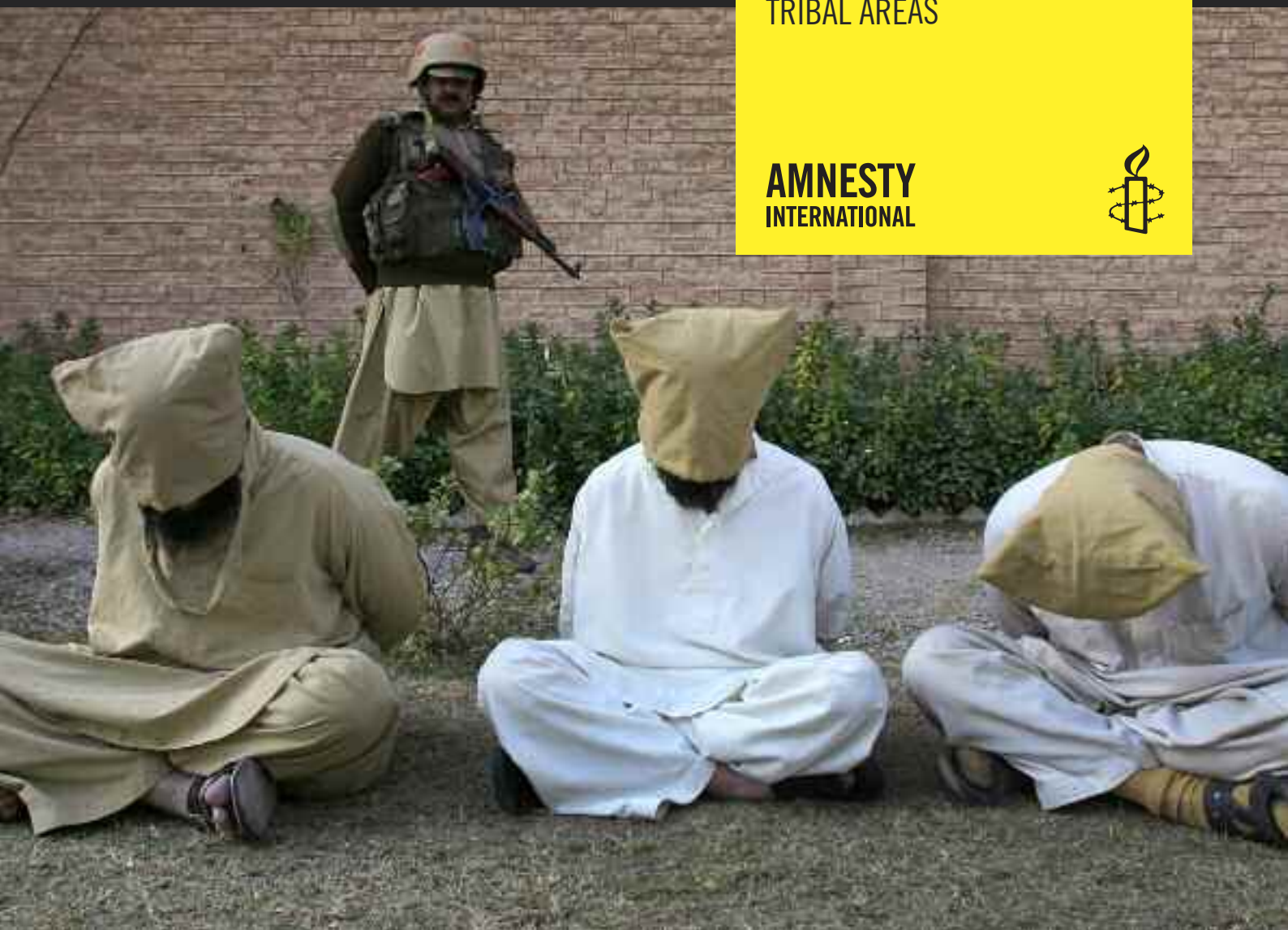


# 'THE HANDS OF CRUELTY'

ABUSES BY ARMED FORCES  
AND TALIBAN IN PAKISTAN'S  
TRIBAL AREAS

**AMNESTY**  
INTERNATIONAL



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*Cover photo:* A soldier stands guard over hooded men as they are showcased to the media at an Armed Forces compound in Khyber Agency, north-west Pakistan, December 2010. The military says they are militants detained during operations in the country's Tribal Areas. © REUTERS/K. Parvez

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## MAP OF NORTHWEST PAKISTAN



## GLOSSARY OF TERMS

**Council of Elders:** a council of three or more "respectable elders" from communities in the Federally Administered Tribal Areas that assists in the resolution of disputes under the Frontier Crimes Regulation 1901 (FCR).

**Frontier Corp:** 'civil' Armed Forces under the authority of the Federal Ministry of Interior but whose commanding officers are seconded from the Army.

**Frontier Constabulary:** law enforcement authority employed by the Pakistani authorities in areas between the Federally Administered Tribal Areas and Khyber Pakhtunkhwa province.

**Geneva Conventions:** The Geneva Conventions is a set of treaties and additional protocols that establish the standards of international law for the humanitarian treatment of the victims of war.

**Internment center:** any acknowledged detention centre administered under the Actions (in Aid of Civil Power) Regulations 2011 (AACPR) where it is defined as "any compound, house, building, facility or any temporary or permanent structure that is notified by the Provincial Government to serve as premises where persons are interned."

**Jirga:** Tribal council of elders formally, under the FCR, or informally established to settle disputes in the Tribal Areas.

**Khassadars:** Tribal police force in the Federally Administered Tribal Areas under the authority of the Political Agent.

**Layeha:** A Taliban military rulebook containing rules reportedly sanctioned by Mullah Muhammad Omar, the supreme commander of the group. The Pakistani Taliban claims to apply the Layeha and it is distributed by the group across the Tribal Areas, particularly in regions under their effective control or influence.

**Missing persons:** victims of enforced disappearance or other unlawful detentions whose fate or whereabouts are unknown.

**Malik:** Tribal leader, typically the most senior or respected elder in a tribal village.

**Political Agent:** Represents the President of Pakistan and the Governor of Khyber Pakhtunkhwa province in one of the seven Tribal Agencies that constitute the Federally Administered Tribal Areas.

**Subedar:** Non-commissioned officer in the Pakistan Armed Forces.

## ACRONYMS

**AACPR:** Actions (in Aid of Civil Powers) Regulations 2011

**CAT:** Convention against Torture

**FATA:** Federally Administered Tribal Areas

**FCR:** Frontier Crimes Regulation 1901

**FC(A)R:** Frontiers Crimes (Amendment) Regulation 2011.

**ICCPR:** International Covenant on Civil and Political Rights

**PATA:** Provincially Administered Tribal Areas

**SMR:** UN Standard Minimum Rules on the Treatment of Prisoners

# INTRODUCTION

"For the first five days they beat us constantly with leather belts across our backs...

...the pain was too much to describe," said Niaz, visibly shaken as he recalled his interrogation by the Pakistan Armed Forces. A 39-year-old farmer from Swat, Niaz and his younger brother Ayub are among the thousands of men and boys swept up in security operations by the Armed Forces in areas formerly controlled by the Taliban.

"There were always five soldiers at every interrogation session, all in Army uniform but usually only one of them, a *subedar* (non-commissioned officer) from Army Punjab Regiment's unit FF6, did the talking. He would threaten to kill me if I didn't confess to being part of the Taliban. I kept telling him that my cousin was a militant, but neither I nor Ayub ever belonged to the Taliban, we are just farmers. On hearing this, the *subedar* would scream, 'Your brother is going to die tonight! If you don't want to see him for the last time speak the truth!'"

One morning in April 2012, 10 days after being arrested with his brother, Niaz was released from an Army Base in the Swat Valley. Later that day his cousin Bilal called with terrible news. "I have Ayub's dead body." According to Bilal, an army officer he met at Saidu Teaching Hospital said Ayub had died of "heart stroke" in army custody.

As far as Amnesty International is aware, no investigation of any kind has yet been conducted by the Pakistani authorities into the alleged torture of Niaz and Ayub or into Ayub's death in army custody.

After a decade of violence, strife and armed conflict, the people of Pakistan's northwest continue to face a human rights crisis despite the Armed Forces' recapture of most areas formerly controlled by the Taliban. This report documents human rights violations during arrests and detentions by the Pakistan Armed Forces<sup>1</sup> and human rights abuses by the Taliban in the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) (see map on page 5)<sup>2</sup>, some of the least developed parts of Pakistan.<sup>3</sup> It follows Amnesty International's June 2010 report on violations of international human rights and humanitarian law perpetrated at the height of the conflict in the northwest.<sup>4</sup>

Amnesty International research shows that, rather than seeking to apply and strengthen the human rights safeguards of Pakistan's ordinary criminal justice system in the Tribal Areas, the Pakistani authorities are applying old and new security laws that authorise prolonged, arbitrary, preventive detention by the Armed Forces, and breach international human rights law. The Actions (in Aid of Civil Power) Regulations 2011 (AACPR) in particular, along with the century-old Frontier Crimes Regulation 1901 (FCR),<sup>5</sup> provide a framework for widespread human rights violations to occur with impunity.

The stated purpose of the AACPR is to enable the Armed Forces to operate against the



Taliban and other armed groups in the Tribal Areas in accordance with the law.<sup>6</sup> It also allows the Armed Forces to be requisitioned for various activities, including “law and order duties” and “to conduct law enforcement operations”.<sup>7</sup> But the alarming frequency of violations and absence of justice for victims reveals that the AACPR, in conjunction with the FCR, has failed to address the human rights crisis in the region, despite the return of state control in many parts of the Tribal Areas for over three years.

Many of the men held by the Armed Forces are subjected to enforced disappearance,<sup>8</sup> tortured or otherwise ill-treated while in custody. Some detainees do not survive and are returned to their families dead, or their corpses are dumped in remote parts of the Tribal Areas, without an effective investigation into the circumstances of their death, compensation for their relatives, or prosecution of those responsible. Detainees who are released alive and their families are threatened with dire consequences if they speak publicly about their treatment in detention.

The Taliban continue to commit a range of human rights abuses, from the brutal killing of captured soldiers and accused spies to indiscriminate attacks that have killed and injured thousands across Pakistan. In areas where they retain effective control, the group continues to perpetrate unlawful killing, following quasi-judicial proceedings or with no proceedings whatsoever, including of captured Armed Forces personnel and those accused of spying. These execution-style killings violate international humanitarian law and are an abuse of the right to life. Taliban quasi-judicial proceedings also fail to meet even the most basic requirements of fair trial under international human rights standards and international humanitarian law.

State and non-state perpetrators of human rights violations and abuses continue to act with total impunity in the Tribal Areas. As far as Amnesty International is aware, no serving or retired member of Pakistan's Armed Forces, law enforcement authorities, or intelligence services has been prosecuted for their alleged involvement in unlawful detentions, torture and other ill-treatment, or the unlawful killing of detainees in the Tribal Areas, including all the cases documented in this report. The state has a poor record of bringing Taliban and other perpetrators of abuses to justice in fair trials.

A key driver of impunity for state and non-state perpetrators is the constitutional exclusion of the courts from ruling on fundamental rights issues in FATA.<sup>9</sup> For over a century the FCR has been and continues to be used by the state to loosely govern FATA with minimal or non-existent human rights protections. The AACPR expands upon this by also seeking to exclude the courts and human rights protections from FATA, as well as PATA where the courts, parliaments and fundamental rights protections of the Constitution otherwise apply.<sup>10</sup> It also poses a threat to human rights and rule of law across Pakistan because it enables arbitrary and unlawful arrests, detentions, and other violations against any individual anywhere in the country whether or not they have committed a recognisable offence, as starkly evidenced by the ‘Adiala 11’ case which is discussed below.

The Pakistan government has made some limited attempts to improve the human rights situation in the Tribal Areas, including fair trial, arrest and detention reforms to the harsh British colonial-era criminal justice system established by the FCR. But these reforms fall far short of what is required under the regular criminal justice system of Pakistan and

international human rights law. The improvements are also rendered almost meaningless by the AACPR.



Relatives of men and boys allegedly taken by the Armed Forces in northwest Pakistan wait inside the Peshawar High Court hoping for any information on the fate and whereabouts of their loved ones. 21 August 2012. © Amnesty International

Despite several legal and practical barriers, relatives have brought cases before Pakistan's courts challenging the lawfulness of detentions by the Armed Forces and the AACPR regime by invoking constitutional rights protections. The superior courts have also asserted jurisdiction in these cases, and in some high profile cases such as the Adiala 11, the authorities have even conceded that they had acted unlawfully.<sup>11</sup> These developments are an important step in moving the State towards greater respect for the rule of law in the conduct of security-related detentions. But acknowledgements of unlawful detentions by the State and warnings by the courts that state agents will be arrested and prosecuted have failed to translate into justice for victims of violations in detention. And the authorities, including the courts, have yet to adequately investigate state agents accused of violations and few, if any, non-state perpetrators of abuses have been brought to justice in fair trials.

Amnesty International acknowledges that Pakistan is facing a major challenge confronting an insurgency on its frontier border with Afghanistan as well as having to re-establish civil authorities and infrastructure devastated by the conflict and the humanitarian crisis this has created, along with three successive years of monsoonal floods. However, by providing legal cover for continued violations by the Armed Forces under the AACPR, and failing to extend the hands of justice to the Tribal Areas, the Pakistan authorities have enabled the Armed Forces to commit human rights violations with impunity. Without urgent action by the Pakistan government to guarantee respect for human rights in the Tribal Areas, millions will continue to be locked in a perpetual state of lawlessness.

## 1.1 METHODOLOGY

This report is based on research conducted by Amnesty International in November-December 2011, and March and July-August 2012, as well as subsequent analysis of government and legal documents relating to thousands of individuals detained under the Actions (in Aid of Civil Power) Regulations 2011, and several others detained under the Frontier Crimes Regulation, or without any specified legal basis. More than 100 testimonies from victims of human rights violations in detention, witnesses, relatives, lawyers, and representatives of Pakistani authorities and armed groups form the main sources of information for this report. Interviews were conducted in English, Urdu and Pashto. The report is also based on analysis of submissions to and orders of Pakistani courts in cases challenging detentions under the Actions (in Aid of Civil Power) Regulations 2011 and the Frontier Crimes Regulation 1901.

Interviewing victims of violations in detention, their relatives and communities in the Tribal Areas presented a number of significant challenges. Many of the individuals interviewed for this report were visibly scared and expressed concerns about the serious repercussions they may face from the Armed Forces, the Taliban or other groups for speaking to Amnesty International. Many names in this report have been changed on request or where it has been deemed necessary for an individual's safety. Unfortunately, most of the government officials who spoke to Amnesty International also requested anonymity due to the sensitivity of the issues documented in this report.

Amnesty International sought to document the challenges faced by women, including female relatives of detained men and boys. However access to information from women and girls was hampered by restrictions placed on their movement and communications by their families and communities, the social stigma of being associated with persons accused of supporting the Taliban, and a general lack of understanding among many women and girls about their human rights.

In the light of these challenges, Amnesty International believes that the cases documented in this report are illustrative of a wider pattern of human rights violations and abuses perpetrated by the state, the Taliban and other armed groups in the Tribal Areas.

## 2. VIOLATIONS BY THE PAKISTAN ARMED FORCES

**"The Army never speaks about their procedures for detentions. In almost all cases they deny detentions and ultimately the people they are accused of detaining are either released after two or three years or so, or they just kill them."**

Latif Afridi, senior Advocate of the Peshawar High Court

Millions have faced violence and periods of armed conflict in Pakistan's northwest Tribal Areas bordering Afghanistan since 2002 when the *Tehrik-i-Taliban Pakistan*, (the Pakistani Taliban Movement) began asserting control in the seven 'agencies' that constitute the FATA and in adjacent parts of PATA.<sup>12</sup> Within this vacuum of authority, the USA has also carried out a programme of so-called "targeted killings" by pilotless 'drone' aircraft that raises human rights concerns, particularly given the lack of transparency surrounding the programme.<sup>13</sup>

Over the last three years the Pakistan Armed Forces have managed to wrest back control of most parts of the Tribal Areas from the Taliban. As the state has regained territory, the Armed Forces have detained thousands of individuals on suspicion of association with the Taliban, without adequate substantiation by the Armed Forces or any confirmation of the basis for their detention.

**"When I surrendered my son to the Army's 7 Baloch Regiment he was a healthy man, he weighed about 85kgs. When they handed his body back it was about one-third of his previous size. We bathed him before burial I noticed his back was covered in lashes, that looked like whipping marks."**

Father of Gulzar Jan who died in Army custody.



