CID, as claimed, but an intelligence agency.

(78) The Telegraph called him the "British national allegedly trained to make bombs in an al-Qaeda camp in Pakistan" (10 July 2005) and said "when interrogated by the ISI, he revealed that he had been involved in a failed plot to bomb pubs, restaurants and railway stations in London while he was living in Hounslow". (24 July 2005).

(79) The Telegraph, 5 October 2005.

(80) Bias against a person suspected of links to "terrorists" appears to also have contributed to considerable delays in the judicial process; they were according to Siddiqui's lawyer intended to keep him in detention to allow further interrogation despite the court granting him bail in September 2005. An official of the district prosecution service was quoted as saying that the granting of bail had been unexpected: "we are under immense pressure from the concerned quarters as they do not want Mr Siddiqui to be released from prison". (Dawn, 17 September 2005.)

(81) In 2005, two tribal journalists were killed in the tribal areas, and in December 2005 tribal journalist Hayatullah Khan was abducted, apparently for his journalistic work and in June 2006 found shot dead. Some journalists have reportedly asked their papers to publish their resignations so that militants would refrain from attacking them. (The Friday Times, 10-16 February 2006.)

(82) It expressed its concern particularly about the threats faced by the civilian population, including women and children, the use of indiscriminate force and use of economic blockades, collective fines and closure of businesses as disrupting normal life in the area. (HRCP: The state of human rights in 2004, 2005.)

(83) BBC, 11 May 2006.

(84) Reuters, Dawn, 23 June 2006.

(85) Dawn, 24 June 2006.

(86) The News, 19 July 2005.

(87) AVT Khyber TV, 29 September 2005.

(88) AFP, 25 September 2005.

(89) Daily Times, 19 July 2006.

(90) Dawn, 19 July 2006.

(91) Reuters, 19 and 23 July 2006.

(92) AFP, 18 July 2006.

(93) Allegedly as a loan defaulter.

(94) Dawn, 27 August 2003.

(95) The unclassified summary of evidence of the Combatant Status Review Tribunal – which the US Supreme Court has determined do not constitute competent tribunals as required by the Third Geneva Convention -- of 26 November 2004 at Guantánamo Bay contained 11 allegations against Saifullah Paracha, including that he had "met and associated with high-level al-Qa'ida operatives including Osama Bin-Laden, held large amounts of al-Qa'ida money, helped locate homes for al-Qa'ida members, and used his media facilities to translate extremist materials into Urdu." It also alleged that he "recommended to an al-Qa'ida operative that nuclear weapons should be used against US troops and suggested where these weapons might be obtained" and discussed how to get chemicals and explosives into countries allied with the USA. Saifullah Paracha reportedly admitted that he had met Osama Bin Laden during two visits to Afghanistan in 1999 and in 2000. He said that his extensive business and charitable work might have brought him in contact with al-Qa'ida supporters. He denied all other allegations of links with al-Qa'ida and alleged involvement in nuclear transfers. (AP, 10 April 2005) Following the CSRT hearing, the Defence Department determined that Saifullah Paracha was an enemy combatant, based on classified information that was not disclosed to him. After 19 months, Saifullah Paracha was formally charged in February 2005 in the US district court in Washington.

(96) The letter dated 31 January 2006 was from Lt.Col Muhammed Imran Yaqub, Director (Operations) National Crisis Management Cell, Ministry of Interior, Islamabad, to the South African Department of Home Affairs. See also AI Index: AFR 53/001/2006.

(97) Through its First Secretary Mr Javid Jalil Khattack.

(98) According to intelligence sources, Akhtar was with Mullah Omar when US forces invaded Afghanistan in late 2001, fled to Pakistan, escaped to Saudi Arabia and later moved to Dubai. (The Washington Times, 9 August 2004.)

(99) Dawn, 8 August 2004.

(100) CBS and AP, 8 August 2004.

(101) AFP, 9 August 2004.

(102) Excerpt from Enemy Combatant Status Tribunal hearing of an Egyptian detainee, Adel Fattouh Ali Algazzar, in Guantánamo.

(103) In this, it differs from rewards offered for the capture of specific identified terror suspects. In July 2006, the USA launched a vigorous campaign to capture terror suspects in Pakistan by advertising the details of wanted persons in Urdu on a range of products, including matchboxes. The matchboxes carry the photographs of "wanted terrorists", they promise to pay for their capture and give contact details for the nearest US representation. They also promise anonymity for anyone providing information. (AP, 5 July 2006.)

(104) Quoted, with several similar flyers reproduced, in Mark Denbeaux and Joshua Denbeaux, Report of Guantánamo detainees: A profile of 517 detainees through analysis of Department of Defense data, 2006.

(105) Moazzam Begg, Enemy combatant: A British Muslim's journey to Guantánamo and back, 2006.

(106) Composite statement: Detention in Afghanistan and Guantánamo Bay. Shafiq Rasul, Asif Iqbal and Ruhuul Ahmed.

<http://www.ccr-ny.org/v2/reports/docs/Gitmo-compositestatementFINAL23july04.pdf>

(107) AFP, 5 July 2006.

