

PAKISTAN

Transfers to US custody without human rights guarantees

"I am particularly concerned that counter-terrorism strategies pursued after September 11 have sometimes undermined efforts to enhance respect for human rights." United Nations High Commissioner for Human Rights Mary Robinson, 20 March 2002.

1. Introduction

Following the attacks on the United States of America (USA) on 11 September 2001, Pakistan has supported in numerous ways the efforts made by the coalition led by the USA to curb 'terrorist' activities. In this process Pakistan has violated the right to fair trial and the right of detainees to be treated in accordance with law and enjoy equal protection of the law.

While acknowledging the obligation of states to uphold law and order and to protect their populations from violent criminal acts, Amnesty International is concerned that in this context human rights protection is all too often relegated to second place. Measures to curb violent criminal acts must be placed strictly in a framework of protection for human rights.

Amnesty International notes that the United Nations (UN) Commission on Human Rights in its Resolution on Human Rights and Terrorism¹ reiterated that "all States have an obligation to promote and protect all human rights and fundamental freedoms and to ensure effective implementation of their obligations under international humanitarian law". The resolution also emphasised "the need to intensify the fight against terrorism in all its forms and manifestations at the national level and to enhance effective international cooperation in combating terrorism in conformity with international law, including relevant State obligations under international human rights and international humanitarian law ...". It urged "States to fulfil their obligations under the Charter in strict conformity with international law, including human rights standards and obligations and international humanitarian law, to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever, whenever and by whomever committed, and calls upon States to strengthen, where appropriate, their legislation to combat terrorism in all its forms and manifestations."

In its report *Rights at Risk*, published in January 2002, Amnesty International describes its concerns regarding security legislation and law enforcement measures adopted by some states since the 11 September attacks in the USA to protect their populations from violent criminal acts.²

¹Commission on Human Rights resolution 2002/35, 22 April 2002.

²*Rights at risk: Amnesty International's concerns regarding security legislation and law enforcement measures*, January 2002, AI Index: ACT 30/001/2002.

The report points out that the protection of human rights and compliance with international humanitarian law have been falsely described as being in opposition to effective action against 'terrorism'. In fact, security and human rights are not conflicting aims but complementary goals. International humanitarian law and human rights laws and standards constitute the bare minimum necessary to protect the safety and integrity of individuals from abuse of power. International human rights law and standards are not simply legal niceties - they oblige states to protect the public against abuses by state and non-state actors: they must be prevented, investigated and punished. The rights enshrined in human rights treaties, such as the right to life, the right not to be subjected to torture and the right to freedom from arbitrary detention, are just another way of describing the idea of security that people expect their governments to ensure. The challenge to states, therefore, is not to promote security at the expense of human rights, but rather to ensure that all people enjoy respect for the full range of rights.

There is clear evidence that Pakistan has in the context of its current cooperation with the US-led coalition violated a range of human rights and obligations under international humanitarian law. It has arbitrarily arrested Pakistani and non-Pakistani people suspected of membership in *al-Qa'ida* and the Taliban. Pakistan has handed over an unknown number of detainees to the US-led coalition without reference to any legal requirements, including Pakistan's domestic legislation governing extradition.

Moreover, Pakistan has handed such detainees over to countries where they are likely to suffer further human rights violations. The prohibition of *non-refoulement* of a person to a country where he or she would be at risk of human rights violation is a principle of customary international law which is binding even on countries like Pakistan which have not ratified relevant international human rights treaties. In some cases, detainees have also been handed over to other countries in circumvention of extradition protection and irrespective of the risk of human rights abuses they may face there.