Pakistan Armed Forces troops take position on a hilltop post in Khajore Kut, an area of Pakistan's South Waziristan tribal region, July 2010. The Actions (in Aid of Civil Power) Regulations 2011 give sweeping powers to the Pakistan Armed Forces in the insurgency-hit Tribal Areas. Thousands have been arbitrarily detained, risking torture, other ill-treatment and even death while in custody. ©AP Photo/Mohammad Sajjad

The Armed Forces' arrest and detention practices go beyond even the sweeping powers granted under the AACPR to a range of further human rights violations including torture and other ill-treatment, and enforced disappearances. Amnesty International has also documented a number of cases of deaths in custody. In none of the cases documented has there been a prompt, thorough and effective investigation by an independent and impartial institution.

Men and boys allegedly arrested and detained by the Armed Forces are being returned dead to their families or reportedly found dumped across the Tribal Areas almost every week. Amnesty International is particularly concerned about at least 17 cases it has recorded where individuals arrested and detained by the Armed Forces later died in detention. Although Amnesty International was not able to clearly establish the cause of death in most of these instances, in many there was relevant testimony and some medical records, suggesting that the detainee died as a result of torture or other ill-treatment.

These violations continue across the Tribal Areas, in parts where there is an ongoing armed conflict and parts where there are no longer active hostilities between the Armed Forces and the Taliban and other armed groups. Far from bringing respect for the rule of law, it is clear that current Armed Forces practices and the legal and administrative system applied in the Tribal Areas foster a climate of total impunity for human rights violations. There will continue to be no effective enforcement of human rights in the Tribal Areas until the Pakistani authorities undertake major legal and policy reforms to ensure the effective protection of human rights.

Amnesty International acknowledges the Pakistani authorities' legitimate and important role in bringing those Taliban and others suspected of responsibility for human rights abuses to criminal justice. However, whatever crimes such individuals may have perpetrated could in no event justify the authorities themselves carrying out human rights violations including enforced disappearances, torture and other ill-treatment, prolonged arbitrary and incommunicado detention, and deaths in custody without investigations.

## 2.1 DEATHS IN ARMED FORCES CUSTODY

**"You are lying! If you don't tell the truth, we will kill you and dump your bodies."**

Threat to detainees Ahmed and Afaq by a Pakistan Army Major

The Pakistan Army and other sections of the Armed Forces have committed unlawful killings throughout operations against the Taliban and other groups.<sup>14</sup> Since the reduction in hostilities in most parts of the Tribal Areas, Amnesty International has documented a number of cases of deaths in the custody of the Armed Forces in unexplained circumstances. In many of the cases, the first the family heard of the fate or whereabouts of their relative after their arrest and detention by the Armed Forces was to find out that he is dead. Amnesty International is not aware of any investigations into the deaths in custody documented in this report as required under international law<sup>15</sup>, including in the high profile 'Adiala 11' case which has received significant national and international media attention.<sup>16</sup>

In July 2010, Shahzeb, a 25-year-old buffalo farmer from Charbagh in the Swat valley, was summoned by a committee established by the village to liaise with the Army and other government authorities. "One of the committee members called our family and said the Army wanted to speak to Shahzeb, they accused him of supporting the Taliban," his brother Karamet said. Karamet and Shahzeb went to meet the committee willingly at the village 'hujra' or public meeting room. There was an Army Major at the hujra, who Karamet says accused Shahzeb of fighting with the Taliban, but he denied the accusation.

Karamet says that the Major ordered that Shahzeb be detained. "We never saw him alive again," he told Amnesty International. "Not once did the Army or any [other] government authority contact us to tell us where he was being kept, what he was guilty of, or how he was being treated [in detention]." Through these practices, the Armed Forces subjected Shahzeb to enforced disappearance. Three years later, in August 2012, Karamet received a call from a member of the village committee. "He said the police had contacted him to say that Shahzeb's body was at the police station, come and take it." Karamet and other relatives immediately retrieved Shahzeb's body. "His body did not look fresh, like he had been dead for five days," Karamet said. He told Amnesty International that the family was not given any explanation for Shahzeb's death, and that, as far as they were aware, no medical examination had been carried out as to the cause of his death. "When the Army took Shahzeb he was a strong, young man. He had no health problems. I am convinced his time in prison killed him."<sup>17</sup>

Amnesty International has documented other cases where the police or medical authorities

informed relatives or their communities that they were holding the dead bodies of men previously detained by the Armed Forces. But in each case, these authorities had not investigated the circumstances behind their deaths.

A member of a village committee contacted Farooq on the morning of 16 August 2012 to notify him that the dead body of his 40-year-old son Gulzar Jan had been brought to the local police station. “All the police said was that he was ill while in prison [Army custody] and died of his illness,” Farooq told Amnesty International. But they did not explain where he had been held or who had brought his body to the police station. “When I surrendered my son to the Army’s 7 Baloch Regiment he was a healthy man, he weighed about 85kgs,” Farooq recalled. “When they handed his body back it was about one-third of his previous size. When we bathed him before burial I noticed his back was covered in lashes, which looked like whipping marks.”<sup>18</sup>

As in the case of Shahzeb, Gulzar Jan had voluntarily reported to an Army contingent, in April 2010, for questioning following accusations by a neighbour in his village that he was supporting the Taliban.

The Army had told Farooq that they would investigate the accusations and then get in touch with him again. A month after Gulzar had been taken away, Farooq had asked a village elder who was in touch with the Army about his son and was told to wait a little longer. Through the village elder, Farooq had then met with the Army Colonel in charge of the soldiers who had taken Gulzar, and the Colonel assured him that Gulzar would be returned. “Time passed and we did not hear anything about Gulzar so we went for a second time to meet the Colonel but he was not present at the Army base near our village. We met a Major, he said Gulzar Jan is not here and we do not know where he has been shifted. For two and half years I never met or heard anything about my son. The next time I saw Gulzar I was bringing his dead body to be buried in our village.”

Not knowing anything about his fate or whereabouts over the two and a half years that Gulzar was subjected to enforced disappearance by the Armed Forces, his family faced extreme distress and anguish. “Every night his mother would pray for his health and that he would be returned soon. I was always anxious about whether he would ever be released,” Farooq told Amnesty International. As the UN Human Rights Committee has underlined the families of victims of enforced disappearance are themselves victims of inhuman treatment caused by the Pakistani authorities.<sup>19</sup>

The enforced disappearance of Gulzar ended only when his body was returned to the family by the police who said it had been delivered to him by the Army. The police said the Army told them Gulzar had died in their custody due to ill health. But there was no autopsy or investigation into the circumstances surrounding Gulzar’s death by the authorities even though the family asked the police to do so.

In another case, 19-year-old Tahir, a Special Police Force officer from Manglawar, Swat, was detained by the Army in January 2012 on suspicion of supporting the Taliban. As far as Amnesty International is aware, however, neither Tahir nor his family were told of the legal basis for his arrest and detention. Eight months later, in September 2012, he died during treatment for an unknown ailment in Saidu Teaching Hospital. According to his family, Tahir

had been healthy with no known medical conditions before being detained by soldiers under the command of a Major from the Pakistan Army's 58 Baloch Regiment. His brother Wali told Amnesty International of the moment he received his brother's dead body:

*After [Muslim celebration of] Eid [on 20 August 2012], people in Swat were expecting the release of their nearest and dearest. I was hoping for Tahir's release and finally [27 September 2012] I got a call on my cell phone. The person told me that Tahir was ill and had been shifted to Saidu Medical Hospital. I asked his name but he wouldn't say. He just said I should go quickly and that he would meet me at the hospital. When I arrived at the hospital it was 11 o'clock in the morning. I went to the emergency counter and asked the three people there whether a patient named Tahir had been admitted. I explained to one of them, a doctor, that I was Tahir's brother and that the Army had told me he was at the hospital. The doctor said Tahir had been brought to the hospital by an Army ambulance a few hours earlier in a critical condition. He led me to another big room where a body was lying on a bed, covered with white sheet of cloth. The doctor removed the cover from his head and it was Tahir... I don't remember what I did after that. We buried him within a few hours.*

### **DEAD BODIES OF DETAINEES DUMPED ACROSS THE TRIBAL AREAS**

Just before evening prayers in February 2011, poultry farmer Jahanzeb was arrested by Army soldiers from his village in Swabi, Khyber Pakhtunkhwa province. He was not seen alive again by his family. More than a year later, on 27 June 2012, Jahanzeb's dead body was found dumped in Haripur District, around 80 kilometres from where he was arrested. To date there has been no investigation into the alleged role of the Armed Forces in Jahanzeb's death, despite several witnesses last seeing him in the custody of Army soldiers, and attesting to this in a petition submitted to the Peshawar High Court in 2011 relating to the lawfulness of his and other detentions by the Armed Forces.

Jahanzeb's case is one of several reports received by Amnesty International of men arrested by the Armed Forces later being found dumped dead across the Tribal Areas. In all the cases implicating the Armed Forces that Amnesty International is aware of, the authorities have failed to carry out a thorough and effective investigation into the circumstances of the deaths or provide compensation for victim's relatives. In some cases a First Information Report (FIR) was filed,<sup>20</sup> but these were not pursued, and even though the individuals had been previously held in the custody of the Armed Forces, this was not even mentioned in the FIR. However, it has only been possible to investigate a handful of these cases in detail for this report due to the volume of incidents received, the remoteness of locations where the bodies have been and continue to be recovered, and the refusal of witnesses to discuss the cases. Amnesty International is therefore concerned that the practice of dumping the bodies of those who die in custody may be more common than our research has been able to establish.

Medical staff and law enforcement authorities were also very reluctant to discuss cases in which the Armed Forces were implicated. For example, although the Haripur District police who investigated Jahanzeb's death told Amnesty International they had registered an FIR,<sup>21</sup> as far as Amnesty International is aware, the police have not yet carried out any investigation into the alleged involvement of the Armed Forces or other state agents. Moreover, the



medical staff who attended to Jahanzeb's dead body at District Headquarters Hospital in Haripur on the day it was discovered, have refused to discuss its condition or whether they had conducted any examination of it. They also refused to comment on media reports that Khan's corpse appeared to exhibit signs of torture and that his back was heavily bruised.<sup>22</sup> Nor were the police and medical staff willing to discuss questions regarding any pressure from the Armed Forces or other authorities not to investigate the state's role in Jahanzeb's death. Jahanzeb's family also refused to discuss his case in detail, one of his relatives saying only that it was “dangerous” for them to speak publicly about his death. Amnesty International is concerned that Jahanzeb's family may have been threatened by the Armed Forces to prevent them from speaking openly about his case.

The discovery of Jahanzeb's dead body, a day after a landmark order by Peshawar High Court in June 2012 to release more than a thousand detainees in Armed Forces detention (see section 5), has had a “chilling” effect on the families of the men and boys held by the Pakistan Armed Forces, according to Ghulam Nabi, a lawyer representing Jahanzeb's family. Nabi told Amnesty International that the authorities have denied holding Jahanzeb despite his arrest by Army soldiers being witnessed by several people, some of whom attested to this in a petition submitted with the Peshawar High Court. The authorities have also denied any responsibility for his death. Nabi said the fact that the dead bodies of individuals detained by the Armed Forces were being recovered far from where they were arrested sent a signal to lawyers and victims' families that the Armed Forces were “above the law”.<sup>23</sup> Other lawyers, such as the respected President of the Peshawar High Court Bar Association, Latif Afridi, have made similar claims. “They are killing people like this [because], if they are released, it will show that the authorities have them [in their custody]. So they just kill them instead.”<sup>24</sup> In contrast, the Peshawar High Court has ordered the authorities to investigate a spate of ‘dumped bodies’ in and around the city of Peshawar, capital of Khyber Pakhtunkhwa province. But as far as Amnesty International is aware, the Court has not called for any specific investigations into the Armed Forces.<sup>25</sup>

It is a fundamental rule of international human rights law that no-one may be arbitrarily deprived of his or her life. Article 6(1) of the ICCPR<sup>26</sup> provides: “Every human being has the inherent right to life. This right shall be protected by law.” This provision of international human rights law can never be suspended or otherwise derogated from even “in time of public emergency which threatens the life of the nation”. The circumstances in which international human rights law allows an individual to be lawfully deprived of his life are very restricted.<sup>27</sup>

Under international law “a death of any type in custody should be regarded as *prima facie* a summary or arbitrary execution and there should be a thorough, prompt and impartial investigation to confirm or rebut the presumption.”<sup>28</sup> By not undertaking any investigation into many of the cases documented by Amnesty International for this report, Pakistan is in breach of its international legal obligations.

The UN Human Rights Committee has confirmed that “states parties should take specific and effective measures to prevent the disappearance of individuals and establish facilities and procedures to investigate thoroughly, by an appropriate impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.”<sup>29</sup> States have a duty as part of their obligations under article 2(3) of the ICCPR to

"investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies"; a failure to do so in respect of a death of a person last seen in custody of the state can, whether or not the state can be definitively proved to have unlawfully deprived the person of his life, "in and of itself give rise to a separate breach of the Covenant."<sup>30</sup>

Similar considerations apply in situations of non-international armed conflict. International humanitarian law prohibits attacks on anyone who is *hors de combat*, which includes detainees in the power of an adverse party to the conflict.<sup>31</sup> Murder of persons *hors de combat* is prohibited.<sup>32</sup> State authorities are still required to carry out a thorough, prompt and impartial investigation into deaths in custody, and in the absence of an explanation resulting from such an investigation, international human rights bodies may presume the deaths to constitute summary or arbitrary executions and/or find violations of the obligation to investigate such deaths.

Deliberate killings that do not comply with international law are often referred to as "extra-legal, arbitrary or summary executions" or "extra-judicial executions". Principle 1 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions<sup>33</sup> provides: "Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences."<sup>34</sup> The Human Rights Committee has further underlined that "States Parties must ensure that those responsible are brought to justice", and that a failure to bring to justice perpetrators may constitute a violation of the ICCPR. This includes violations of the right to life, the prohibition against torture and other ill-treatment and enforced disappearances.<sup>35</sup>

## 2.2 TORTURE AND OTHER ILL-TREATMENT IN DETENTION

**"...The first time I got a slap I was already in a state of shock, I don't remember for how long they kept on beating me after that but when they stopped I was already lying on the floor and my whole body was aching with pain. I was crying because of the pain, anger and shame."**

Noor, victim of torture

Pakistan's Armed Forces have been implicated in the torture and other ill-treatment of individuals detained over the last decade of counter-insurgency operations against the Pakistani Taliban and other armed groups in Tribal Areas.<sup>36</sup> As the state's practices have moved away from large-scale military operations to sporadic clashes with armed groups over the last three years, the authorities' attention has shifted to search operations resulting in thousands of arrests and detentions. With this shift in focus, Amnesty International has become increasingly concerned about the treatment of detainees.

Typical of the 19 cases of torture and other ill-treatment by the Armed Forces documented by Amnesty International is the case of Hameed, arrested during an army search operation in Batkhela, Malakand District, in September 2010. Held in Malakand Fort, an army base, Hameed said that Army soldiers beat him with their fists and kicked him during interrogations that lasted for around 15 minutes at a time almost every day for a period of several weeks. While being beaten, he was repeatedly asked questions about his involvement with the Pakistani Taliban in Batkhela. Relatives who briefly visited Hameed in a prison at Malakand Fort said he looked frail, had a cut on his lips and was missing a front tooth; both of these injuries he ascribed to the beatings he received from soldiers during his detention. Apart from the beatings, a relative also claimed that he was not given adequate food. “Hameed was so thin. He said they were feeding him only enough to keep him alive.”<sup>37</sup>

The Armed Forces have also been accused of resorting to torture during interrogation sessions in detention facilities that appear to have been designed specifically for that purpose. Twenty-seven year old farmer Noor recounted his experiences of torture after willingly turning himself over to the Army in late 2009. Some neighbours had told Noor that his name was on a list of suspected members of the Taliban. Despite fearing ill-treatment if he contacted the Armed Forces, Noor's parents convinced him to visit a local Army base in Derrai to clear his name. But as he tried to explain his situation he was detained by soldiers from Army Unit 14 NLI. “I told one of the soldiers at the entrance to the main building in the base that I was mentioned on a Taliban list and afterward he went into the building.” As soon as the soldier returned he ordered three other soldiers standing guard to detain Noor. “The soldiers held me by my shoulders and wrists and took me into the building,” he recalled. “They never explained what the charges against me were or what I was accused of doing.”

Noor said he was placed in a room that already had 15 other men in it. “I didn't recognize any of them. But we all were very afraid. Some of them were in a very bad condition, you could see a few had been beaten very brutally because their faces were swollen. When I saw these prisoners I got very frightened.” Although kept in the same room for most of the time, the soldiers took Noor to a separate room for interrogations where he says he was tortured.