(108) Ahmed Errachidi had migrated to the UK in the 1990s, then gone on to work in a jewellery store in Pakistan, travelled to Afghanistan to help local people affected by the US-led military action and then returned to Pakistan.

(109) Both statements in Le Journal Hebdomadaire, Morocco, 8-15 July 2005.

(110) The Hindustan Times, 1 June 2005.

(111) Mark Denbeaux and Joshua Denbeaux, Report of Guantánamo detainees: A profile of 517 detainees through analysis of Department of Defense data, 2006. The authors point out that in the case of the Uighurs from China, held at Guantánamo Bay, the US government considered people to be enemy combatants based on information provided by bounty hunters and add, "as to the Uighurs, at least, there is no doubt that bounties were paid for the capture and

detainment of individuals who were not enemy combatants."

(112) See USA: Human dignity denied - Torture and accountability in the 'war on terror', AI Index: AMR 51/145/2004, 27 October 2004; USA: Guantánamo and beyond, AI Index AMR 51/063/2005, May 2005; USA: Guantánamo: Lives torn apart – The impact of indefinite detention on detainees and their families, AI Index: AMR 51/007/2006, 6 February 2006.

(113) Reuters, 6 August 2004.

(114) The Guardian, 7 August 2004.

(115) The Washington Post, 3 August 2004.

(116) According to the New York Times of 3 August 2004, Mohammed Naeem Noor Khan told them that in the 1990s he had met a Saudi man who introduced him to others who sent him to a training camp in Afghanistan; he reportedly also said that he was later introduced to al-Qa'ida members for whom he worked on an elaborate email network. Khan also reportedly admitted to his interrogators that he met several men believed to be al-Qa'ida operatives in different locations, including in Karachi and in the tribal areas.

(117) The Guardian, 7 August 2004.

(118) The Washington Post, 3 August 2004.

(119) The Guardian, 19 March 2005.

(120) Adel Kamil Abdullah: The memoirs of Adel Kamil of Bahrain: The Guantánamo Returnee, 2006.

(121) Human Rights First, Ending Secret Detentions, June 2004.

(122) Global News Wire, 4 July 2002; cited in Human Rights First, Ending secret detentions, June 2004.

(123) The Friday Times, 4-10 January 2002.

(124) Dawn, 3 January 2002.

(125) Director General Inter-Services Intelligence (ISI) Public Relations (ISIPR) Major-General Shaukat Sultan denied the handing over of Kohat airport to US control. (BBC, 19 September 2003.)

(126) Human Rights Committee, General Comment 20, Article 7.

(127) UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

(128) International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, Article 16 (Aid or assistance in the commission of an internationally wrongful act), UN General Assembly Resolution 56/83, UN Doc. A/RES/56/83, 12 December 2001.

(129) On 20 March 2004 and 2 May 2004.

(130) Daily Times, 29 April 2006.

(131) The News and Dawn, 23 October 2004.

(132) According to some reports he is an Afghan Tajik, but Dawn of 25 April 2006 states that he is from Urjinzabad area of Tajikistan.

(133) Enshrined in Article 40 of the Convention on the Rights of the Child.

(134) Dawn, 26 November 2004.

(135) Fida Gul's pointed to the fact that juveniles cannot be charged under the Foreigners Act as it makes no provision for foreign children to stay in Pakistan on their own. This was apparently ignored.

(136) Newline, July 2006.

(137) His sister Zainab Khadr told Amnesty International that after the military intervention in Afghanistan began, the family fled the country for South Waziristan in early 2002 and frequently moved. When attacks seemed imminent, the rest of the family moved on while the father stayed behind with Abdul Karim Khadr for support as the father had earlier been injured.

(138) The information about his being injured and arrested along with Abdul Karim Khadr was given by Zainab Khadr in December 2004.

(139) The elder brother of Abdul Karim Khadr, Omar Khadr, a Canadian national, was arrested on 27 July 2002 by US forces in Afghanistan and transferred to Guantánamo Bay in November 2002. He was then 16 years old. In November 2005 he was charged with several offences including murder and is to be tried by military tribunal. (CBC News online, 20 April 2006) Another elder brother, Abdurahman, was held in Guantánamo Bay until his release in October 2003. (New York Sun, 16 March 2004) The eldest brother, Abdullah Khadr, was reportedly arrested on 15 October 2004 along with two Pakistani friends in Islamabad and detained in Pakistan without charge or trial until he was returned to Canada in December 2005. He alleged that he had been tortured in Pakistan. (CBC News, 19 December 2005) He was arrested on 17 December 2005 in Toronto, reportedly at the request of US authorities, and denied bail.

(140) In a BBC Radio 4 interview on 29 January 2004.

(141) USA: Torture or other cruel, inhuman or degrading treatment/legal concerns: Mohammed C., AI Index: AMR 51/097/2005 and USA: Who are the Guantánamo detainees: Case sheet 10: Chadian national: Mohamed C., AI Index: AMR 51/110/2005. See also Asharq Alawsat, 20 May 2006, quoting his letter to his lawyer.

(142) AI Index AMR 51/110/2005.

(143) Cage Prisoners, Source of data: unclassified report by Omar Deghayes.