For its part, the USA has denied, or threatened to deny, internationally recognized rights to people taken into its custody in Afghanistan and elsewhere, including those transferred to Camp X-Ray and Camp Delta in Guantánamo Bay (see below).³

Amnesty International calls on the Government of Pakistan to strictly adhere to its own constitutional human rights safeguards and international humanitarian law and human rights law

³For a detailed analysis see: *United States of America: Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay*, AI Index: AMR 51/053/2002, April 2002 and the decision of the Inter-American Commission on Human Rights on 13 March 2002 requesting the USA to take urgent measures necessary to have the legal status of the prisoners at Guantánamo Bay determined by a competent tribunal. Juan E. Mendez, President of the Inter-American Commission on Human Rights, 13 March 2002.

and standards. They require that all people against whom there is a suspicion of involvement in criminal activities be treated strictly in accordance with law. To discriminate against those suspected of 'terrorist' offences by arbitrarily arresting them and handing them over while circumventing formal extradition proceedings violates the principle of equality before law and equal protection of law which are fundamental rights recognised in the Constitution of Pakistan.

This report summarizes the context in which arbitrary arrests and arbitrary transfers to US custody have taken place and then describes specific instances of such human rights violations. It ends with a set of recommendations.

2. The political context

Pakistan joined the US-led alliance against 'terrorism' shortly after the attacks in the United States, putting its airspace and some of its airports at the disposal of the coalition and providing intelligence assistance for its operations. Thousands of Pakistanis who had earlier gone to Afghanistan to join the Taleban were arrested in Afghanistan where they remained in the custody of the state or individual warlords. Beginning in late April 2002, over 600 Pakistani detainees were released and returned to Pakistan. In early May, Afghan deputy Defence Minister General Abdul Rashid Dostum announced that hundreds of Pakistani prisoners held in Shibergan prison would be released and taken to the Pakistan border by representatives of the Interim Administration.

Though Pakistan closed its western borders in the wake of the events of 11 September and more specifically after the beginning of the military action in Afghanistan initiated by the US-led coalition on 7 October 2001, hundreds if not thousands of members of *al-Qa'ida* and the Taleban, including Afghans, Pakistanis and other nationals, are widely believed to have slipped through the long and porous border. For instance, when in mid-March 2002 coalition troops overran *al-Qa'ida* forces at Shahi Kot area in Afghanistan, some 400 *al-Qa'ida* and Taleban members were believed to have crossed into Pakistan despite a tightening of border control by Pakistani forces. International media quoted Pakistan officials as estimating that as many as 1,800 *al-Qa'ida* members and more than 3,000 Taleban came to Pakistan after November 2001.⁴

Several hundred of those who slipped into Pakistan were arrested either by tribal groups, who either retained them in their custody or handed them over to provincial or federal custody (see below). Others are assumed to be hiding with associates in the designated tribal areas or to be in hiding in large cities of Pakistan sheltered by Islamist groups. Many observers believe that *al-Qa'ida* and Taleban members are beginning to regroup in Pakistan. The *New York Times*

⁴The *New York Times*, 8 March 2002.

reported that new websites and internet communications recently intercepted indicate that *al-Qa'ida* members may be trying to regroup in Pakistan near the Afghan border as at least some of the communications could be traced back to Pakistan.⁵

Afghan sources have asserted that people are fleeing to Pakistan to escape military action but also to regroup in order to resume their action. Commander Ziauddin, a Northern Alliance officer in Gardez was quoted in *The Times* as saying: "They are coming across from Pakistan in groups of five to ten with new hit-and-run guerilla tactics."⁶ The paper adds, "The problem has been compounded by Pakistan's inability to clear out *al-Qa'ida* bases within its tribal provinces, affording the fighters the essential asset of a safe haven to train and recuperate." Mohammad Khan Golboz, spokesman of the Tribal Council at Khost, Eastern Afghanistan, said US and Pakistani forces would have been unable to patrol the entire long border: "According to my information and on the basis of my conversation with the people, there are no Taleban or *al-Qa'ida* members here [in Khost]. They have all escaped and it is possible that they have succeeded in reaching Pakistan we have a very long border here, no one is able to control the whole length of the border. They [the Americans] can only watch the roads, [but] the members of *al-Qa'ida* are able to use mountains and heights and find routes for their escape. The Pakistani forces are unable to block the whole length of the border."⁷

Pakistani authorities have vehemently denied this saying that border security is extremely tight and does not allow suspects to slip through.⁸ Interior Minister Moinuddin Haider on 27 March reiterated that Pakistan had good control of its Western border and enjoyed full cooperation with the semi autonomous tribes living there: "The Pakistani tribesmen living on this side of the Pakistan/Afghanistan border are very clear. They are co-operating with us and they are acting in a very responsible manner. They will not like to take the risk of harbouring anyone, not at all."⁹ In mid-April 2002, the Government of Pakistan took additional measures to tighten control

⁵*The New York Times*, 6 March 2002.