“A group of soldiers would come into the room and call out the name of a prisoner and then take him for interrogation,” Noor recalled. “Finally my name was called and I stood up immediately and went with them. I don't recall exactly how long after they arrested me this happened, I was so frightened, but it must have been some hours later [on the same day].” Noor was escorted by the soldiers to another a room where there were another five soldiers present. “There were sticks, knives, bamboo sticks, lashes, hand cuffs on the wall and a rope was hanging from the roof as if it was used to hang people.”

“I cannot tell you how frightened I was when I saw all those things.” One of the soldiers asked Noor his name, his father's name, his address, and then, according to Noor, he said, “we have proven reports that you were with the Taliban.”

Noor denied being part of the Taliban. “I told them that this is a lie, but as soon as I said that they started hitting me with punches, slaps and kicked me with all the force they could. I was screaming and begging them to stop and was swearing by Allah that I was innocent and had nothing to do with the Taliban but they kept on hitting me.”

*The first time I got a slap I was already in a state of shock, I don't remember for how long they kept on beating me after that but when they stopped I was already lying on the floor and my whole body was aching with pain. I was crying because of the pain, anger and shame. They again asked me to tell the truth and tell them about my contact with the Taliban. I couldn't say anything at first then a soldier came near me and hit me very hard on the head with his open hand and screamed, "talk!" I again swore upon Allah and said I was innocent and had nothing to do with the Taliban, but they again started hitting me. I don't know when they stopped and took me back to the room and pushed me in. It felt like an eternity but it was probably about two or three hours later. All night I couldn't even lie down on my back, all my body was in pain. That night was the most terrible night of my life. I have never even seen an animal beaten the way I was beaten.*

Amnesty International has documented a number of cases in which torture and other ill-treatment, such as experienced by Noor, happened during interrogations at army bases. Niaz Khan says he and his brother Ayub Khan were beaten with leather straps during continuous interrogation sessions conducted by Army personnel over a period of 10 days in March and April 2012. After each session, according to Niaz, they were left shirtless, exposed to cold late evening or early morning temperatures in an open-air prison ward along with dozens of other inmates until daybreak. Niaz claims he and Ayub were detained by the Army because their uncle had been a commander of the Pakistani Taliban in the Matta area of the Swat valley, a region now under state control. Niaz also said he and Ayub had been village representatives on a community council established by the Taliban during their occupation of the region.

## **FAILURE TO INVESTIGATE ALLEGATIONS OF TORTURE<sup>38</sup>**

Niaz Khan, a 39-year-old farmer in the the Swat valley, was arrested at his house one morning in March 2012 by around 15 soldiers of FF66 unit of the Pakistan Army's Punjab Regiment. "First the soldiers surrounded our house, then they entered it. They searched the rooms and eventually they found me. .... One of the soldiers told me to come with them," Niaz recalled.

"From there they walked me out to one of the Army trucks and then they drove off. I did not resist them. They took me to an Army base at the Government Degree College in Matta, Swat. When I arrived they tied my hands and covered my face with some kind of cloth."

The Army told Niaz's younger brother Ayub to come to the base. "Someone from the Army, I do not know who, told people from our village to summon him," Niaz said. When Ayub arrived at the base on 30 March he was also detained, but Niaz only discovered this the following day, 1 April. "At six o'clock in the morning they brought Ayub into the lock up with me. That evening they blindfolded us and took us to another location. I later learnt it was an Army camp in Shangwatai village [in Matta district, Swat]."

"For the first five days they beat us constantly with leather belts across the top and bottom of our backs throughout the day, up to an hour at a time" Niaz Khan told Amnesty International. "The pain was too much to describe, but I could hear Ayub screaming while they tortured him before or after me."

“There were always five soldiers at every interrogation session, all in Army uniforms but usually only one of them did the talking. One of them was a *subedar* (non-commissioned officer). I assumed he was in charge. He would threaten to kill me if I didn't confess to being part of the Taliban. I kept telling him that my cousin was a militant, but that neither I nor Ayub ever belonged to the Taliban, we are just farmers.”

According to Niaz, on hearing this, the *subedar* screamed, “Your brother is going to die tonight. If you don't want to see him for the last time, speak the truth.”

“Each time they finished they dragged me out of the torture cell and one of the five men would kick me out like a football onto an open-air ground inside the prison. It was extremely cold, and it was only then I noticed dozens of others like me, including my brother, shivering and whimpering in the cold.” Being natives of the region, they recognised the mountains and landscape of Shangwatai. “That is how I knew this was the place where we were kept.”

As far as Amnesty International is aware, no investigation of any kind has yet been conducted by the Pakistani authorities into the alleged torture of Niaz and Ayub or into Ayub's subsequent death in army custody 10 days later (see Introduction).

Article 1 of the UN Convention against Torture (CAT)<sup>39</sup> defines torture to mean:

*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

Torture and other cruel, inhuman and degrading treatment are absolutely prohibited by international law in all circumstances, including by the ICCPR, the CAT, the Geneva Conventions and customary international law.<sup>40</sup> Torture is a crime under international law.<sup>41</sup> Information obtained by torture or other cruel, inhuman or degrading treatment must not be admitted as evidence in any proceeding.<sup>42</sup> International human rights standards further require that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.<sup>43</sup>

Additionally, and critically, states are obliged to conduct prompt, thorough, effective investigations by independent and impartial bodies into torture and bring those responsible to justice.<sup>44</sup> Pakistan is required to ensure that all allegations of torture, as a crime under international law, are subject to criminal investigations and that wherever sufficient admissible evidence exists, cases are actually brought to prosecution.<sup>45</sup> The AACPR provides for the appointment of an Oversight Board, whose mandate includes reviewing the “conditions of internment centers” and making inquiries where there is any complaint of “torture”, “in-dignified” [sic] or “degrading” treatment.<sup>46</sup> The Oversight Board must investigate any complaint or information regarding such treatment, but it can only recommend “suitable departmental action against the official concerned.”<sup>47</sup> The powers of the Oversight Board do not then meet Pakistan's requirements under international law for an effective mechanism for enforcement of the prohibition on torture. While the AACPR does

include a clause that makes crimes under international law an offence, it provides only that these cases will be tried "pursuant to a procedure to be prescribed under" the AACPR.<sup>48</sup>

Furthermore, the Oversight Board consists of two military and two civilian officers, appointed by the Governor, who prepare a report "for consideration of the Provincial Government."<sup>49</sup> Given the Governor's close involvement in the appointment of these personnel, and the fact that those appointed are unlikely to be independent, and may include members of the same branch of Armed Forces alleged to have committed torture or other ill-treatment, any investigation conducted by the Oversight Board is unlikely to be independent, impartial, thorough or effective.

In any event, Amnesty International has been unable to find any confirmation that the Oversight Board has been established or that it has examined any allegations of torture or other ill-treatment against detainees, reflecting the generally unaccountable and inaccessible nature of the detention regime under the AACPR.

There are a range of protections against torture and other ill-treatment under Pakistan law which, although in some respects fail to fully comply with international standards, would provide a measure of protection and must be effectively enforced in the Tribal Areas. Article 15 of the AACPR prohibits the torture of any "person interned" pursuant to the AACPR. However, the AACPR does not contain or refer to any definition of "torture", and the prohibition does not extend to all other forms of cruel, inhuman or degrading treatment or punishment, as required by international law.<sup>50</sup> Article 14(2) of the Constitution of Pakistan prohibits torture for the purpose of extracting evidence.

Both Pakistan's Law of Evidence<sup>51</sup> and The Criminal Procedure Code of Pakistan<sup>52</sup> also prohibit the use of statements in proceedings obtained through ill-treatment, torture or threats. Article 337-K of the Pakistan Penal Code criminalizes causing "hurt for the purpose of extorting... any confession or any information which may lead to the detection of any offence or misconduct." However, by failing to include the broader range of purposes listed in the CAT and limiting its application to physical pain or injury, this provision fails to criminalize the full range of conduct covered by the definition of torture under international law. Further, the UN Human Rights Committee has stated that "it is not sufficient ... to prohibit such treatment or punishment or to make it a crime". Measures of prevention, investigation, and punishment of perpetrators and reparation for victims are also obligations under the CAT and ICCPR.<sup>53</sup> While the AACPR prohibits torture, this very limited legal provision does not satisfy Pakistan's international legal obligations in this regard.<sup>54</sup>

As outlined above, Amnesty International is not aware of any cases in which allegations of torture or other ill-treatment have been investigated by the authorities, certainly not in the cases documented in this report. By failing to investigate allegations of torture and other ill-treatment, Pakistan is again in violation of international human rights law. It must act immediately to effectively investigate allegations, and bring to justice those responsible.

## 2.3 ENFORCED DISAPPEARANCES AND ARBITRARY DETENTION

Amnesty International research uncovered 39 cases of enforced disappearance carried out by the Armed Forces in the Tribal Areas, and is concerned that these represent only a fraction of the total.<sup>55</sup>

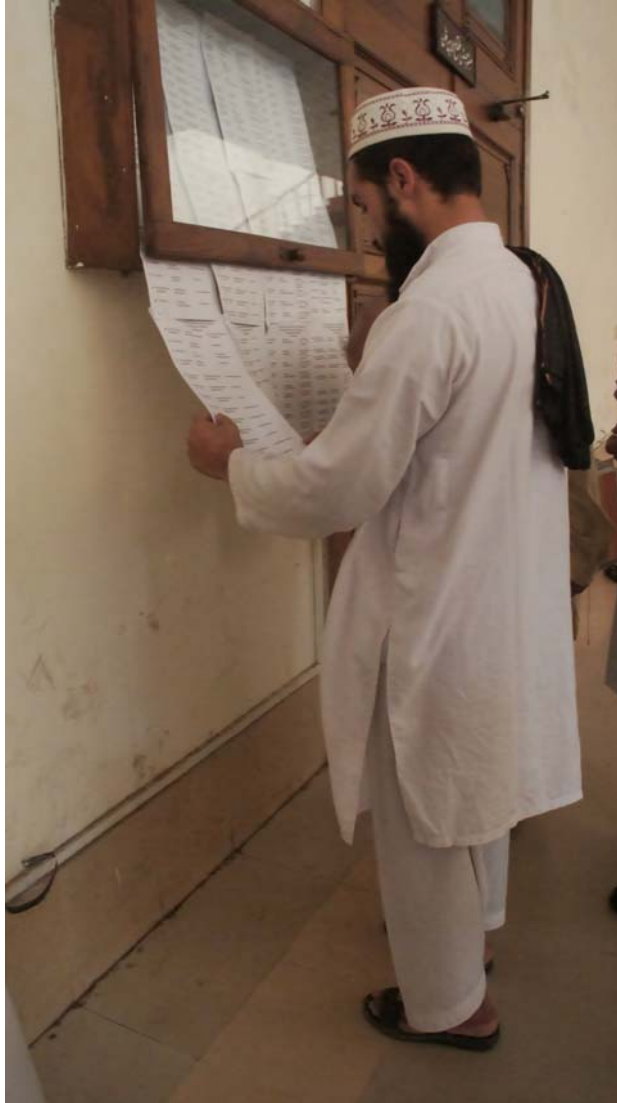
The UN Human Rights Committee has held that enforced disappearances constitute multiple violations of the ICCPR, in particular including the right to liberty and security of person, the prohibition on torture and other ill-treatment, the right of detainees to humane treatment and the right to life.<sup>56</sup>

The AACPR seeks to regularise detentions carried out by the Armed Forces, thereby avoiding the risk of enforced disappearances. However, lawyers acting on behalf of detainees or relatives in over a 100 cases brought before the Peshawar High Court told Amnesty International that the only indication that their clients had been detained under the AACPR was the appearance of their name in internment center detention lists prescribed under the regulations. The specific current location of the detainee was not always provided, nor was any other indication of the legal basis for the arrest, including charges against the detainee; and court proceedings did not always result in the fate of the detainee being established.<sup>57</sup> Furthermore, these lists were only provided after the High Court requested them from the authorities. They were not made available to family members or others with a legitimate interest until cases were brought to the courts, and relatives and friends of those detained said they were never provided with information about internment centers, including their location. The lists also appear not to record all individuals held by the state under the AACPR regime, and in November 2012 the Peshawar High Court ordered the authorities to provide a full and complete list of all detainees held and their locations by December 2012.<sup>58</sup> At the time of writing, this list had still not been provided to the Court.

The Peshawar High Court has also taken such action by asserting jurisdiction in cases challenging the lawfulness of detention. In June 2012, it took the unprecedented step of ordering the authorities to release 1,035 named detainees. Although the authorities later told the court they had released all of these detainees, the releases have not been confirmed by an independent and impartial institution, and at least a further 895 remain in internment centers where they continue to risk torture and death, without any clear indication of when or if they will be brought to trial.

It is very likely there are others in the custody of the state outside the official internment centers. The civil administration for FATA, for example, has facilitated unacknowledged detentions in unofficial places of detention by the Armed Forces. According to Peshawar High Court records, Malik Mujtaba Khan, Standing Counsel for the Additional Chief Secretary to the FATA Secretariat, told the Court that the Political Agents did not have any individuals arrested by the Armed Forces in their custody. However on 11 July 2012 the Court said that it had found that “more than 20 individuals” were being held in unacknowledged detention in prisons maintained by Political Agents in different Agencies of FATA that are not in prescribed internment centers.<sup>59</sup> The Court ordered the authorities to investigate these detentions further and to release anyone found to be illegally detained by the Political Agents.<sup>60</sup> In contravention of article 9(4) of the ICCPR, however, and as far as Amnesty

International is aware, the Court in these cases did not itself continue any inquiry into the lawfulness of the detentions.



Every month, Fazle Khaliq anxiously looks through the list of hearings inside the Peshawar High Court hoping government lawyers finally provide information on the fate or whereabouts of his brother Fida Hussain. Fazle and Hussain were both arrested and detained by the Pakistan Armed Forces on the evening of 23 March 2012 from the local market at Khairabad in Nowshera District, north-west Pakistan. Although Fazle was released the same evening, Fida Hussain remains missing. © Amnesty International



Apart from the FATA administration's promises to abide by these court orders, Amnesty International is not aware of any steps taken to release or provide due process rights to the men and boys held in unacknowledged detention in FATA or any penalties applied to agents of the state involved in these detentions. On many occasions neither relatives nor lawyers were able to visit detainees despite clear orders by the Peshawar High Court to the authorities to facilitate these visits.<sup>61</sup>

Given the secretive and unaccountable nature of detention practices, Amnesty International has been unable to determine the exact number of individuals held in detention in the Tribal Areas. Over 1,000 detainees have already been named by the authorities in the internment center detention lists produced before the courts. But lawyers and activists estimate that this represents only a fraction of all detainees and believe thousands more remain in detention. According to a senior government official familiar with the government's detentions process, over 2,000 cases have been registered at the Peshawar High Court. “But, the actual figure of missing persons [i.e.: victims of enforced disappearance or other unlawful detentions whose fate or whereabouts are unknown] is much higher.”<sup>62</sup>

## ENFORCED DISAPPEARANCE OF AYAZ

Ayaz was subjected to enforced disappearance by the Armed Forces for over a year and was eventually released without charge. Having fled the area in 2008, he says he returned to his village, near the city of Shabqadar, Khyber Pakhtunkhwa province, in 2010 after the Taliban had been pushed out of the surrounding areas by the Army.

Just after evening prayers in July 2011, soldiers from the Azad Kashmir Regiment of the Pakistan Army accompanied by local police surrounded Ayaz's village, Zohaib, a resident who witnessed the incident, told Amnesty International:<sup>63</sup> “First they surrounded the entire village, then around 30 to 40 soldiers started searching from house to house. They gathered all the men and boys, mostly those who were 15-40 years old, but some older men too, and put about 20 of them into police cars. No one knew why the Army had come, but we suspected it was because our village used to be controlled by the Taliban. The Army was looking for people who belonged to the Taliban.”

During the search operation, soldiers arrested 45-year-old Ayaz, a noted religious teacher from the village. One of Ayaz's children, who witnessed the incident, told Amnesty International: “I opened the door and saw the Army people. I told them there were no men in the house, but they just came in and saw my father there. They said they wanted to take him and a few soldiers grabbed him while others searched our house. The Army people didn't recognise him. But then another person came, a man in plain clothes, he told the soldiers who he was. I didn't recognise him, he spoke Pashto but was not from the village. I think he was an Army informer.”