(144) For details see: USA: Who are the Guantánamo detainees? Case sheet 17, Mohamed Al-Amin, AI Index: AMR 51/114/2006.

(145) The Friday Times, 28 March – 3 April 2003.

(146) The Sunday Times, London, 9 March 2003.

(147) Dawn, 11 March 2003.

(148) Sunday Telegraph, 10 March 2003. She reported that the sons' detention was being used to force their father to talk.

(149) The Daily Times, 12 March 2003.

(150) Pakistan: Open letter to President Pervez Musharraf, AI Index: ASA 33/03/2004.

(151) See Art. 3(1).

(152) Art. 37(a).

(153) Art. 37(b).

(154) Art. 37(c-d).

(155) The HRCP stated in a press release of 4 February 2006, accompanying the release of its annual report for 2005 that "Torture was endemic, with many deaths caused by brutality apparently passed off as suicides".

(156) See annual reports of the HRCP.

(157) Human Rights First, Ending secret detentions, June 2004.

(158) See for instance International Law Commission, Responsibility of States for Internationally Wrongful Acts in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, UN Doc. A/56/10 (2001), Articles 16, 17.

(159) British journalist Tahir Shah described the location of his 16-day-long arbitrary detention before his release on 3 August 2005: "I scanned the room. It was arranged for torture. There was a rack for breaking feet, a bar for hanging a man upside down, rows of menacles, straps and batons and pliers for extracting teeth. There were syringes with used needles, smelling salts, a medical drip and dried blood on the floor and the walls. Exactly where this dreadful place is I still do not know. I arrived and left blindfolded. But it was near Peshawar ... and it is run by Islamabad's military intelligence." (The Sunday Times, 7 August 2005.) Two Swedish journalists who were arrested with Tahir Shah told Amnesty International that they had on several occasions heard screams and weeping and had to struggle to keep calm, fearing that they would be ill-treated next. They were blind-folded, chained and handled roughly, but not physically abused.

(160) USA: Who are the Guantánamo detainees? Case sheet 12: Ethiopian national/UK resident: Benyam Mohammed al-Habashi, AI Index: AMR 51/152/2005.

(161) Jumah al-Dossari's testimony was given to Amnesty International by his lawyer who reported that during his visit in October 2005, he tried to commit suicide by hanging himself. He was subsequently moved out of isolation and has been under medical supervision at the camp. His lawyer reported seeing him shackled to his wheelchair in the camp

hospital. (Washington Post, 18 November 2005.)

(162) For the full testimony see: USA: Days of adverse hardship in US detention camps –Testimony of Guantánamo detainee Jumah al-Dossari, AI Index: AMR 51/107/2005.

(163) Dawn, 19 May 2005.

(164) Hans Davidsen-Nielsen and Matias Seidelin, Daskeren pa Guantánamo, [The Dane in Guantánamo], 2004, p. 93.

(165) Adel Kamil Abdullah: The memoirs of Adel Kamil of Bahrain: The Guantánamo Returnee, 2006.

(166) AFP, 14 August 2004.

(167) Dawn, 19 August 2004.

(168) Dawn, 19 August 2004.

(169) Herald, September 2004.

(170) Dawn, 20 August 2004.

(171) Dawn, 19 August 2004; Complaint number FIR No. 217/2004.

(172) Dawn, 28 August 2004.

(173) Dawn, 11 September 2004.

(174) Dawn, 11 September 2004.

(175) Dawn, 20 October 2004.

(176) Human Rights Watch reports Pakistan: Two US citizens "disappeared", 9 March 2005, Pakistan: US citizens tortured, held illegally, 24 May 2005; The other face of terror, June 2005.

(177) See above: Pakistan: US citizens tortured, held illegally, 24 May 2005.

(178) Dawn, 23 December 2002 and 2 April 2003. Another doctor reportedly held and interrogated for one month by FBI agents for allegedly treating al-Qa'ida members is Dr Amir Aziz, arrested in October 2002. The fate and whereabouts of another doctor, Iraqi national Dr Shaukat Nafeh, arrested in Lahore in November 2002, who had allegedly treated Arab patients in Quetta before moving to Lahore, remain unknown.

(179) Dawn, 5 June 2003.

(180) Dawn, 23 December 2002.

(181) R v. Thomas [2006] VSCA 165 (18 August 2006), para 85.

(182) Press release, Parliamentary Assembly Communication Unit, 7 September 2006.

(183)

(184) HRCP, The state of human rights in 2004, 2005.

(185) Daily Times, 11 July 2006.

(186) Herald, October 2005.

(187) Herald, October 2005; the theme of this issue is "Missing: What has happened to hundreds of people picked up by security agencies since 2001?" It contains cases histories and an interview with the Interior Minister.

(188) See Amnesty International, urgent actions, AI Index: ASA 33/030/2005, ASA 33/009/2006, ASA 33/022/2006.

(189) Dawn, 15 December 2005.

(190) Quoted by Committee to Protect Journalists, Open letter of 19 December 2005.

(191) The Daily Times, 7 January 2006.

(192) According to local sources, Taleban members do not hide their actions. Criminals would have been unlikely to have been able to hide a hostage for long, and moreover there were no monetary demands to the family.

(193) Los Angeles Times, 24 March 2006.