⁶*The Times*, London, 17 April 2002. The paper also quotes an alliance intelligence commander in Gardez, Colonel Zihrat Gul Mangal, as saying: "Small *al-Qa'ida* groups have begun shooting there after crossing back from Pakistan. They can never be 100 per cent removed from Afghanistan as long as they have sanctuary in Pakistan."

⁷*BBC*, 15 March 2002, monitoring *Radio Voice of Afghanistan*, 14 March 2002.

⁸For instance, Pakistan's Defence Secretary Hamid Nawazkhan during a visit to Azerbaijan in mid April 2002 said he thought it impossible that Bin Laden should be in Pakistan as the border was effectively sealed. Similarly Foreign Minister Sattar was quoted in *The Washington Times* of 26 March 2002 as asserting the effective closure of the entire border.

⁹*Reuters*, 27 March 2002.

over its Western border; it resolved to restructure the Frontier Constabulary and the Frontier Corps to conduct security operations in the border areas of the North West Frontier Province (NWFP) and Balochistan as well as in the Federally Administered Tribal Areas (FATA).¹⁰

Joint US-Pakistani raids and arrests in late March 2002 (see below) of high ranking *al-Qa'ida* members, including many non-Pakistanis, in the Punjab heartland where they had found sanctuary with sympathisers, shows that Pakistan's borders have not been effectively sealed as had been officially claimed. "What we have here is a large number of people from *al-Qa'ida* and the Taleban who have travelled through Pakistan and through the central Punjab without anyone informing the authorities. ... There are obviously certain channels of support, certain groups and maybe certain institutions willing to escort them and give them safe passage."¹¹ Indirectly acknowledging the likely presence of *al-Qa'ida* members in Punjab province following the arrests of some 65 suspected *al-Qa'ida* members in late March 2002, officials in Faisalabad said in early April 2002 that three special teams had been set up to collect detailed information about *al-Qa'ida* members, including local members of banned Islamist groups suspected of links with *al-Qa'ida*.

The presence of *al-Qa'ida* and Taleban members in different parts of Pakistan has raised the question of 'hot pursuit' of suspected *al-Qa'ida* members by US armed forces on Pakistan territory. On 26 March 2002, two US senators visiting soldiers in Afghanistan raised the possibility of widened US involvement in tracking them down. Senator Richard Shelby, a Republican from Alabama and Vice Chairman of the US Senate Select Committee on Intelligence told a news conference at Bagram, Afghanistan, that some *al-Qa'ida* and Taleban had crossed into Pakistan and added, "I am hoping that the government of Pakistan is going to join us in a big way to rid the border of ... the *al-Qa'ida* who use Pakistan as a sanctuary."¹² Senator Bill Nelson, a Democrat from Florida similarly said, "If we have to work out something with President Musharraf where we can have troops along that border in Pakistan to rid the *al-Qa'ida* and the other terrorists from going across that porous border, then so be it."¹³ Around the same time, the commander of US forces in Afghanistan, Maj. Gen. Franklin L. Hagenbeck of the 10th Mountain Division said that crossing the border to capture or kill *al-Qa'ida* members

¹⁰The Federally Administered Tribal Areas (FATA), also known as tribal agencies, have a quasi-autonomous status; they are governed by a Political Agent who works directly under the control of the Federal Government. FATA areas do not fall within the jurisdiction of Pakistan's criminal justice system but have their own system laid down in the Frontier Crimes Regulation of 1901.

¹¹Analyst M.A. Niazi, quoted in *AFP*, 3 April 2002.

¹²*Reuters*, 26 and 27 March 2002.

¹³*Reuters*, 26 March 2002.