Relatives of Ayaz said that the Army and police personnel did not explain the grounds for arresting him, nor was the family ever subsequently told about Ayaz's fate or whereabouts. As with almost all of the cases documented for this report, the only information obtained by relatives about Ayaz's fate and whereabouts came through informal contacts. The day that Ayaz was taken, three *jirgas*, or tribal meetings, were convened to talk to Colonel Waseem, commander of the Azad Kashmir Regiment, at its base in the ‘Rest House’ hotel near Michene Bridge. “I went with the son of the biggest chief in our area who is also very pro-government, along with about 15 other people including witnesses to Ayaz's arrest,” Ayaz's relative told Amnesty

International. "But Colonel Waseem was not available to meet us. Our village malik then contacted the Colonel on his cell phone and he said he was away in Murree and would be back in 17 days."

Seventeen days later the family again approached the Army accompanied by 15 local maliks. "We met Colonel Waseem personally and he said the Army was still investigating Ayaz, please come back," one of the men who attended the meeting told Amnesty International. "While we asked him for more information about why Ayaz had been taken and whether he was being treated well, the Colonel said that his case was out of his hands because Ayaz had been handed over to the Inter-Services Intelligence (ISI). He said, 'ask the family to wait and let's see. I'll see what I can do.'"

Two months after that meeting, in September 2011, the same *jirga* accompanied by more than 30 residents again spoke to Colonel Waseem. He told the *jirga* he still had no further information about Ayaz. According to one of the residents who accompanied the *jirga*, the Colonel claimed; "I don't have the power to do anything with the ISI. I cannot help you any further but you should go to the Court and file a case for his release." Some of the men and boys that had been detained by police at the same time as Ayaz on 2 July 2011 were released around five days later. They told relatives that Ayaz was briefly detained along with them but was later the same day separated from them and taken to the Army camp at the Rest House hotel, which is not a listed "internment center".

Ayaz's detention and absence had a significant impact on his community. "Because of his absence [while in detention] there were a lot of problems. He was the only one teaching Quran to the girls in the village, they had no one to go to learn to read or write," said a resident from Ayaz's village. The community has also found it difficult to find an *imam* or religious cleric to perform funeral prayers and marriage ceremonies in the village.

Ayaz's family were denied any confirmation of his fate and whereabouts for more than a year after he was taken by the Army. "For so many months we had no idea if he was alive or dead," one of Ayaz's children told Amnesty International.

Although visibly shaken by his ordeal, Ayaz himself recounted his experience in detention to Amnesty International, in which he alleged he was beaten at different points: "I was kept somewhere in Peshawar but where I cannot say exactly. The first four months were very tough, they were particularly strict, food was not given on time, the quantity was little and not of a good quality. I was not allowed to go to the bathroom for many days at a time, or offer prayers. They would punch me repeatedly, anywhere between two or four men at any time of the day or night. Mostly they did not ask me anything [while punching him], they just swore at me. After four months of these conditions I was shifted [to another prison], I don't know where [because] I was blindfolded but the treatment was better. I was given better food, and they didn't beat me or stop me from praying or going to the bathroom. I saw other people from our village there too. There were three classes of prisoners in the jail, those in black clothes, those in blue and [those in] red clothes. Minor cases [*i.e.*, cases where the detainee was under a lower level of suspicion] were in red clothes. Those they were a bit unsure of or still investigating were in blue and those that they were certain were Taliban or militants were in black clothes, which meant they would be killed or imprisoned for life. I was in red clothes so I knew they knew I was innocent, but I did not know if they would ever release me." Still deeply affected by his ordeal in Army custody, and only recently released, Ayaz would not discuss conditions in detention or his treatment with Amnesty International in any further detail, including his experiences during the latter months of his detention.

One evening in August 2012, an Army officer entered Ayaz's prison cell and told him he would be released the following day. "Your verification has been finished, you can go home now," Ayaz recalled. "The next morning at

10:30 am I was taken to an Army officer's office by a soldier. The officer said 'you are now a free man'. He told me to keep silent and not to talk about what happened with me to anyone or I could again face trouble. Then he asked the soldier to release me." After his eyes and face were covered with cloth and his hands tied, Ayaz was escorted to a vehicle. "After 20 minutes of driving the car stopped and they untied my hands and took the cloth off my face. As they drove off I noticed I was standing in front of a famous landmark in Peshawar."

Despite several appeals by his family and lawyer, at no time during Ayaz's ordeal did the Pakistan Armed Forces or any other authorities give reasons for his arrest and detention or formally provide his family or lawyer with information about his fate and whereabouts.

The concealment of the fate and whereabouts of Ayaz effectively placed him outside the protection of the law, including even the limited protections of the AACPR. Despite being a respected senior member of his village, several appeals by local elders trusted by the Army, and informal acknowledgements from the authorities that he was in their custody, neither Ayaz's immediate family nor his community were aware of any formal process through which they could request access to him. Nor did any Pakistani authorities provide information on his condition or where he was being detained. The fact that a man of his social standing – with the local jirga pursuing his case and attempting to find out what had happened to him – faced such problems raises serious concerns about the ability of other detainees to have access to their family or a lawyer, or for their family to know their fate or whereabouts. Further, the concealment of Ayaz's whereabouts for more than 13 months caused great anguish to his family, amounting to torture or other ill-treatment of the family in this case.<sup>64</sup>

Ayaz's detention for 13 months without being brought before a court able to rule on the lawfulness of his detention, and with the power to order his release if found unlawful, also demonstrates how the specific legal framework in the Tribal Areas, including the AACPR, does not effectively check instances of enforced disappearances carried out by the Armed Forces, and may even serve to facilitate such violations. His treatment is also in violation of Article 9 of the ICCPR, which provides that no one should be subjected to arbitrary detention.<sup>65</sup> Furthermore, although Ayaz's family filed a *habeas corpus* petition with the Peshawar High Court in May 2012, as far as Amnesty International is aware, he was only released when the Army had concluded its own, separate investigations.

The Armed Forces still hold many other people in arbitrary detention in breach of Article 9(1) of the ICCPR. This is especially clear when detainees like Ayaz are held without any reasons being given for their arrest and detention, as required by the ICCPR,<sup>66</sup> and are held for such lengthy periods without being brought before a court. In most of the cases documented by Amnesty International, the Armed Forces did not give reasons for detention. In the handful of cases where they did, the reasons were either broad or vague and in no case did the authorities explain to detainees the charges against them.

Those subjected to enforced disappearance are often returned to their families dead. Like Shahzeb and Gulzar Jan whose stories were documented earlier, 40-year-old Ali Raza was subjected to enforced disappearance when he was taken by Army soldiers from his village in Swat district in August 2011. He subsequently died in Army custody.<sup>67</sup> His family had no idea about his fate or whereabouts and were fearful of contacting the Army or other

authorities because he had been a member of the Taliban and were concerned that inquiring about him "could cause more problems for us" according to his brother. Then his brother received a call in early July 2012. "An Army officer rang my cell, he said Ali is dead," his brother told Amnesty International. "He said Ali had been arrested last year because he was involved with the Taliban. The officer said his body is being kept in Saidu Teaching Hospital." At no time did the authorities inform Khan's family where he had been detained or the reasons for his death.

No case of enforced disappearance documented in this report is known to have been investigated by the authorities. Enforced disappearance is a crime under international law<sup>68</sup> and is absolutely prohibited,<sup>69</sup> including under the ICCPR.<sup>70</sup> Further, Pakistan is under a duty to promptly, thoroughly and impartially investigate any allegation of enforced disappearance, where there are reasonable grounds to believe an enforced disappearance has taken place, even if there has been no formal complaint.<sup>71</sup> The investigation must be transparent, in that the results of such investigation must be made available to all persons concerned.<sup>72</sup> Further, where the facts warrant, any person alleged to have committed an enforced disappearance must be prosecuted in a trial before the competent civil authorities.<sup>73</sup>

While Pakistani law does not yet contain a specific offence of enforced disappearance, these incidents could also be investigated and prosecuted under the Pakistan Penal Code (PPC), which lays out a range of offences including kidnapping, abduction, wrongful restraint, wrongful confinement and wrongful confinement in secret - all of which cover situations similar to, or partially covering, an enforced disappearance.<sup>74</sup> In cases where enforced disappearances involve torture or other ill-treatment, Article 367 of the PPC criminalises kidnapping and abduction leading to the person being "subjected to or put in danger of being subjected to grievous hurt." Articles 339, 340, 346, 365, and 368 of the PPC deal with offences relating to concealing, wrongfully restraining, keeping a person in confinement, and wrongful confinement in secret and imposes strict penalties for each of these crimes. Article 348 of the PPC lays out the express prohibition against wrongful confinement to extort a confession. However, none of these substitute for codifying in Pakistani law the crime of enforced disappearance and including a requirement that all such allegations are investigated, and those responsible brought to justice. Any immunities or defences of "official authority" or "necessity" in relation to crimes of enforced disappearance must be eliminated.

## **2.4 THE ADIALA 11 AND AACPR: IMPUNITY IN THE TRIBAL AREAS AND BEYOND**

The 'Adiala 11' case has become synonymous with the lack of accountability that surrounds ongoing practices of enforced disappearance, ill-treatment and deaths in Armed Forces custody in the Tribal Areas.<sup>75</sup> It also demonstrates how the authorities use the AACPR to justify unlawful detentions even when individuals are taken from areas outside the Tribal Areas and other legal grounds invoked by the state have been judged unlawful by the courts.

The case involves 11 men,<sup>76</sup> some of whom were first subjected to enforced disappearance in

different parts of Punjab and Khyber Pakhtunkhwa provinces outside the Tribal Areas in 2007 and 2008. The first that relatives knew anything about their fate and whereabouts was when the authorities told the media in July 2008 that the men were being held in Adiala Jail, Punjab, for alleged involvement in attacks on military installations across Pakistan.<sup>77</sup> Relatives visited the men frequently in prison and launched petitions challenging the lawfulness of their detention before the courts. On 8 April 2010 an Anti-Terrorism Court in Rawalpindi ruled their detention unlawful. However, the government refused to release the 11 men, issuing 30 day preventive detention orders for each of them under the Maintenance of Public Order Ordinance 1960.<sup>78</sup> When this lapsed on 6 May, the government issued another preventive detention order under the Anti-Terrorism Act 1997. On appeal to the Lahore High Court, however, both detention orders were held to be unlawful and the court ordered their release. Two days later, on 29 May 2010, the 11 men were abducted from Adiala Jail by armed men, with the apparent collaboration of the prison authorities, in front of relatives who had gathered there, expecting their imminent release. Ghulam Murtaza, father of ‘Adiala 11’ detainee Mazhar ul Haq, recalled the incident:

*We [relatives] were waiting at the jail since the previous night. Then at 11:00 am around 10 double-cabin pick ups entered the jail [Adiala Prison]. A big truck [also] drove into the prison and parked in front of the main exit gate, and the cars drove towards it and [eventually] stopped between the truck and the gate. Several armed men in plain clothes got out of the cars and I saw prison wardens handing some prisoners to them. I noticed one of them was my son Mazhar. We all started shouting slogans against the agencies but there was nothing we could do [because the perpetrators were armed]. We stood there shouting until the cars drove away.<sup>79</sup>*

The authorities initially denied having the men. However, after relatives brought the case to the Supreme Court, on 9 December 2010 the Judge Advocate General of the Armed Forces finally admitted that all 11 were in the state's custody. Still, the authorities only submitted formal charges against the men in April 2011. Media reports claimed four of the men died in unclear circumstances between August 2011 and January 2012, three of them during treatment at a hospital in Peshawar, and this was only confirmed by the authorities during hearings under strong questioning by the Court.<sup>80</sup> After concerted pressure from the Supreme Court, on 26 January 2012 the provincial government of Khyber Pakhtunkhwa finally disclosed that they were being held in Frontier Corps Fort Parachinar, a remote prescribed AACPR internment center in Khurram Tribal Agency near the border with Afghanistan.

After constant demands by the Supreme Court, seven of the Adiala 11 were dramatically brought to the Supreme Court in Islamabad on 13 February 2012 in a visibly poor physical state. A lawyer for the Adiala 11 described the appearance of the surviving seven men in court:

*In the early morning they brought those boys [to the Supreme Court building in Islamabad] and they were not in a very good condition. When the Chief Justice asked them to get up and walk towards him at the rostrum to see them on their feet, some of them couldn't walk. They had to walk with support. One was even holding a urine bag in his hand. In those days it was winter and they were not even wearing the proper clothes for winter. They were such like skeletons and dead bodies.<sup>81</sup>*



Ghulam Murtaza and his wife hold a photo of their son Mohammad Mazar ul Haq who, aged 24, went missing in Islamabad in 2007. © Amnesty International

The appearance of the men in court was unprecedented given the courts historically poor record in investigating the Armed Forces over alleged human rights violations.<sup>82</sup> Two days later, the lawyer for the Ministry of Defence acknowledged that the charges the Armed Forces brought against the men “did not come with in the ambit” of laws hitherto invoked to justify their detention. However, he formally invoked the AACPR, claiming the regulations provided the Armed Forces with a lawful basis for continued detention of the seven surviving men as the regulations had been “promulgated by the President... to cater for such situations”.<sup>83</sup> As at time of writing, the Adiala 11 case remains before the Courts, but there are serious concerns for the well being of Mazhar ul Haq and the other six surviving members.

The Supreme Court has yet to order an investigation by the authorities into Armed Forces personnel or other agents of the state for their alleged role in enforced disappearance, ill-treatment, or deaths in custody, even though it has investigated and even convicted high civilian officials in recent times.<sup>84</sup> As far as Amnesty International is aware, there have been no investigations into the deaths of the four who died in custody, nor into the enforced disappearance and treatment of all 11. In this case, the Armed Forces appear to have actually moved the detainees to the Tribal Areas to allow them to attempt to use the AACPR to justify these violations. Until the AACPR is repealed, and in the absence of strong judicial oversight of their actions, the Armed Forces will continue to be able to act with impunity,

seeking to apply the AACPR to justify unlawful detention and enforced disappearance not only in the Tribal Areas, but throughout Pakistan.

## 3. ABUSES BY THE TALIBAN AND OTHER GROUPS

The Pakistani Taliban is a complex network of armed groups based in FATA and in parts of Afghanistan bordering Pakistan.<sup>85</sup> Although factions of the Pakistani Taliban have been known to disagree with one another, sometimes violently, they all share a common goal of overthrowing the Pakistani state and establishing their own Islamic state. The network also has strong military links with Al Qaeda, Shura Mujahideen and other armed groups in the Tribal Areas with whom they share similar ideology and political objectives as well as often sharing bases, arms, combatants and intelligence.

These armed groups continue to carry out indiscriminate attacks that have killed and injured hundreds across northwest Pakistan in the last three years alone, and thousands countrywide over the last ten years.<sup>86</sup> They have regularly carried out suicide and IED bombings, targeting marketplaces, mosques, schools, and other populous areas that either indiscriminately or deliberately cause scores of civilian deaths.<sup>87</sup> For example, on 19 August 2012 the Pakistani Taliban claimed responsibility for a suicide bombing in a mosque in the Ghundai area of Jamrud Sub-division in Khyber Tribal Agency just before Friday prayers, killing at least 56 persons and injuring more than 120 others.<sup>88</sup> Muhammad Talha, a Pakistani Taliban spokesman for Darra Adam Khel, part of FATA, claimed the attack was directed against members of the Kukikhel tribe, who live in the region, in reprisal for the killing of two Pakistani Taliban fighters.<sup>89</sup>

### 3.1 ABUSES FOLLOWING QUASI-JUDICIAL PROCEEDINGS

The Taliban have also been responsible for a range of other human rights abuses perpetrated in the name of Islamic justice: from the violent imposition of discriminatory norms on communities under their control, to torture and other ill-treatment and the unlawful killings of civilians and Pakistan Armed Forces personnel. When the Taliban first emerged in the Tribal Areas they promised local communities that they would provide speedy, fair justice in direct response to the limited existing justice system that local communities criticised for being slow and tainted by corruption and political influence.<sup>90</sup> However, quasi-judicial bodies and decisions by the Taliban and other groups have themselves been arbitrary and have failed to meet even the most elementary principles of human rights or international humanitarian law, including fair trial and due process rights. In some cases, the Taliban have not even employed these quasi-judicial procedures before unlawfully killing an individual in their custody.