(194) Committee to Protect Journalists, press release, 11 April 2006.

(195) US consul Mike Spangler said, "we have seen reports regarding the disappearance of Mr Hayatullah Khan and allegations of US involvement in his detention. Hayatullah is not known to the United States. We have no information about his whereabouts." (The News, Dawn, 10 May 2006.)

(196) Daily Times, 18 June 2006; Dawn, 16 June 2006.

(197) Newswire, July 2006.

(198) Lashkar-e-Jhangvi, a Deobandi Sunni militant group, is believed to have close links with the Taleban and possibly also with al Qa'ida. The group was banned in August 2001.

(199) For example, The News, 3 November 2005.

(200) The News, 9 September 2005.

(201) The News, 3 September 2005.

(202) See Amnesty International urgent action, AI Index: ASA 33/013/2004 and ASA 33/017/2004.

(203) Dawn, 10 November 2005.

(204) In July 2006, some 20 Algerians, including cleric Mehdi Rabah, were freed from Peshawar Central Prison and given into the care of the Al Khidmat Foundation. They had been arrested in late 2001 for their alleged links to al-Qa'ida and been held in secret places of detention before being charged under the Foreigners Act. (Daily Times, 20 July 2006.) On 17 August 2006, eight other foreign terror suspects, including Saeed Ahmed Majboor and Sufian Mazher from Algeria; Nija Bin Sheikh from Tunisia; Jamshed Ahmed and Zareef Nadeem from Tajikistan; Qari Abdur Rehman and Zareef Lateef from Uzbekistan; and Burham Ahmed from Bangladesh, were on orders of a Peshawar court released and handed over to the Al Khidmat Foundation which provided surety for them. They had been held for between five and 30 months in secret detention. (Daily Times, 19 August 2006.)

(205) The News, 17 June 2005.

(206) Dawn, 4 July 2006.

(207) The News, 5 July 2006.

(208) BBC, 21 June 2006, Daily Times, 22 June 2006.

(209) Dawn, 23 June 2006.

(210) See Amnesty International, urgent actions AI Index ASA 33/01/2004 and ASA 33/02/2004.

(211) The French journalists were convicted under the Foreigners Act for violating visa regulations and left the country.

(212) AFP, 22 January 2004.

(213) Marc Epstein later confirmed that one of the men, Abdullah Shakir, had indeed been a Taleban commander, not an impersonator as alleged. (see Pakistan: Open letter to President Pervez Musharraf, AI Index: ASA 33/003/2004.)

(214) Okaz, a Saudi newspaper, 6 January 2002.

(215) HRCRP, The state of human rights in 2004, 2005.

(216) The News, 13 June 2005, quoted in BBC, 13 June 2005. This has recently been reiterated by Foreign Office spokesperson Tasnim Aslam who stated that all those handed over to US custody had been refused by their countries of origin and has committed offences in the USA. (Dawn, 29 August 2006.)

(217) AP, 3 June 2005.

(218) The Friday Times, 28 March – 3 April 2003.

(219) The Washington Post, 23 October 2002, ABC News, 27 June 2006.

(220) Mark Denbeaux and Joshua Denbeaux, A profile of 517 detainees through analysis of Department of Defense Data, 2006. Seton Hall University School of Law, February 2006, p. 14. Available at:

http://law.shu.edu/news/Guantánamo_report_final_2_08_06.pdf.

(221) Ibid., p. 4.

(222) See USA: Who are the Guantánamo detainees. Case sheet 16: Sudanese national: Sami al Hajj, AI Index: AMR 51/013/2006.

(223) RSF, Where the United States imprisons journalists, February 2006.

(224) RSF, Call for release of cameraman Sami Al-Haj as he completes fourth year in Guantánamo, 13 June 2006.

(225) Extracts from the transcript of his Combatant Review Tribunal hearing made public after the Associated Press' lawsuit under the US Freedom of Information Act.

(226) Qassim and Hakim reportedly said that they fled the city of Ghulja in Xingjiang in 1999, met up in Kyrgyzstan and travelled via Pakistan to Afghanistan, intending to travel to Turkey where they wanted to join a locally settled Uighur group. In Afghanistan they received some training in the use of small arms, not, as they said, against USA targets, but for uses associated with Uighur nationalism targeted at Chinese government repression. They fled to Pakistan in late 2001 where they were captured in late 2001-early 2002 by Pakistani police who turned them over to US custody apparently in return for bounty payment. (Boston Globe, 26 July 2005.) They were flown to Guantánamo Bay some six months later.

(227) Qassim et al. v. Bush et al., No. CIV.A. 05-0497(JR), United States District Court, District of Columbia, Memorandum, 22 December 2005, p. 2. Justice Robinson also criticised the language used by the combatant status review board: "The government's use of the Kafka-esque term 'no longer enemy combatants' deliberately begs the question of whether these petitioners ever were enemy combatants". Ibid.

(228) Ibid., p. 4.

(229) Boston Globe, 18 May 2006, Al-Jazeera, 9 May 2006.

(230) This process, opposed by Amnesty International as being in violation of international standards of fair trial, has been stalled following the US Supreme Court ruling in the Hamdan case: Hamdan v. Rumsfeld, Secretary of Defense, et al. 548 U. S. (2006), decision of 29 June 2006.

(231) Military authorities suspended his trial proceedings in May 2006 pending a decision of the US Supreme Court on the legality of the trials by military courts.

(232) HRW, List of "Ghost Prisoners" Possibly in CIA Custody, (last updated 1 December 2005), available at <http://hrw.org/english/docs/2005/11/30/usdom12109.htm>.

(233) Center for Human Rights and Global Justice, Fate and whereabouts unknown: Detainees in the "war on terror", December 2005.

(234) For details see the website of the US Department of Defense at <http://www.defenselink.mil/pdf/detaineebiographies1.pdf>, under "detainee biographies"

(235) For example, USA: Human dignity denied – Torture and accountability in the 'war on terror', AI Index: AMR 51/145/2004, p.110-116.

(236) NBC News, 3 November 2005. See also: United States of America: Below the radar: Secret flights to torture and "disappearances", AI Index: AMR 51/051/2006.

(237) Los Angeles Times, 4 November 2005.

(238) BBC News, 3 November 2005.

(239) BBC, 3 November 2005.

(240) Dawn, 4 November 2005.

(241) Dawn, 4 November 2005.

(242) Dawn, 4 November 2005.

(243) Los Angeles Times, 4 November 2005, NBC News, 3 November 2005.

(244) NBC News, 3 November 2005.

(245) Los Angeles Times, 4 November 2005.

- (246) Reuters, 3 November 2005.
- (247) AFP, 26 December 2005.
- (248) AFP, 2 May 2006.
- (249) Dawn, 26 December 2005.
- (250) AP, 2 May 2006.
- (251) Dawn, 25 May 2006.
- (252) Reuters, 25 May 2006.
- (253) Reuters, 25 May 2006.
- (254) Reuters, 25 May 2006.
- (255) BBC, 24 May 2006.
- (256) See Amnesty International, urgent actions, AI Index: ASA 33/007/2005 and ASA 33/018/2005.
- (257) Dawn, 6 May 2005.
- (258) Dawn, 5 May 2005.
- (259) Washington Post, 5 May 2005.
- (260) The News, 6 May 2005.
- (261) Dawn, 6 May 2005.
- (262) The Guardian, 6 May 2005.
- (263) The Sunday Times, quoted in The News, 9 May 2005. Some observers have suggested that US investigators may have may have confused Faraj al-Libi and Anas al-Liby who is wanted for the bombings in East Africa. (The News, 9 March 2005.)
- (264) Dawn, 12 May 2005.
- (265) Reuters, 6 May 2005.
- (266) Dawn, 5 May 2005.
- (267) US and Pakistani officials appeared to disagree over whether to arrest al-Libi at that time. Whereas the CIA apparently wanted to shadow him further in the hope it would lead to more senior al-Qa'ida members, Pakistani officials feared losing the person allegedly involved in attacks on President Musharraf. (The Times, 6 May 2005.)
- (268) Fox News, 7 May 2005.
- (269) Reuters, 6 May 2005. The Guardian reported that US investigators had no access to al-Libi but that Pakistani intelligence passed on information to them. (The Guardian, 6 May 2005.)
- (270) Reuters, 6 May 2005.
- (271) Fox News, 7 May 2005.
- (272) AFP, 12 May 2005.
- (273) Fox News, 12 May 2005.
- (274) Dawn, 14 May 2005.
- (275) Dawn, 1 June 2005.
- (276) Dawn, 2 June 2005.
- (277) Daily Times, 2 June 2005.
- (278) AFP, 6 June 2005, Dawn, 7 June 2005.

(279) For the numerous media reports on his possible location see: Center for Human rights and Global Justice, Fate and whereabouts unknown: Detainees in the "war on terror", December 2005.

(280) Dawn, 29 May 2004.

(281) Daily Times, 20 August 2005.

(282) Washington Post, 6 August 2004.

(283) Washington Post, 3 August 2004.

(284) More sources are listed in HRW, List of "Ghost Prisoners" Possibly in CIA Custody, (last updated 1 December 2005), 2005.

(285) The nationality of Ali Abdul Aziz Ali is uncertain; most reports, including the US Defence Department list of the 14 individuals transferred to Guantánamo Bay released in September 2006, describe him as "Balochi and raised in Kuwait". The same description is given for his uncle Khalid Sheikh Mohammed who in most media reports is described as a Kuwaiti national. According to the US Defence Department description of his activities, Ali Abdul Aziz Ali was a "Pakistan-based al-Qa'ida operative".

(286) Dawn, 3 May 2003.

(287) The judge in this case (U.S. v. Paracha) refused to allow Ali Abdul Aziz Ali (and Majid Khan, see below) to personally appear in court citing national security concerns and their testimonies was presented in court in a paraphrased manner. (Washington Post, 9 November 2005.)

(288) Baltimore Sun, 11 and 12 September 2006.

(289) Dawn, 29 May 2004. She had lived and studied in the USA for some 10 years and acquired US nationality.

(290) Both statements in Dawn, 29 May 2004.

(291) Dawn, 30 March 2004.

(292) Dawn, 30 March 2004.