Despite a significant reduction in territory under direct Taliban control over the last three years, quasi-judicial processes continue to be administered by the group. Following abduction of individuals, these processes have often resulted in the ill-treatment and killing of those accused of spying, supporting the Taliban's enemies, or promoting issues, such as the human rights of women, which they perceive as un-Islamic. The Taliban and other groups have particularly targeted human rights activists, humanitarian workers, journalists and individuals accused of spying. The Taliban have also been responsible for brutal execution-style killings of captured Pakistan Armed Forces personnel in contravention of international humanitarian law with no pretence of trial.<sup>91</sup> This report does not address abductions for ransom carried out by the Taliban and other groups in the Tribal Areas, although this is a major source of revenue for the group.<sup>92</sup>

The Pakistani Taliban cite the "Layeha", or Book of Rules, reportedly sanctioned by Afghanistan Taliban supreme commander Mullah Muhammad Omar, as authorising practices that constitute abduction, ill-treatment, killings and other human rights abuses.<sup>93</sup> The Layeha are also applied by the Pakistani Taliban and copies of these rules have been distributed across the Tribal Areas. Although short and vague, the Layeha purportedly allows "high Taliban commanders" to dispense punishments but authorisations of the death penalty must be received from Mullah Omar or his deputies,<sup>94</sup> and torture is expressly prohibited.<sup>95</sup> In practice, however, the Taliban also justify killings on broad, vague interpretations of "Sharia Law" beyond even the rules and procedures set out in the Layeha.

On the afternoon of 9 October 2012, Malala Yousufzai, a 14-year-old school girl from Mingora, Swat, was shot in the head as she was travelling home from school with classmates. Two of Yusufzai's classmates, Shazia Ramzan and Kainat Riaz, who were sitting next to her, sustained minor injuries in the attack. Kainat recalled:

*We had just finished our exams and were coming home from school. After we all sat in the van another car approached and suddenly stopped and two boys came out of it. One went to the driver who stopped the van. Another walked into the back [where the girls were sitting]. When we saw he had a pistol, we all screamed a lot. He said "who is Malala?" I don't think anybody pointed her out, but some of the girls looked at her, and he might have recognised her face and started firing at her directly. He hit Malala and she fell down. Shazia and I were sitting next to her, we got hit also.<sup>96</sup>*

At time of writing, Malala Yousufzai was recovering from gunshot injuries to her head and neck and remained under medical observation in a hospital in Birmingham, United Kingdom, where she had been transferred following initial treatment in Peshawar and Rawalpindi, Pakistan.

In a statement distributed to the media on 10 October 2012, the Taliban said they wanted to kill Malala, and would continue to try and kill her, because of her campaigning for girls' education in the Swat valley which the group considers contrary to Islam and Sharia. "*It is a clear command of sharia that any female, that by any means plays a role in war against Mujahideen [Taliban], should be killed,*" Pakistani Taliban spokesperson Ehsanullah Ehsan was quoted in the statement as saying.

The Taliban have also sought to justify the abduction and killing of civilians on the basis that



they are assisting their enemies and are therefore legitimate targets. A common example of this is the abduction and killing of individuals believed to be spies. Nazar was killed by the Taliban in North Waziristan in mid-2011. *“It was so clear that he was an agent that it took just six hours to decide his fate,”* said Alam Khan, a Taliban commander in North Waziristan Tribal Agency responsible for the killing of accused spies in the area.<sup>97</sup> Khan told Amnesty International he had supervised a team of three Taliban fighters who killed Nazar by a gunshot to his head in a remote location close to Miramshah, capital of North Waziristan Tribal Agency.

According to Khan, the Taliban constitute a *shura* (council) of seven to 12 people including a mufti, or religious scholar, to decide cases of individuals accused of spying. *We have a separate team for monitoring mechanisms at different military and government camps and offices, including in every region and district and we monitor how local people visit these offices and gather reports of their meetings with military and government officials.*

**“Almost every month you see a dead body with a note on it under charges of spying in specific tehsils [sub-districts] or villages. Not just in Khyber [Tribal Agency] but in the surrounding areas [outside the Tribal Areas] like Kohat, Dera Dum Khel and Lakimarwat.”**

Frontier Constabulary officer in Khyber Tribal Agency<sup>98</sup>

Nazar was presented before a shura and accused of providing information on foreign fighters in North Waziristan to the Pakistan Army. “We presented the shura with evidence to show that Nazar started meeting with military officials at the Army camp in Miramshah and in Kohat [bordering North Waziristan]”, said Taliban commander Alam Khan who accused Nazar of taking one million rupees to spy on foreign fighters for the Pakistan Army. “Due to his espionage we lost 10 mujahideen [fighters] on 12 and 13 May [2011], among them three of our best,” Khan explained. The shura, headed by a mufti, decided that Nazar was a spy and ordered him to be killed. “The mufti quoted the Quran and the punishment for those who spy on Muslims and help infidels in times of war is very clear, you must kill them,” said Alam Khan.

Nazar’s cousin Amjad told Amnesty International about finding his dead body. At around 8.30am on 15 May 2011, the same day Nazar was killed, Amjad got a phone call at home from one of his neighbours. “He said there is a dead body, about two kilometres from our house, and it looks like Nazar. I rushed to the spot on foot and identified my cousin.” Nazar’s body reportedly had several wounds including a gunshot to the left side of his head. His throat was partially cut and there were a number of cuts on his neck, hands, ankles, feet and waist. Alam Khan said: “I took Nazar with two [Taliban] fighters, his wrists were bound behind his back. One of the fighters shot him on the left side of his head and he died instantly. The fighters then cut his body all over to send a warning that those who spy will not be spared and will die shamefully.”

His body looked fresh, like he had just been killed a few hours ago,” Amjad recalled. “There was a note placed over his chest with Pashto written on it. It said ‘all those who are spying

will face the same fate'." Such is the stigma towards those killed by the Taliban and fear towards the group that no one dared to offer Nazar's funeral prayers.<sup>99</sup>

The Taliban use the killing of spies to instil fear in areas under their influence. In the Nazar case, for example, despite claims that his killing was decided on the basis of the Quran, Alam Khan said that it was also necessary "so that other residents [of Miramshah] would not dare do spying for our enemies."<sup>100</sup> As a result of the killing Nazar's family has fled North Waziristan out of fear of further reprisals from the Taliban.

The Taliban have also used accusations of spying as a means of controlling the population in regions either under their effective control or where they retain significant influence. On 15 June 2012, the Taliban announced a ban on all vaccinations of the general population by government-employed medical staff and non-governmental organisations in North and South Waziristan until attacks by US pilotless aircraft came to an end.<sup>101</sup> In a statement on behalf of the group, Hafiz Gul Bahadar, a powerful Taliban commander from North Waziristan, claimed that the USA was using health workers to secretly target Taliban forces in the Tribal Areas under the guise of vaccinations.<sup>102</sup> He also linked the ban to the apparent use of a fake vaccination campaign by the USA in its attempts to locate Osama bin Laden in Pakistan. Bahadar said that breach of the ban would lead to "any kind of loss" without any right to challenge such punishment. As Dr. Muhammad Sadiq, the surgeon-general of North Waziristan Tribal Agency explained, "we cannot carry on the Polio vaccination campaign after surfacing of the pamphlet. We stopped the campaign immediately after we received it because to continue would risk certain death."<sup>103</sup>

### 3.2 UNLAWFUL KILLING OF CAPTURED PAKISTAN ARMED FORCES PERSONNEL

According to the "Layeha" individuals who the Taliban decide have been working for its enemies such as other armed groups, military forces of Pakistan or the USA, must "quit their jobs".<sup>104</sup> Or, their fate will be determined by "Taliban high commanders." Where the Taliban have captured members of the Pakistan Armed Forces, they have invariably executed them.

On 22 December 2011 the Pakistani Taliban took 15 soldiers of the Frontier Corps prisoner from the Mulazai area of district Tank, Khyber Pakhtunkhwa province. A Taliban spokesperson said this was in response to the killing of Taliban commander Qari Kamran by the Frontier Corps during an operation in Khyber Tribal Agency.<sup>105</sup> All the soldiers were apparently executed on 4 January 2012 with gunshots to the head and the video of the execution posted on the internet. In another case on 24 June 2012, the Taliban claimed responsibility for killing seven Pakistan Army soldiers and four government workers captured during fighting in Upper Dir district near the Afghanistan-Pakistan border. The soldiers were beheaded and a brutal video posted on the internet in which Taliban members displayed the severed heads. A Taliban spokesperson said the soldiers were killed as revenge for the killing of Taj Gul, one of their commanders from Khyber Tribal Agency.<sup>106</sup> According to the spokesperson, the decision to kill the soldiers was made by a *shura* consisting of a Taliban commander, local tribal elder and a religious scholar who has formally qualified from a seminary in Afghanistan or Pakistan recognised by the Taliban.



Taliban fighter executes captured Pakistani soldiers on 4 January 2012, the Taliban claims, to avenge the killing of one of its commanders by the Frontier Corps the previous month. The killing of captured soldiers is a violation of international humanitarian law. This still image has been taken from a video obtained by Reuters on 21 January 2012. © REUTERS/Umar Media/Handout/via Reuters Tv

In both of these cases the Taliban justified the killings as lawful under their interpretation of the Sharia. According to Pakistan Taliban spokesperson Ehsanullah Ehsan, members of the Pakistan Armed Forces may be killed as they are infidels fighting "at the behest of the United States and against Sharia."<sup>107</sup> However, the Taliban says the lives of captured soldiers may be spared in certain circumstances. According to the Layeha, there is a difference between 'infidels' and 'renegades', being that "infidels may be released on payment of ransom" whereas renegades must be killed regardless of whether a ransom for their life can be paid.<sup>108</sup> If a ransom is not paid, those deemed to be infidels must be killed "by beheading and his or her head should be cut off."<sup>109</sup>

## TALIBAN ABUSES AND INTERNATIONAL LAW

Attacks deliberately targeting civilians in situations of armed conflict are prohibited under international humanitarian law, whether perpetrated by state forces or armed groups.<sup>110</sup> Outside situations of armed conflict, such attacks are inconsistent with the fundamental principles of humanity reflected in international humanitarian law and are wholly inconsistent with basic respect for the rights to life and to security of person of those targeted. They also constitute crimes under national law for which those responsible should be brought to justice.

Indiscriminate attacks during armed conflict are also prohibited under international humanitarian law.<sup>111</sup> These are those attacks which are of a nature to strike military objectives and civilians or civilian objects without distinction, either because the attack is not directed at a specific military objective, or because it employs a method or means of combat that cannot be directed at a specific military objective or has effects that cannot be limited as required by international humanitarian law.<sup>112</sup> Outside of an armed conflict, such attacks are contrary to fundamental principles of humanity.

The Taliban's practices of terrorising the population and carrying out summary executions of the civilian population violate international humanitarian law and are abuses of human rights. Under international humanitarian law, murder is prohibited and civilians not directly participating in hostilities must not be targeted, as was Malala Yusufzai who was targeted on her way back from school.<sup>113</sup> Common Article 3 obliges all parties to a non-international armed conflict to treat humanely "persons taking no active part in the hostilities". It stresses that certain acts, such as murder, torture and other ill-treatment, "shall remain prohibited *at any time and in any place whatsoever* [emphasis added]".

Furthermore, attacks, such as the bombing of the mosque in Ghundai, which appear intended to spread terror among the civilian population, are also prohibited.<sup>114</sup> The effect of such attacks, and also, for example, the campaign in relation to the vaccination scheme, have a broader impact on the civilian population, impairing their access to services necessary to fulfil their rights to health and education guaranteed under the International Covenant on Economic, Social and Cultural Rights.<sup>115</sup>

Common Article 3 of the Geneva Conventions also provides for humane and non-discriminatory treatment for all persons taking no active part in the hostilities. It prohibits also the passing of sentences and the carrying out of executions without judgment being pronounced by a regularly constituted court providing all judicial guarantees recognized as indispensable. The ICRC Commentary to Common Article 3 suggests that "the Article should be applied as widely as possible" and it further explains that "no possible loophole is left; there can be no excuse, no attenuating circumstances."<sup>116</sup>

International humanitarian law also prohibits the murder of anyone in the control of an adverse party.<sup>117</sup> This would include any member of the Armed Forces captured by the Taliban. Such killings, and those of civilians indiscriminately killed, including the attempted killing of Malala Yusufzai or those killed in the mosque bombing in Ghundai, also constitute abuses of the right to life and security of person.

While human rights treaties are directly binding as a matter of international law only on states, when a group such as the Taliban engages in conduct that would constitute a violation of human rights if it were

perpetrated by a state, Amnesty International condemns the acts as human rights abuses. Amnesty International calls on all armed groups, including the Taliban, to respect the human rights recognized under international law.

Individuals acting on behalf of the Taliban or other armed groups that commit violent acts will also generally be acting in violation of Pakistani criminal law and so can be arrested and prosecuted where there is sufficient admissible evidence under Pakistani law for their crimes, in a manner that complies with Pakistan's international human rights obligations. Some acts by individuals acting on behalf of, pursuant to or in the furtherance of a policy of an armed group, (or, for that matter, individuals acting on behalf of a state,) can also in certain circumstances constitute crimes under international criminal law, such as crimes against humanity or, in situations of armed conflict, war crimes. Acts such as murder, torture, enforced disappearance and other inhumane acts may constitute crimes against humanity if knowingly committed as part of a widespread or systematic attack directed against any the civilian population, particularly in furtherance of an organizational policy (of the state or armed group) to commit such attacks.

## 4. THE TRIBAL AREAS – A LEGAL WILDERNESS

**“The hands of cruelty extend to the Tribal Areas but the hands of justice cannot reach that far.”**

Ghulam Nabi, Peshawar High Court Lawyer

While the Pakistan Constitution enshrines a range of “fundamental rights” into domestic law, many of them similar or corresponding to Pakistan's international human rights obligations under, for example, the ICCPR, these protections are not generally enforceable in FATA, nor, after the Actions (in Aid of Civil Power) Regulations were passed into law, in PATA.

The Constitution provides that neither the Supreme Court nor any of Pakistan's provincial High Courts can exercise jurisdiction under the Constitution in relation to FATA unless otherwise specified in a parliamentary law.<sup>118</sup> While the courts have had jurisdiction over

PATA since 1973,<sup>119</sup> the AACPR seeks to exclude them from jurisdiction in PATA along with FATA. It does so by invoking Article 245(3) of the Constitution which excludes the high courts from jurisdiction on fundamental rights issues in relation to any area in which the Pakistan Armed Forces have been called to "act in aid of civil power".<sup>120</sup> This prevents the courts from ruling on the lawfulness of detention or the enforcement of fundamental rights under the Constitution. Further, acts of parliament do not apply to FATA unless the President otherwise specifies.<sup>121</sup>

FATA is administered separately from Pakistan's provinces. All powers and responsibilities of the state in FATA are placed under the direct executive control of the President of Pakistan, with each Tribal Agency directly administered by 'Political Agents' who operate under the FATA Secretariat, a body of civil servants headed by the Governor of the Khyber Pakhtunkhwa on behalf of the President. To date all the Political Agents have been senior male civil servants who wield significant administrative, executive, and judicial powers including the application of the harsh Frontier Crimes Regulations 1901 (FCR). "The PAs have no accountability because their office is a combination of police, judge and administration, everything," a serving member of the civil administration assisting a Political Agent in FATA told Amnesty International. PATA is administered by the government of Khyber Pakhtunkhwa.

**"The FCR is a black law that is unacceptable to any civilized society"**

Nisar Mohmand, Awami National Party leader from Mohmand Tribal Agency

The FCR has been the primary formal mechanism for the administration of justice in the FATA,<sup>122</sup> although the AACPR has been increasingly used in the context of military operations against the Taliban and other groups, and general law enforcement. First enacted during the British Raj in 1872, the FCR establishes a draconian system of limited government and special powers over what is now northwest Pakistan.<sup>123</sup> Pakistan inherited the FCR at its foundation in 1947 and it still operates, despite recent amendments, with little or no recognition of, or respect for, the rule of law, due process, or democratic institutions. Justice A.R Cornelius, former judge of the Supreme Court of Pakistan, has described the FCR as "obnoxious to all recognized modern principles governing the dispensation of justice".<sup>124</sup>

Amnesty International documented in its 2010 report 'As if hell fell upon me' how the broad authorities given to the federal government in the FCR violate Pakistan's international and domestic human rights obligations.<sup>125</sup> At that time, the serious human rights deficiencies of the FCR were regularly criticised and pressure for reform was growing. On 14 August 2009, President Asif Ali Zardari had announced a proposed reform package for FATA which would include a reform of the FCR justice system. The reforms include repeal of the Additional District Magistrate's power to order corporal punishment,<sup>126</sup> limiting some of the Political Agent's powers of arrest and detention,<sup>127</sup> establishing the right of some detainees to bail (but not including those in preventive detention under the FCR or the AACPR)<sup>128</sup> and setting up a limited appeals process in criminal trials<sup>129</sup> which still falls well short of international fair trial standards (see further below).

The FCR reforms, subsequently approved in August 2011, have had a limited positive impact on human rights in FATA and fail to address many of the human rights concerns previously highlighted by Amnesty International.<sup>130</sup> As discussed in more detail below, the power of the authorities to hold individuals in preventive detention<sup>131</sup>, and the collective punishment regimes<sup>132</sup> continue to apply under the reformed FCR system.