(293) Information from Ismat Siddiqui's lawyer, Elaine Sharp, quoted in Center For Human Rights and Global Justice, Fate and whereabouts unknown: Detainees in the "war on terror", New York University School of Law, December 2005.

(294) According to the US Defence Department list of 14 individuals transferred to Guantánamo Bay released in September 2006, Ali Abdul Aziz Ali married Dr Aafia Siddhiqui shortly before his arrest.

(295) Hambali, who reportedly leads the Jamaah Islamiya, was arrested in Thailand in August 2003, handed over to US custody around October 2003 and remained at an unknown location until US President Bush in September 2006 announced his transfer along with 13 others to Guantánamo Bay.

(296) Rusman Gunawan had, allegedly in response to Hambali's request, contacted another terrorist suspect in Pakistan, Amar-al-Balochi, asking him to send money to Hambali. According to the prosecution, Ruswan Gunawan had also led a study group of Indonesian and Malaysian students in Karachi called al Ghuraba which allegedly undertook terrorist activities. Rusman Gunawan reportedly admitted during preliminary interrogation in Pakistan on 8 and 9 December that he had sent telecommunication equipment and money to his elder brother Hambali. He is reported to have denied being sympathetic to Islamist goals and merely to have obliged his elder brother. (The News, 22 June 2004.)

(297) Daily Times, 11 October 2003.

(298) Jakarta News, 29 June 2004.

(299) The Friday Times, 26 October to 2 November 2003.

(300) Dawn, 26 September 2003.

(301) Dawn, 27 September 2003.

(302) BBC, 10 December 2003 and 22 March 2005.

(303) Tempo Interactive, 11 December 2003.

(304) Jakarta Post, 22 June 2004.

(305) Milliyet, 9 May 2006, quoted in BBC, 9 May 2006.

(306) Dawn, 18 April 2006.

(307) Haberler.com, 13 June 2006.

(308) BBC, 27 October 2005.

(309) Reuters, 27 October 2005.

(310) BBC, 26 and 27 October 2005.

(311) BBC, 6 October 2005.

(312) BBC, 18 August 2005.

(313) Al-Sharq al-Aswat, 19 March 2004.

(314) Mamdouh Habib told Amnesty International that during six months in a Cairo prison, he was hung from hooks in the ceiling, beaten, given electric shocks with a cattle prod and threatened that he would be raped by dogs. He also reported that he was forced into torture chambers one of which was filled with water so high that he had to stand on tiptoe for hours in order not to drown. A second chamber had a very low ceiling and held two feet of water forcing him to maintain a painful stoop; a third held a few inches of water and an electric generator which his captors said would electrocute him. While in detention in Egypt, he confessed that he had helped train the attackers of 11 September in martial arts, a confession he later withdrew.

(315) See USA: Memorandum to the US Attorney General – Amnesty International's concerns relating to the post 11 September investigations, AI Index: AMR 51/170/2001 and USA: Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay, AI Index: AMR 51/053/2002.

(316) See Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights, "Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states, draft report, AS/Jur (2006) 16 Part II, 7 June 2006, p. 45. Available at http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf.

(317) *ibid.*: "Official flight records obtained by this inquiry show that the known rendition flight plane, N379P, took off from Islamabad on 21 July 2002 and flew to Rabat, Morocco".

(318) For details of the series of abuses to which he was subjected at every stage of his illegal detention, see USA: Who are the Guantánamo detainees? Case sheet 12: Ethiopian national/UK resident Benyam Mohammed al Habashi, AI Index: AMR 51/152/2005.

(319) See for instance Report of the Committee against Torture, UN Doc. A/56/44 (2000-2001), para. 73(e); Bazorkina v. Russia (Application no. 69481/01), ECtHR Judgment of 27 July 2006, paras. 139-142; Human Right Committee, United States of America: Concluding observations, UN Doc. CCPR/C/USA/Q/3/CRP.4, 28 July 2006, para. 12.

(320) The police finally registered the case on 15 November 2004, on the orders of the Sindh High Court. Human Rights Watch, Pakistan: US citizen tortured, held illegally, May 2005.

(321) Dawn, 4 April 2006.

(322) Dawn, 3 March 2006.

(323) Dawn, 19 August 2006.

(324) Dawn, 21 August 2006.

(325) Daily Times, 22 August 2006.

(326) Dawn, 20 June 2006.

(327) Article 184 (3).

(328) Article 199 (1) (c).

(329) Article 199 (2).

(330) Article 4(1).

(331) Article 25(1).

(332) HRCP, The state of human rights in 2004, 2005.

(333) Herald, October 2005.

(334) Herald, October 2005.

(335) "Agencies conduct witch-hunt in the Frontier", Herald, December 2004,

(336) Dawn, 11 August 2004.

(337) CBC News, 9 August 2004.

(338) The News, 1 March 2006.

(339) Dawn, 12 July and 21 July 2006. The hearings related to several Sindhi and Baloch men who are victims of enforced disappearance.

(340) Ardeshir Cowasjee, "We need to know, General", Dawn, 16 July 2006.

(341) Dawn, 21 July 2006.

(342) Dawn, 3 August 2006.