The FCR reforms have also been overshadowed by the broad powers of arrest and detention given to the Armed Forces under the AACPR. The Pakistan Army was strongly opposed to these FATA reforms,<sup>133</sup> and they were only approved by the President in August after the Armed Forces had been given sweeping powers and protections under the AACPR in June the same year.<sup>134</sup>

The AACPR allows the federal government to requisition the Armed Forces for a broad range of activities. While purportedly invoked to counter a “threat to the solidarity and integrity of... Pakistan,”<sup>135</sup> the AACPR authorises the Armed Forces to carry out “law and order duties, to conduct law enforcement operations, to continue natural calamities [sic] and for rehabilitation.”<sup>136</sup>

In respect of the Armed Forces at least, the AACPR in FATA effectively renders almost meaningless any of the minimal safeguards included in the FCR Amendment Regulations 2011, and represents a new legal framework for the Armed Forces in PATA that appears designed to circumvent human rights protections contained in the Constitution.

**“The Actions (in Aid of Civil Power) Regulations are even more dangerous than the FCR. It is a system of martial law over the Tribal Areas.”**

Abdul Jalil Jan, Jamaat-e-Ulema Islam (Fazlur) party politician from the Tribal Areas<sup>137</sup>

## **APPLICATION OF FRONTIER CRIMES REGULATION UNDER THE ACTIONS (IN AID OF CIVIL POWER) REGULATIONS 2011 – THE CASE OF FAREEDULLAH**

The case of Fareedullah is illustrative of how the authorities use the legal framework in a way that violates the human rights of detainees. Subjected to arbitrary detention under the AACPR, Fareedullah subsequently faced unfair trial before a council of elders under the FCR.

An 80-year old retired Frontier Corps (FC) soldier, Fareedullah was himself arrested by the FC at his house in Bara district of Khyber Tribal Agency in September 2009. His son Irfan said that Fareedullah was taken away by three FC soldiers who made a threatening gesture with their guns at Irfan when he tried to stop them.

Through family and tribal connections, Fareedullah's family desperately sought information on his whereabouts. “I tried to contact many Afridis [the tribe they belong to] at captain and major level in the Army who belonged to Khyber Agency. I thought being Afridi they might help me. All of them made promises but

never delivered any information or helped us in any way," Irfan said. Finally, after bribing a clerk, the family was informed that Fareedullah was being kept in a prison in Jamrud District, in Khyber Agency. Fareedullah was reportedly interrogated in prison by a 'Joint Investigation Team' (JIT) comprising civil and military intelligence authorities.

Irfan told Amnesty International about visiting his father in detention, more than three months after his arrest.

"I finally saw him in prison almost four months after they took him away [in January 2010]. Words cannot describe what I saw. He was sitting on the floor in his prison cell, keeping himself upright by holding the prison bars. He was looking downward as if there was no strength left in his neck to support the weight of his head. My father is an aged person and his hand and a part of his upper body was already paralyzed. He looked completely pale, as if he had just been dragged out of his grave. He was in the same clothes as the day I saw him being taken away but now they were dirty. He had lost much of his head and beard hair. We started talking but you know he was in such a state that for seven minutes he was looking at me as if he had no idea I was his son. We had a simple chat and finally when he remembered he started asking about the family, was everyone ok? That sort of thing. I told him that I am going to meet people who could help to get him released. When our meeting finished and I got up to leave I noticed that a *khassadar* was standing behind me and heard our entire conversation."

"We had another meeting on 3 July 2010 and I brought some food, clothes and other things for him. He asked me to arrange a lawyer but said very little else. He told me that a few times they would take him away blindfolded, he didn't know where. They would take him to a room somewhere and sometimes one, two or up to four people would ask him about his connections to [the armed group] Lashkar-e-Islam and [its leader] Manghal Bagh but he flatly denied all the accusations except that Taif Afridi [whom the authorities accused of involvement with Lashkar-e-Islam] was his son – although he hadn't even met Taif in three years. That was all he told me. I tried asking him many other things but he did not say very much. But he did complain, "they keep me hungry here most of the time," and that they were not giving him enough food or any the medication he used to take for his conditions even though he asked them and he felt he was losing his hearing, something I'd noticed too."

Following his interrogation Fareedullah was declared a 'black' detainee under the AACPR regime and accused of supporting *Lashkar-e-Islam*, an armed group based in Khyber Tribal Agency. He was then transferred to the Special Branch of Khyber Pakhtunkhwa police in Peshawar for further interrogation after which his status was reduced to 'grey.' But Nizam was kept as a 'black' detainee accused of being an "active member of defunct *Tanzeem Lashkar-e-Islam* and involved in the commission of heinous crimes like kidnapping, car snatching and other heinous crimes." He was detained without charge for three months, before he was ultimately brought before a Council of Elders, a *jirga* established arbitrarily by a Political Agent or District Coordination Officer under the FCR which in no way constitutes the independent and impartial tribunal to which Fareedullah is entitled under international law. The Council of Elders found them guilty and sentenced him to 10 years in prison and fined Rs100,000 (\$US1000). The decision was confirmed by the Assistant Political Agent acting as magistrate in July 2010. Fareedullah appealed the decision but it was rejected in February 2011.

Fareedullah was transferred to Peshawar Central Jail following his conviction where he received better treatment, including regular medical examinations. Fareedullah died in Peshawar Central Jail on 5 July 2012. The cause of his death was recorded as cardiac arrest on the prison death register, but his family claim that Khan died as a result of the poor conditions in detention, especially his treatment and alleged abuse under



interrogation in Khyber Tribal Agency prior to being transferred to Peshawar Central Jail.

One of Amnesty International's main concerns is that the AACPR allows the Armed Forces to arbitrarily detain individuals without charge or judicial review, in breach of international human rights law. The regulations also fall far short of international fair trial and other judicial guarantees, including the right to presumption of innocence.

Both the AACPR and FCR allow for a complete lack of accountability for army officers and other state officials for wrongdoing, including human rights violations,<sup>138</sup> with in practice the authorities often going beyond even the sweeping authorisations contained within these laws. Human rights violations committed by the state and the cover provided for them under these laws has further undermined already limited and poorly enforced human rights protections in the Tribal Areas and contributed to the almost complete absence of the rule of law there.

## 4.1 SWEEPING POWERS OF ARREST AND DETENTION

The FCR and the AACPR both contain sweeping authorisations that allow for arbitrary detention of individuals. Article 40 of FCR gives the Political Agent broad powers to require a surety or a bond from anyone “who is likely to do any wrongful act or commit any offence, which may cause breach of peace or disturb the public tranquillity.” If the individual fails to provide the required security they can be detained for up to two years without trial and without being presented before a court at the sole discretion of the Political Agent. The period can be renewed on the same grounds at the discretion of the Political Agent at the end of the two year period.<sup>139</sup> Similar provisions apply where the Political Agent believes there is a “blood feud or other cause of quarrel likely to lead to bloodshed.”<sup>140</sup> Such renewals could in theory continue indefinitely for the rest of the individual's life as no ultimate time limit of any kind is specified in the law.

Detention under the FCR may be reviewed, but only after two years of detention and then only by a Political Agent or District Coordination Officer, who also has the discretion to continue the detention if they believe the detainee to be a “habitual or desperate or hardened criminal or [if] the grounds on which he was detained have not ceased”.<sup>141</sup>

The AACPR also appears to allow indefinite administration detention without charge or effective (or any) judicial supervision and control. Article 11 of the AACPR further provides that the “power to intern” is valid until the “continuation of action in aid of civil power”. Indefinite detention without proper review or charge like this is in breach of article 9 of the ICCPR, while the Committee against Torture has held amounts “*per se*” to a breach of the Convention against Torture.<sup>142</sup>

In addition to the detention powers already provided under the FCR, Article 9(1) of the AACPR allows the Governor or any officer authorised by the governor to intern or detain any person who is considered:

- a. *May obstruct actions in aid of civil power in any manner whatsoever; or*
- b. *If not restrained or incapacitated through internment shall strengthen the miscreants ability to resist the Armed Forces or any law enforcement agency; or*
- c. *By any action or attempt may cause a threat to the solidarity, integrity or security of Pakistan; or*
- d. *Has committed or likely to commit any offence under this Regulation so that the said person shall not be able to commit or plan to commit any offence, during the action in aid of civil power.*

The Governor also has wide discretion to authorise arrests and detention that may be arbitrary or unlawful. This includes the detention of any person where it is "expedient for peace in the defined area" (Article 9(2), or anyone who is "not... in the definite area, but is suspected of committing acts or has nexus with actions that are referred to [in Articles 9(1)]... in the defined area."<sup>143</sup> The application of this provision is further broadened by the vague definition of "miscreant" which includes "any person who... is intending to commit or has committed any offence under this Regulation and includes a terrorist, a foreigner, a non-state actor or a group of such persons by what so ever names called."<sup>144</sup> None of these terms, including, for example "terrorist" are defined in the legislation. The scope of application of these provisions is made even more sweeping by the very broad manner in which the actual offences are defined later on in the AACPR (see further below).

Article 9(1) of the ICCPR provides that "[n]o one shall be subjected to arbitrary arrest or detention" and that "[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." The Constitution of Pakistan similarly provides that "[n]o person shall be deprived of life or liberty save in accordance with law."<sup>145</sup> The Human Rights Committee, which oversees ICCPR implementation, has underlined that "'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law".<sup>146</sup> Detention will "be considered arbitrary if it is not necessary in all the circumstances of the case and proportionate to the ends sought."<sup>147</sup>

## **HABEAS CORPUS**

Article 55A(4)(b) of the FC(A)R establishes a final appeal authority called the FATA Tribunal with authority to release a person "illegally or improperly detained". However, the FATA Tribunal does not satisfy international standards required for an authority to constitute a court. This is because it consists of two civil servants and a high court judge<sup>148</sup> who are not given security of tenure (they are appointed for only three years or "during the pleasure of the Governor"), and are appointed by the Governor "on such terms and conditions as he may determine."<sup>149</sup>

Under international human rights law, certain requirements of independence and impartiality

are required for an authority to constitute a “court”; simply designating an administrative board or other quasi-judicial authority as a “court” or “tribunal” is not sufficient.<sup>150</sup> As the Human Rights Committee has explained, requirements of independence under the ICCPR include “guarantees relating to their security of tenure... [and] the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and the legislature.”<sup>151</sup> This is not met by the members of the FATA Tribunal serving at the “pleasure of the Governor,” and on “terms and conditions as he may determine”.<sup>152</sup> For detentions authorised under the AACPR, the FATA Tribunal appears not to have any authority to review the lawfulness of detention.<sup>153</sup> As stated above the high courts are also excluded from ruling on such matters.<sup>154</sup>

Under the AACPR, a person or his family may request the Governor or the Armed Forces carrying out the detention to release the detainee, but there is no requirement that the detainee be released, even if there are found to be no grounds for his detention. Instead, ultimately, the Governor or Provincial Government can “turn down the request for the time being”.<sup>155</sup> However, in practice the decision is likely to be taken by an officer of the Armed Forces as authority for detentions may be delegated to them and in practice high civil authorities are not directly involved in the management of detainees. Neither a member of the Armed Forces, nor the Governor or Provincial Government, come close to being the independent and impartial court required by international human rights law to rule on the lawfulness of detention. Based on the research done for this report, the Armed Forces appear to release detainees when they see fit. Furthermore, under the AACPR it does not seem possible to question the validity of the detention as Article 9(8) deems everyone subject to an internment order to have been “validly interned” under the AACPR.

The Peshawar High Court has (as noted in section 2.3) taken steps to assert jurisdiction in relation to *habeas corpus* cases. In June 2012, the court ordered the release of 1,035 named male individuals who the authorities acknowledged were in their custody and considered ‘white’ detainees under the AACPR (that is individuals who they did not consider were involved with the Taliban or other armed groups). The Court also ordered that a further 895 named individuals detained as ‘grey’ and ‘black’ detainees, terms used by the authorities to describe individuals whom they consider respectively might or are definitely members of the Taliban or other armed groups, be promptly charged and their cases brought to trial. While lawyers acting for these detainees believe that most of these men and boys have been released, they also assert that many more remain in detention without being brought before a court. The Peshawar High Court also appears aware that others are still in detention: in November 2012, it ordered the authorities to provide a full and final list of all remaining detainees, which it is yet to receive. Additionally, the remaining 895 individuals in internment centers continue to risk torture and death, without any clear indication of when or if they will be brought to trial.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has reported that “lengthy periods of detention without judicial review might lead to their misuse by security and other forces for the aims of preventive detention and may thus facilitate the use of illegal methods to obtain confessions and other evidence.”<sup>156</sup> The cases of torture and other ill-treatment documented by Amnesty International in this report are testament to the relevance of this scheme to the detention regimes in FATA and PATA.

The courts, and the Peshawar High Court in particular, appear to be willing to hear arrest and detention cases in spite of their exclusion under the AACPR. However, the authorities have a poor record of fully complying with court orders for the release or prompt trial of those held in their custody, in contravention of ICCPR art 2(3)(c).

Article 9(2) of the Pakistan Constitution contains similar guarantees to Article 9(4) of the ICCPR, in that any person detained is to be brought before a magistrate within 24 hours of arrest. However, this is specifically not applicable to anyone detained pursuant to a law providing for preventive detention.<sup>157</sup> The Constitution provides for a separate regime of detention Review Boards comprised of Supreme or High Court judges to review on whether there is sufficient cause for detention every three months.<sup>158</sup> But none of these measures are followed in the Tribal Areas as they are effectively displaced by the regimes under the FCR and AACPR, both of which purport to oust the jurisdiction of the High Courts in relation to ruling on the lawfulness of detention and other fundamental rights issues. Further, the Constitution itself specifies that Article 9 in its entirety is not applicable to "enemy alien[s]",<sup>159</sup> in breach of the requirement of non-discrimination in enjoyment of rights under the ICCPR and the right to equality before the law.<sup>160</sup>

## **ADMINISTRATIVE DETENTION**

From the incomplete and inadequate information provided by the authorities, it appears that most of the detentions carried out in the Tribal Areas, if founded on any lawful framework, are based on the preventive and indefinite detention regimes prescribed by the AACPR and FCR. These regimes are also inconsistent with Pakistan laws that establish procedures against preventive detention.<sup>161</sup>

Under the Pakistan Criminal Procedure Code, ordinarily the detaining authority must communicate the grounds on which the detention order was made to the detainee. They must also inform the detainee of their right to contest the order, and allow them the opportunity to do so. The Criminal Procedure Code<sup>162</sup> specifies the rights of criminal defendants, suspects, and obligations of law enforcement agencies. It also lays down the responsibilities of courts and law enforcement agencies to investigate violations. Almost all of these safeguards are absent from the AACPR and the FCR.

Amnesty International opposes all systems of administrative detention on security grounds. Such regimes for example undermine the role of procedural safeguards in the criminal justice system in protecting the right to liberty, and they frequently involve increased risk of abuse.<sup>163</sup> The regimes for administrative detention should be immediately repealed. Aside from this policy position, however, the particular administrative detention established under the FCR and AACPR clearly fails to comply with the specific requirements of article 9(1) and 9(3) of the ICCPR and the more general requirement that all detentions be under effective judicial control.<sup>164</sup> Anyone currently held in administrative detention should be immediately brought to a court to rule on the lawfulness of their detention and, if they are not promptly charged with valid criminal offences and tried without undue delay in an independent civilian court in accordance with international fair trial standards, they should be released.

## 4.2 BROAD AND IMPRECISE OFFENCES

Amnesty International is concerned about several imprecise, vague and overbroad offences under the FCR and ACCPR. This section aims to highlight some of these, but many other offences in the FCR and ACCPR also raise human rights concerns.

Under Article 16(1) of the AACPR, it is an offence if an individual is “*suspected of an act of challenging the writ or authority of the Federal or Provincial Government [emphasis added]*”. Making mere suspicion of wrongdoing itself a criminal offence is a violation of the presumption of innocence under article 14(2) ICCPR and also violates Article 15(1) of the ICCPR<sup>165</sup>. This has been interpreted to mean that criminal offences “must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct.”<sup>166</sup> Other offences under the AACPR fail to meet this requirement by covering such a broad range of conduct that individuals will not be able to predict when they are committing an offence. For example AACPR Article 16(2) provides that anyone who “commits terrorism or sabotage” is deemed to have committed an offence, but no specific elements of “terrorism” and “sabotage” are set out.

Article 16(3) applies to anyone who “obstruct[s] or attempt[s] to obstruct *in any manner* the action in aid of civil power [emphasis added]”, and criminalises “threaten[ing] in [any] manner whatsoever the peace and tranquillity of any area by subversion, spreading literature, delivering speeches electronically or otherwise thus inciting the people in commissioning any offence.” Under Pakistan’s international law obligations, restrictions on freedom of speech must be “formulated to sufficient prevision to enable an individual to regulate his or her conduct accordingly”.<sup>167</sup> Article 16(3) does not satisfy this requirement.

## 4.3 VIOLATIONS OF THE RIGHT TO FAIR TRIAL

The FCR and the AACPR both authorize violations of the right to a fair trial. Amnesty International’s criticisms of the FCR in this regard are contained in the organisation’s June 2010 report ‘As if hell fell upon me’.<sup>168</sup> These concerns in respect of the FCR remain despite the 2011 amendments, save that the amended regulations have incorporated the right to appeal in articles 48-52 and a limited provision for bail at article 11A. While the recognition of a right to bail is an important development, it remains arbitrary and detention is still not expressly the last resort. Where there are “reasonable grounds for believing” an individual is “guilty of an offence punishable with imprisonment for ten years”, the individual loses the right to bail, and no other factors are taken into account.

Amnesty International has similar fair trial concerns with respect to the AACPR, which does not recognise a defendant’s right to be presumed innocent. In the AACPR, it is an offence for anyone to be “suspected of an act of challenging the authority and writ of the Federal or Provincial government”<sup>169</sup> and there is no express provision for the presumption of innocence as required by international law.<sup>170</sup> Indeed, the presumption of innocence is positively

violated by Article 19(1) of the AACPR which provides that any evidence presented by the Interning Authority or any of its officials is "admissible in evidence and shall be deemed sufficient to prove the facts in issue or the relevant facts". Such a provision makes it impossible for a suspect to defend a case, as there is an irrebuttable presumption that any evidence presented by an official is conclusive as to the facts in issue. Any trial held under these rules would be clearly contrary to international law and fundamentally unfair.<sup>171</sup> In both the FCR and the AACPR, the right to legal representation and the right to call or cross-examine witnesses are both conspicuously absent.<sup>172</sup>

In terms of procedure, the AACPR allows proceedings to be followed pursuant to the FCR, the Code of Criminal Procedure (Act V of 1898) or the Anti-Terrorism Act 1997 (the ATA), "or any applicable law, as the case may be". It is not clear which procedure will be followed in each individual case. While it is outside the scope of this report to analyse all the procedures followed under these laws, Amnesty International has in the past expressed its concerns regarding the ATA.<sup>173</sup>

Further, the reforms in the amended FCR do not address the concerns addressed in Amnesty International's report '*As if hell fell upon me*'. The prescribed procedures still do not allow for trial before an independent and impartial court as required under the ICCPR,<sup>174</sup> customary international law and the Pakistan Constitution.<sup>175</sup> The procedure remains broadly the same as it was under the FCR prior to the reforms; namely that the office of the Political Agent makes a preliminary finding, followed by an arbitrarily established *jirga* hearing.<sup>176</sup> "There is no legal training given to Political Agents or any of the elders, no training for drafting of judgment or recording of evidence, nothing," a civil servant assisting a Political Agent in FATA told Amnesty International.

While the amendments to the FCR now incorporate the possibility of appeal in criminal proceedings, appeal is not to any court but to the Commissioner or Additional Commissioner who are part of the executive government. Furthermore, appeals are only granted at the absolute discretion of the Governor.<sup>177</sup> Further appeal can then be made to the FATA Tribunal, with which there are serious concerns regarding its independence and impartiality.

#### 4.4 COLLECTIVE PUNISHMENT

Collective punishments have been one of the most enduring representations of the lack of human rights protections in the Tribal Areas, dating back at least to the creation of the FCR during the British colonial period.<sup>178</sup> Under the FCR, the Political Agent is authorised to carry out collective penalties against an entire community for alleged infractions by any of its members. Amendments to the FCR only slightly reduce the scope of these provisions. Pursuant to Article 21 of the FCR as amended, these measures apply only to males between the ages of 16 and 65 in the first instance, and then to smaller social groups than provided for in the FCR prior to amendment.<sup>179</sup> The application of these measures is in violation of international law, including that it discriminates against men between the ages of 16 and 65. The law, however, has not changed practice much in this regard because the FCR was being applied on the whole only to men and boys even before the amendments. Even after the

amendments, boys younger than 16 continue to be punished for criminal offences they were not personally responsible for under the collective punishment provision of the FCR.

Maroof Khan, a 12-year old labourer in a Pakistan Pipe Industry factory in Kokikhel Katyakkhel district of Khyber Tribal Agency was sentenced to three years in jail and fined Rs100,000 after being arrested along with his father Qadar Jan, who was accused of involvement in a kidnapping. The jirga that convicted Maroof Khan accepted that he was innocent. Nevertheless, they insisted that Maroof Khan also be convicted for the kidnapping, one member of the jirga saying, “Qadar Jan and Maroof his son, both must be punished to get rid of this curse from this area. Maroof being a minor is not involved in the crime and should be treated mildly.”<sup>180</sup> Khan is currently being held at Central Prison Peshawar and is expected to be released in 2013.



Maroof Khan, a 12-year old labourer from Kokikhel Katyakkhel district of Khyber Tribal Agency, a victim of collective punishment following a jirga decision. Although the jirga has accepted he was innocent, he was sentenced for the alleged crimes committed by his father and other members from his tribe. He is currently being held at Central Prison Peshawar and is expected to be released in 2013.

## 4.5 SAFEGUARDS AGAINST VIOLATIONS

### MAINTENANCE OF REGISTER OF DETAINEES

A small improvement in the FCR regime following its amendment is the additional requirement to maintain a register of all cases of those detained, at article 58. Article 58A of the FCR also includes a requirement for regular jail inspections, but only governmental authorities, not independent bodies.

The AACPR includes an obligation to maintain a register of detainees<sup>181</sup>. However, the definition of "internment center", which is where those detained under the AACPR are to be kept,<sup>182</sup> is very broad and covers "any compound, house, building, facility or any temporary or permanent structure that is notified by the Provincial Government to serve as premises where persons are interned." It is not clear to whom the Provincial Government will notify that such premises will be used as an internment center, and the lack of any formal notification procedure, together with the broad authority to use almost anywhere as a detention facility. Given the many cases of enforced disappearance and secret or incommunicado detention documented in this report, such a lack of clear procedures is of great concern.

Certainly, the lack of notification of the detention facilities is a common problem. Many relatives of detainees picked up and held in the Tribal Areas had no idea where detainees were being held, and despite the listing of internment centers under the AACPR, the location of some detention facilities are still not publicly known.

Forty-year-old Ali Raza went missing from his village in Swat district in PATA in August 2011 and his family had no idea about his fate or whereabouts until early July 2012. "An Army officer rang my cell, he said Ali is dead," his brother told Amnesty International. "He said Ali had been arrested last year because he was involved with the Taliban. The officer said his body is being kept in Saidu Teaching Hospital. My brother was involved with the Taliban. As far as I know he never fought with them, but he was a Taliban supporter. But no one ever told us he had been arrested, [or] what [crime] he was guilty of [committing]," he explained. Nor did the authorities inform Khan's family where he was being detained or the reasons for his death.

Detainees have the right to be held in officially recognized places of detention, under a valid order committing them to detention.<sup>183</sup> This is recognised as an important safeguard against torture and other ill-treatment, enforced disappearance and other human rights violations.<sup>184</sup> No-one should be held in secret detention<sup>185</sup> and the maintenance of secret places of detention should be abolished by law.<sup>186</sup>

The Human Rights Committee has stated with regards to implementing the ICCPR that "to guarantee the effective protection of detained persons, 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, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends."<sup>187</sup> State authorities must keep and maintain up-to-date official registers of all detainees, both at each place of detention and centrally.<sup>188</sup> The information in such registers must be made available to courts and other competent authorities, the detainee, and his or her family.<sup>189</sup>

The requirements of the AACPR in this do not meet the Pakistan's obligations under international human rights law. It is not clear who the Provincial Government is to notify about the "internment centers," and as such it is not clear that detainees' lawyers or their families will have access to this information, particularly as the Armed Forces have such wide discretion under the AACPR to establish an internment center almost anywhere. These concerns are borne out by the practice in the Tribal Areas; Amnesty International is aware of



only one instance of notification of the location of internment centers in FATA and PATA. This was also only because it was required by the Peshawar High Court and the notification was not made publicly available until after it was filed as a submission to the Court.<sup>190</sup> In all of the cases Amnesty International has documented where individuals had been detained by the Armed Forces, no families or friends were originally notified if they were being held in a prescribed internment center, or the specific location of prescribed internment center.

## ACCESS TO FAMILY AND LAWYERS

In addition to the requirements above, international human rights law requires that detainees have the right to inform<sup>191</sup> their family and friends<sup>192</sup>, and access to a lawyer<sup>193</sup> and medical treatment<sup>194</sup>. Detainees also have the rights “to be visited by and to correspond with, in particular, members of his family” and “to communicate with the outside world” more generally.<sup>195</sup> These rights apply as well in situations of armed conflict as a matter of international humanitarian law.<sup>196</sup> Everyone arrested or detained – whether or not on a criminal charge – and everyone facing a criminal charge – whether or not detained during pre-trial phases – has the right to the assistance of legal counsel.<sup>197</sup> Neither the AACPR nor the FCR contain any guarantees of this nature and there is considerable evidence that these rights are systematically not respected in practice. This is a key concern given the number of cases of incommunicado detention (denial of contact with the outside world), torture and other ill-treatment and enforced disappearance that Amnesty International has documented in this report.

The authorities have provided some details of internment centers and lists of detainees to lawyers acting on behalf of relatives of individuals in custody under pressure from the Peshawar High Court despite its apparent lack of jurisdiction over FATA and AACPR. However, as far as Amnesty International is aware, the authorities have largely failed to provide families and lawyers with access to the detainees. On occasion detainees have managed to gain access to their families, but in all of the cases documented for this report this happened only after extensive inquiries by relatives through informal channels. In most cases, relatives had no idea where their family members were being held, their current condition. Lawyers engaged by relatives to represent family members in detention almost never knew where they were being held, never gained access to and were unaware of any charges brought against them. In almost all of the cases Amnesty International documented, detainees were being held incommunicado, that is, without contact with the outside world. As noted above, many were also subjected to enforced disappearance.

The authorities’ failure to allow relatives to access detainees is not only in breach of international law but appears to directly violate orders of the Peshawar High Court. On 26 June 2012, the Court ordered the internment authorities to facilitate meetings between relatives and detainees, noting that this “mandatory” requirement “shall not be violated in any manner.”<sup>198</sup> During the same hearing, the FATA Secretariat told the Court that relatives would be provided with an opportunity to meet detainees “according to the procedure laid down under the law.”<sup>199</sup> Despite this, as far as Amnesty International is aware, the internment authorities have not formally facilitated family access to most detainees.



At the Peshawar High Court, Rafia (left) and Khadija (right) hold photos of their fathers, victims of enforced disappearance, while, in the courtroom, lawyers demand their immediate release by the authorities. 21 August 2012. Both Rafia and Khadija’s fathers were abducted by the Armed Forces from Nowshera District, northwest Pakistan, in January 2009. © Amnesty International

The enforced disappearance of Ayaz, documented in section 2.3 above, an influential and respected member of his community, illustrates the degree to which detainees are denied access to families and lawyers, but is far from unique. The family of 25 year old Shahzeb from Mangwultan, whose death in custody is described in section 2.1, was not able to access him, nor were they provided any information about the charges against him or his whereabouts, until he was returned to them dead three years after being arrested.

Incommunicado detention and the failure of the authorities to provide access to families or lawyers have a profound and traumatic impact on the men and boys held in detention. “The whole two months I was in detention I would recite Quran and pass through my days. But I did not know anything about the outside world,” Khaleel Jan, who was arrested in January 2010 and later released, told Amnesty International. “The whole time I had no idea whether my family was okay, there was no contact with them at all. I was always in mental tension. When I was finally reunited with my wife [over] two months later she burst into tears. She said she was always worried, so many thoughts were running through her head. She was frightened that she would never see me again. We only got married six months before I was arrested.”<sup>200</sup>

The UN Committee against Torture has emphasized the right to contact relatives as among the “basic guarantees” that “apply to all persons deprived of their liberty.”<sup>201</sup> This is of key importance given the practices of enforced disappearance, torture and other ill-treatment and

the cases of deaths in custody documented in this report.

Even when the authorities do acknowledge holding named individuals in their custody, relatives and their legal representatives often only discover this by accident. The lawyer acting for relatives of Hameed and Rashid, who were both arrested by the Army in Batkhela District on separate occasions in September and October 2010 respectively, only discovered that the authorities had acknowledged that the two men were in the state’s custody after he noticed their names on an internment list submitted by the Khyber Pakhtunkhwa government to the Peshawar High Court on 11 May 2012.<sup>202</sup> The lawyer only noticed the list because the Peshawar High Court made it public the same day. But even after this disclosure, Hameed’s lawyer told Amnesty International, he has never been allowed to meet his client. Hameed’s story is typical of many of the cases documented for this report.

In some instances, the authorities have denied detaining an individual despite witnesses to his arrest by the Army or other security forces. But even in cases where the authorities admitted to holding the individual in their custody, lawyers seeking to exercise their due process rights, as well as family, were rarely given access to detainees. Furthermore, in such cases, the authorities rarely revealed the location of the detainee, or at least not until months later, and then only in lists of detainees submitted to the Peshawar High Court. Often, the family would not be aware of the location or whereabouts of the detainee even after such lists were submitted to the court.

## **ENFORCED DISAPPEARANCE AND INCOMMUNICADO DETENTION OF HAMEED**

Hameed, a 42-year-old small business owner and father of five children, was detained by soldiers from 19 Sindh Unit of the Pakistan Army on the evening of 10 September 2010 during a raid on his house in Malakand District. His family told Amnesty International about the ordeal they faced just trying to meet him in detention.

“We had no idea where Hameed was being kept or if he was still alive.” Fearful of asking the Armed Forces or other authorities directly about Hameed after witnessing his arrest, Hameed’s relatives informally approached retired Armed Forces personnel and others about his whereabouts. “We started to privately ask people like retired military officers to find out what happened to him. At that time [after Hameed had initially been taken] none of the people we contacted knew anything about where he was. Four months after Hameed was taken, around January 2011, we spoke to the office of Humayun Khan [the Finance Minister in the Khyber Pakhtunkhwa provincial government]. We explained the entire situation to his Personal Secretary but all he said to us was inshallah he will be okay and released soon.”

“To this day, whenever we hear someone from our area has been released from any government prisons we ask them about Hameed. We ask all of the people from our village about people who had been released recently, everyone [in the village] knew who had been released even if people were too afraid to speak too openly about former prisoners. For a whole year we failed to find anyone who had seen Hameed in detention. Maybe they did, but were too frightened to say. We couldn’t tell. But then one day in September 2011 we spoke to a man who said, “yes Hameed was in detention with me. Alhumdulillah he is still alive.” But then he said, “do not mention that I told you this. They [the authorities at the detention centre] said that if they find out I have spoken to

anyone [about being in detention] they will find me and kill me." According to this man both he and Hameed were first kept in Malakand prison then sometimes they were shifted to a prison in Thana College in Malakand." Thana College is not an official internment center.

"We met a few other people who were locked up with Hameed and it turns out they were with him some months ago and they did not know his location or condition at that moment. But they are always too scared to tell us exactly where they were kept, what was his condition."

"I finally met Hameed in Malakand Fort on 28 July 2012. Someone from our village had a relative working as the District Coordinating Officer (DCO) of the Malakand District civil service. He told his relatives in our village who told us that Hameed was there. After that, myself and Hameed's wife and other immediate family would visit Malakand Fort every few weeks, but without being allowed to see Hameed. Eventually they allowed us to meet him, but they didn't tell us this themselves. The whole time they contacted us through the DCO's [District Coordinating Officer] relative who lived in our village. We were told on Friday evening to come to the Fort the next day. That Saturday morning, on 28 July, we arrived at the Fort around eight o'clock in the morning. The guards at the Fort told us to wait for a couple of hours on the lawn outside the building. At around 11 o'clock in the morning one of the guards from the Fort called us in and after he registered our names, about half an hour later, the four of us we were invited into a big room. Some men in military-looking uniforms, I don't know which kind, first checked the room and then left us in there. Then they brought Hameed in. I was shocked beyond belief by his appearance. Hameed looked very skinny and looked off-colour. His lip was cut, one of his front teeth was missing and his speech was impaired. He said he lost it after being beaten by the interrogators inside the prison. Before his arrest and detention Hameed had a stomach ailment for which he took medicine, but he wasn't given the appropriate dosage and he said his stomach problems had gotten worse because of this."