(343) Herald, October 2005.

(344) Herald, October 2005.

(345) He was allegedly the mastermind behind attacks on President Musharraf in December 2003, allegedly at the instance of Abu Faraj Al-Libi, and a reward of Rs. 20 million was offered for his capture; there are also allegations that he was involved in the murder of Daniel Pearl, suicide bombings and hijackings and linked to various Islamic militant organisations, including the Lashkar-e-Jangvi and the Jaish-e-Mohammad, as also the Taliban in Afghanistan.

(346) Dawn, 28 September 2004, 27 September 2004.

(347) Dawn, 15 July 2005

(348) AFP. 28 December 2004.

(349) The Washington Times, 29 September 2004. See also B. Raman, The curious case of Amjad Farooqi, <http://www.pakistan-facts.com> of 30 September 2004.

(350) HRCP, The state of human rights in 2004, 2005.

(351) Wilson John, "Amjad Farooqi: Face of new terror coalition", The Jamestown Foundation, Terrorism Monitor, 7 October 2004.

(352) Pakistan: Human rights abuses in the search for Al-Qa'ida and Taleban in the tribal areas, AI Index: ASA 33/011/2004.

(353) Asian Affairs, April 2006.

(354) The Herald, December 2004.

(355) BBC, 30 March 2004.

(356) Dawn, 30 April 2006, also Reuters, 26 May 2006.

(357) HRCP. The state of human rights in 2004, 2005.

(358) The News, 15 April 2006.

(359) Dawn, 2 March 2006. This was the day of US President Bush's visit to South Asia, and some observers saw the attacks as a demonstration of Pakistan's commitment to the "war on terror". Ashok K. Bahuria, "Pak Army's Operation in Waziristan", Asian Affairs, April 2006.

(360) The Friday Times, 10-16 March 2006.

(361) Dawn, 3 March 2006.

(362) Ibid.

(363) Dawn, 5 March 2006.

(364) Dawn. 8 March 2006.

(365) Dawn, 12 March 2006.

(366) AFP, 12 March 2006.

(367) Dawn, 25 March 2006.

(368) Reuters, 26 June 2006.

(369) The Friday Times, 17-23 March 2006.

(370) Dawn, 25 May 2006.

(371) The Friday Times, 17-23 March 2006.

(372) The Friday Times, 17-23 March 2006.

(373) According to Pak Institute for Peace Studies, the area is a stronghold of the Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (Movement for the Implementation of Mohammad's Sharia Law), a pro-Taleban group banned by the Pakistan government in January 2002.

(374) The drones are launched and landed by troops in war zones but once in the air, they and their missiles are controlled remotely from air force bases in the USA. They provide video images from a height of 7,600 meters and can shoot missiles without the need to have a spotter on the ground to identify the target. The Predator-Hellfire combination has been used by US forces outside Afghanistan and Iraq in order to kill al Qa'ida suspects, for example in Yemen, where on 3 November 2002 a Hellfire missile fired from a CIA drone killed all people travelling in a car including Abu Qaed Sunian al-Harithi, alias Abu Ali.

(375) Amnesty International wrote on 31 January 2006 to US President George W Bush expressing its concern that a pattern of killings carried out with these weapons appeared to reflect a US government policy condoning extrajudicial executions. See also Pakistan: US involvement in civilian deaths, AI Index: ASA 33/002/2006.

(376) AFP, 17 January 2006

(377) Daily Times, 19 January 2006.

(378) Dawn, Reuters, 19 January 2006.

(379) Washington Post, 15 January 2006.

(380) Washington Post, 14 January 2006.

(381) Washington Post, 15 January 2006.

(382) BBC, 18 January 2006.

(383) Washington Post, 14 Jan 2006.

(384) Washington Post, 18 January 2006.

(385) New York Times, 16 January 2006.

(386) Washington Post, 16 January 2006.

(387) NBC, 14 May 2005.

(388) See: AI Index: AMR 51/079/2005.

(389) Reuters, 14 May 2005.

(390) The News, 7 November 2005.

(391) CNN.com, 3 December 2005.

(392) Daily Times, 6 December 2005.

(393) New York Times, 14 and 15 January 2006, CNN, 14 January, Washington Post, 16 January.

(394) us.rediff.com/news, 5 December 2005.

(395) AFP, 12 February 2006.

(396) AP, quoted in *The Daily Times*, 13 February 2006.

(397) *Daily Times*, 9 May 2006.

(398) *Dawn*, 11 June 2006.

(399) Reuters, 10 June 2006, *Dawn*, 11 June 2006.

(400) UN Doc. E/CN.4/2003/3, 13 January 2003, para. 37.

(401) *Ibid.*, para. 39

(402) UN Doc: E/CN.4/2003/G/80, 22 April 2003.

(403) UN Doc. E/CN.4/2005/7, 22 December 2004, para. 41.

(404) Article 11 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that rules and regulations on the use of firearms by law enforcement officials should include guidelines that "... b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm" and "... (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged".

(405) Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Article 1.

(406) Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989.

(407) The Declaration was referred to the General Assembly for adoption later in 2006. See: First session of the Human Rights Council: A step in the right direction, AI Index: IOR 41/011/2006.

(408) AI Index: ASA 33/014/2002.

(409) Pakistan: Open letter to President Pervez Musharraf, AI Index ASA 33/003/2004; see also: Pakistan: Imminent execution of Mir Aimal Kasi raises fears for others taken into US custody without human rights guarantees, AI index: ASA 33/034/2002.

(410) Pakistan: Human rights abuses in the search for al-Qa'ida and the Taleban in the tribal areas, AI Index: ASA 33/011/2004.

(411) Before the adoption by the UN Human Rights Council of the draft Convention on Enforced Disappearances, Amnesty International used the term "disappearances" and the "disappeared" when making a reference to this type of human rights violation in the absence of an internationally recognized definition.

(412) See Pakistan: Transfer to US custody without human rights guarantees, AI Index: ASA 33/014/2002.

(413) *New York Times*, 27 September 2005. See also his book in Pashtu: *Da Guantanamo Anzoor* [A picture of Guantanamo].

(414) Moazzam Begg, *Enemy combatant: A British Muslim's journey to Guantánamo and back*, 2006.

(415) Michael Elliott, "The Next Wave," *Time Magazine*, 17 June 2002.

(416) Final Report of the National Commission on Terrorist Attacks Upon the United

States (the 9/11 Commission Report). August 2004. <http://www.9-11commission.gov/report/index.htm>.

(417) See, for instance, USA: Human dignity denied – Torture and accountability in the 'war on terror', AI Index: AMR 51/145/2004, p. 110-116.

(418) In addition to the 558 prisoner names on a list issued on 19 April 2006 by the US Justice Department, 201 names of people who had been moved out of Guantánamo Bay brings the total number of detainees to 759. Of these, 67 were Pakistanis. The following day, a senior Pakistani security official accused US officials of having concealed information about Pakistani detainees. (AP, 20 April 2006. *Dawn*, 21 April 2006.)

(419) *Daily Times*, 17 June 2006.

(420) AFP, 16 May 2006, BBC, 1 June 2006.

- (421) Dawn, 17 May 2006.
- (422) BBC, 12 June 2006, Dawn, 17 May 2006.
- (423) Dawn, 31 August 2006.
- (424) Dawn, 1 August 2006.
- (425) Dawn, 18 August 2006.
- (426) BBC, 12 June 2006.
- (427) Herald, October 2005.
- (428) HRCP, The state of human rights in 2004, 2005.
- (429) Reuters, 27 June 2005.
- (430) BBC, 18 May 2005.
- (431) HRCP, The state of human rights in 2004, 2005.
- (432) The Wall Street Journal, 4 March 2003.
- (433) See: Pakistan: Transfer to US custody without human rights guarantees, AI Index: ASA 33/014/2002.
- (434) For details of his possible location, see: Center for Human Rights and Global Justice, Fate and whereabouts unknown: Detainees in the "war on terror", December 2005.
- (435) BBC News, 4 March 2003; AFP of 10 March 2003 quotes a Pakistani intelligence official as saying on condition of anonymity that the operation was carried out by the ISI while CIA officials were posted outside the house.
- (436) For details about his possible location, see: Center for Human Rights and Global Justice, Fate and whereabouts unknown: Detainees in the "war on terror", December 2005.
- (437) BBC News, 4 March 2003.
- (438) For media reports on the possible location of his detention, see: Center for Human Rights and Global Justice, Fate and whereabouts unknown: Detainees in the "war on terror", December 2005.
- (439) Dawn, 3 May 2003.
- (440) The News, 2 May 2003.
- (441) USA Today, 30 April 2003. For media reports on the possible location of his detention, see: Center for Human Rights and Global Justice, Fate and whereabouts unknown: Detainees in the "war on terror", December 2005.
- (442) United Press International, 3 August 2004.
- (443) AFP, 25 January 2005.
- (444) Daily Times, 16 March 2003.
- (445) Daily Times, 16 March 2003.
- (446) Knight-Ridder News Service, 16 March 2003.
- (447) For several media reports on his custody and whereabouts see: Center for Human Rights and Global Justice, Fate and whereabouts unknown: Detainees in the "war on terror", December 2005.
- (448) BBC News, 19 June 2003. See also AI Index: AMR 51/103/2003.
- (449) CBS News, 14 July 2003.
- (450) CBS News, 14 July 2003. For media reports on the possible location of his detention, see: Center for Human Rights and Global Justice, Fate and whereabouts unknown: Detainees in the "war on terror", December 2005.
- (451) Daily Times, 20 June 2003.
- (452) The News, 17 July 2003.

(453) Human Rights Watch, List of "Ghost Prisoners" Possibly in CIA Custody, (last updated 1 December 2005), 2005, citing USA Today, January 8, 2002 and The Washington Post, January 5, 2002.

(454) For the full testimony see: USA: Days of adverse hardship in US detention camps –Testimony of Guantánamo detainee Jumah al-Dossari, AI Index: AMR 51/107/2005.

(455) Amnesty International has for many years used the term "disappearances" and the "disappeared" and the 14 point programme was drawn up prior to the adoption of the draft UN Convention for the protection of all persons from enforced disappearance by the UN Human Rights Council on 29 June 2006.

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