"He said he had been accused of attacking the Batkhela Chowk police station in 2009 [at the beginning of the Army operations there]. In total we spoke to him for just 20 minutes."

"We had never seen him before and we never saw him after that meeting in Malakand Fort. I worry we will never see him again." As far as the family knows, Hameed remains at Malakand Fort, but apart from the internment list produced to the Peshawar High Court, the family has received no other information from the authorities as to his whereabouts, or his conditions in detention. As at time of writing, the family had not been able to visit him again, nor have they been provided with a formal mechanism for requesting access to Hameed. Even when informally asked, for example when Hameed's relatives contact prison staff through friends, the authorities have refused to grant access to Hameed.

An order was issued against Hameed under the AACPR on 11 May 2012 but his lawyer has not been allowed to visit him. The only notice of this order provided by the authorities was a large list of individuals charged under the AACPR, together with names of the internment centers where they were allegedly being held, provided by the government to the Peshawar High Court during hearings of *habeas corpus* petitions.

Hameed's case is emblematic of the multitude of human rights violations that those in detention in the Tribal Areas are subjected to by the Armed Forces. Hameed was taken away and subjected to enforced disappearance by the Armed Forces for nearly two years, and even then his family only managed to discover his whereabouts through informal channels.

Subsequently, they were only granted access to him on one occasion, when they saw him in ill-health, with complaints about the lack of adequate medical care and alleging torture and other ill-treatment at the hands of his interrogators. Amnesty International is not aware that any of Hameed's allegations have been investigated. Since July 2011, neither his family nor his lawyer has been able to visit Hameed and as far as they know he has been held in incommunicado detention without charge or trial and without being physically produced before a court.

## **FAILURE TO PROVIDE REASONS FOR DETENTION**

Neither the FCR nor the AACPR contain any explicit requirement that detainees be given the grounds or reasons for their detention. Although there is a requirement to pass “a suitable order in writing” under Article 10(3) of the AACPR, it is not clear if this order must include detailed reasons for the decision, or if there are any provisions that allow such an order to be challenged before a court.

In practice, however, detainees are rarely, if ever, aware of the reasons for their detention. Khaleel was arrested in January 2010 by a group of uniformed policemen led by three men in plain clothes while he was visiting his doctor in Nowshera. “First they asked my doctor to confirm his identity? He said yes, and two of the men in plain clothes immediately grabbed his arms and one of them said ‘come with us’,” Khaleel told Amnesty International. “Then one of the men in plain clothes asked who I was and where I was from. I told them my name and that I am from Swat. After hearing this they grabbed my hand and one of them said ‘you also come along’.” During interrogations in an unknown location, Khaleel was asked whether he belonged to any religious group and what he thought of the Taliban, but at no stage during his arrest or subsequent detention or interrogation did police or the men in plain clothes introduce themselves by name or rank, nor did the men in plain clothes explain whether they belonged to any state authorities. Khaleel spent the next two months in detention. Khaleel's experience is typical of many of those detained by the state.<sup>203</sup>

Article 9(2) ICCPR provides that “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”<sup>204</sup> Neither the FCR nor the AACPR incorporate this right, and in practice authorities are violating article 9(2) of the ICCPR.

## **4.6 CONDITIONS OF DETENTION**

The AACPR provides no safeguards at all regarding conditions in detention, requiring only that “the Governor... prescribe internment procedure” regarding how detainees are held.<sup>205</sup> As far as Amnesty International is aware, the authorities have not prescribed an “internment procedure” for either FATA or PATA, and with no procedure, there are no safeguards

consistent with international human rights standards, such as are found in the UN Standard Minimum Rules on the Treatment of Prisoners (SMR)<sup>206</sup>. Given the lack of enforceability of fundamental rights protections in the Tribal Areas under Pakistan Constitution and AACPR<sup>207</sup>, this heightens the vulnerability of detainees, with no explicit standards set to provide protection in terms of the conditions in which detainees are kept. There is no reference in the AACPR to any international instruments, such as Article 10 of the ICCPR which provides that detainees must be treated humanely, to the SMR or the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, or even to the Constitution itself.<sup>208</sup> Conditions of detention are a very real concern in the Tribal Areas, particularly in light of the deaths in custody documented in this report.

#### **4.7 VIOLATION OF THE RIGHT TO LIFE OUTSIDE AN ARMED CONFLICT**

As documented in Amnesty International's 2010 report, and as continues to this day, the Armed Forces are using lethal force in both FATA and PATA. There has been, and continues to be, a non-international armed conflict in some parts of FATA, between the Pakistan state and the Taliban and other armed groups. However, there are other parts of FATA and PATA to which the AACPR currently applies but where there is no armed conflict taking place.

If the AACPR is to apply to the FATA as a whole and PATA, in order to ensure respect for the right to life, the AACPR must recognise the different sets of rules that apply under international law in situations of armed conflict and outside of situations of armed conflict. They should by default reflect the standard position under international law outside of armed conflict, which is to provide for a human rights and law enforcement standards framework, and only permit recourse to the more permissive rules of international humanitarian law in those particular situations and territories that actually constitute an armed conflict.

The AACPR does not do this. Article 4 allows a more permissive regime to be applied, akin to a conflict setting, irrespective of whether the situation is one of armed conflict. Article 4(1) of the AACPR obliges the Armed Forces to take precautions in attack, i.e., precautions when using lethal force to minimise "collateral loss of civilian life and object," while Article 4(2) states that the Armed Forces should "adhere to the principles of proportionality and necessity". Article 4(3) however gives the Armed Forces a very wide latitude to use force and arms to achieve any "objective" during "armed action" and to "take any action... necessary in this regard."

The AACPR, which may be retrospectively applied,<sup>209</sup> provides that the Armed Forces may be "requisitioned in aid of civil power, for law and order duties, to conduct law enforcement operations, to continue natural calamities and for rehabilitation."<sup>210</sup> Accordingly, they are not specifically applicable to times or places where an armed conflict is ongoing. In fact, the reverse might be said to be true; they are relevant to situations where the Armed Forces are called on to fill the role of the civilian administration, including where there is no armed conflict.

Indeed, even in those areas in which there is an ongoing non-international armed conflict,

international human rights law is still applicable, although the “test of what is an arbitrary deprivation of life” will generally be determined by international humanitarian law.<sup>211</sup> International human rights standards may also be relevant in situations of armed conflict. For instance, in so far as armed forces or others are in fact engaging in law enforcement functions, standards on use of lethal force such as those contained within the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the UN BPUFF, discussed further below) should still in principle apply, particularly as regards civilians who are not at the time of the use of force actively and directly participating in hostilities.<sup>212</sup>

Particularly outside a situation of armed conflict, the use of lethal force could breach international human rights law and standards. The Pakistani state, including its Armed Forces, must respect the right to life enshrined in Article 6 of the ICCPR and Article 9 of the Constitution of Pakistan.<sup>213</sup> This means that lethal force can only be deliberately used in very narrow circumstances, for instance as provided for by the UN Code of Conduct for Law Enforcement Officials and the UN BPUFF. Specifically, firearms should only be used “in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”<sup>214</sup> More broadly, “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”<sup>215</sup>

In situations of armed conflict, international humanitarian law may provide more specific rules in terms of the use of lethal force.<sup>216</sup> In such situations the Armed Forces must ensure that civilians are not targeted<sup>217</sup>; and that civilians are protected unless and only during such time as they directly participate in hostilities.<sup>218</sup> Armed Forces must distinguish between civilian and military targets;<sup>219</sup> ensuring any impact on civilians is proportionate to the military advantage anticipated;<sup>220</sup> and by taking precautions in attack.<sup>221</sup> While the AACPR as drafted reflects some of these obligations, it does not clearly set out the prohibition against targeting civilians who are not directly and actively participating in hostilities, or fully incorporate the other protections to which civilians are entitled. In any event, even if these provisions were amended to be brought into line with international humanitarian law, the AACPR would still need to be further amended to make clear that they apply only to situations of armed conflict, with rules reflecting international law enforcement standards applying in all other circumstances.

## 5. BARRIERS TO JUSTICE

**“All petitions filed at the Peshawar High Court alleging that someone has been taken by the state are sent to the Defence and Interior ministries which then notify other relevant ministries and security authorities. Every sector commander of the Armed Forces gets sent a report about each of these petitions. Mostly they say we don’t have these people. They only occasionally mention that yes this person is in our custody or he might be in our custody.”**

Iqbal Mohmand, Deputy-Attorney-General for the Khyber Pakhtunkhwa province government<sup>222</sup>

Hundreds of relatives and a number of lawyers have sought to enforce basic human rights protections for individuals held in detention through Pakistan’s courts, but there are significant legal and practical hurdles to judicial relief. The greatest legal obstacle is the constitutional exclusion of Pakistan’s high courts from jurisdiction over the FATA on all matters,<sup>223</sup> and over the PATA with respect to fundamental rights violations of the Constitution, *habeas corpus* petitions and other matters, pursuant to Article 245(3) of the Constitution and the AACPR.<sup>224</sup> Despite this, Pakistan’s high courts, and especially the Peshawar High Court and the Supreme Court of Pakistan, have actively engaged in some *habeas corpus* cases and on occasion sought to enforce the due process rights of detainees (as discussed in sections 2.3 and 4.2 in above).

On the other hand, the legal barrier to criminal and civil suits against the state or its agents for alleged human rights violations in the Tribal Areas appears to have been maintained. While the courts have threatened to hold officials accountable, Amnesty International is not aware of any prosecutions of officials in the Tribal Areas for alleged human rights violations. In a hearing also in June 2012, Chief Justice of the Peshawar High Court, Dost Muhammad Khan, noted that:



*this court deem [sic] it proper to administer another warning to the Civil Administration throughout the Province as well as FATA and particularly the police not to extend any assistance or help to the Intelligence Agencies or other forces who are indulging in these illegal activities [unlawful detentions and enforced disappearances] and without sanction of law and without proper sanction from the competent authority and in case anyone is found violating these instructions and the order of the court, he will be booked for the crime under the relevant provisions of the law by the court.*<sup>225</sup>

The Peshawar High Court described the “illegal activities” as instances where the Civil Administration and local police assist the Intelligence Agencies in “invading homes and premises of the citizens, make arrest [sic] and whisking away these people to unknown destination.”<sup>226</sup> In non-binding remarks during a separate hearing in relation to alleged enforced disappearances and other alleged violations in Armed Forces detention, the Chief Justice of the Supreme Court Iftikhar Mohammad Chaudhry reportedly threatened to order the arrest of the law enforcement personnel for failing to provide a legal basis for arrests and detentions in that province.<sup>227</sup>

During the landmark *habeas corpus* hearings before the Peshawar High Court in June 2012 Brigadier Nobahar the Judge Advocate General of the Pakistan Armed Forces, acknowledged that the continued detention of individuals after the Army had determined them were innocent “constitutes a civil offence under the Army Act and the officer/officers responsible for the same would be triable even by the ordinary criminal courts under the supervision of the High Court... [without] exemption under the Army Act.”<sup>228</sup>

In the Adiala 11 case, Brigadier Nobahar also assured the Supreme Court that the Armed Forces were “fully aware” of fair trial protections under the Pakistan Constitution<sup>229</sup> and that those held in custody would have to be released if there was insufficient evidence to prosecute them.<sup>230</sup> The petitioners have also asked the court to direct the Pakistan Ministry of Defence and other governmental authorities, including the ISI, to file a complete report regarding the death of some of the detainees, and to declare that all of the Adiala 11 were in “illegal confinement” and “subjected to torture”. The petition is still pending before the Supreme Court, however, as far as Amnesty International is aware, there has been no criminal investigation alongside this case.

These acknowledgements by the Court and the authorities that detentions have been carried out unlawfully are an important step in the process of moving the state towards greater respect for the human rights and the rule of law in the conduct of security-related detentions. However, these acknowledgements and threats of prosecutions by the courts have failed to translate into justice for victims of violations in detention.

As far as Amnesty International is aware, no serving or retired member of Pakistan’s Armed Forces, other security forces or law enforcement agencies, or intelligence services has been prosecuted for their alleged involvement in unlawful detentions, enforced disappearance, torture and other ill-treatment or the unlawful killing of detainees. No prosecutions have been carried out in relation to any of the cases documented in this report, despite some of these and others being presented to the courts with detailed evidence of violations committed by named members of the Pakistan Armed Forces.<sup>231</sup>

As the UN Human Rights Committee has said in relation to obligations under the ICCPR:

*Where... investigations... reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations.*<sup>232</sup>

Thus, the impunity that currently reigns for precisely these kinds of violations in the Tribal Areas also constitutes a violation of Pakistan's international human rights obligations.

The Judge Advocate General acknowledged that there was no legal basis for the arrest and detention of the Adiala 11 under the Army Act 1952 and justified their continued custody by the state under the AACPR. Relatives of surviving members of the Adiala 11 told Amnesty International that Pakistan authorities had not provided them with the specific basis for their continued detention under the AACPR.<sup>233</sup> Nor, as at time of writing, has the Supreme Court challenged the lawfulness of the application of the AACPR in this case.

Furthermore, there are also serious concerns that many released detainees have been threatened with death if they speak out about their treatment in detention, as has been documented in this report. This is a serious barrier to the reporting and documenting of these cases, let alone investigations and prosecutions. Amnesty International's concerns are echoed by the UN Working Group on Enforced or Involuntary Disappearances (WGEID) in relation to Pakistan generally. A statement issued at the conclusion of its visit to Pakistan in September 2012 notes that "it was also reported to the WGEID that some victims and witnesses received serious threats when reporting their cases to the police, the courts or the Commission of Inquiry."<sup>234</sup>

Several men who had been released from Armed Forces detention and who met Amnesty International refused to go on record about their ordeal out of fear of being detained again or killed. All of the released detainees interviewed on record by Amnesty International said they had been threatened with death by interrogators or other prison staff if they spoke to anyone about their detention. When being released, recalled 23 year old Noor, "one of the guards told me not to go out of Swat and that I should report to the Derrai check post every month. If you try to leave [Swat] or tell anyone [about his treatment in detention] we will find you next time we will just kill you."<sup>235</sup>

Other former detainees felt they had been indirectly threatened to prevent them from speaking openly about their experiences in detention. When Ayaz, who was arrested in Shabqadar District by the Army in July 2011, was being released in August 2012, he explained that:

*an Army officer said, 'you are a free man. But you must keep silent and not talk about what happened or you will face trouble.' I took this to mean that they would kill me if I told anyone*

*about the beatings and other horrible things they did to me. I did not say anything in response to his threat but I felt he took my silence to mean I would say nothing. Then he ordered a soldier to blindfold and release me.*<sup>236</sup>

International law provides that victims and witnesses, as well as all those involved in investigations into enforced disappearances, torture and other ill-treatment and arbitrary or summary executions, are protected from violence, threats of violence, ill-treatment, reprisal or any other form of intimidation.<sup>237</sup>

The failure to bring state perpetrators of these violations to justice is largely a result of the exclusion of the high courts from the Tribal Areas. The courts are also constrained by their reliance on the executive to carry out investigations into alleged incidents of human rights violations by the state. Whether due to lack of jurisdiction or practical resources, or because prosecutors and judges are unwilling to challenge the actions of the military, the fact remains that the perpetrators of human rights violations are not being subject to proper criminal investigations or prosecution.

As noted in Chapter 2.1 above, witnesses told Amnesty International that they saw soldiers from the Pakistan Army arrest Jahanzeb from his village in Swabi in February 2011. His dead body was recovered on the side of the road in Haripur district, around 60 kilometres from where he was taken, over a year later. The case was brought to the Peshawar High Court but the authorities said they had no record of him being in their custody. The court simply accepted their claims and did not order a criminal or any other form of investigation, even though Jahanzeb's family attested to witnessing Army soldiers arresting him in the petition filed with the Court. At time of writing, the case remains pending but no further action has been taken by the Court.

## 5.1 ACCOUNTABILITY AND REMEDIES

Both the FCR and the AACPR violate the right to a remedy,<sup>238</sup> and undermine and render ineffective the protection of human rights in the Tribal Areas. The gap in accountability, founded in the ouster of the jurisdiction of the high courts and consequent impossibility of upholding the Pakistani Constitution in FATA, has potentially widened with the amended FCR. Article 10 of the FCR now provides that “no Civil Court shall have Jurisdiction to call in question the legality of anything done or purported to be done in respect of any matter, the cause of action whereof has arisen in the Tribal Area.”

Similarly, while the AACPR does expressly prohibit torture (but not other cruel, inhuman or degrading treatment or punishment) at Article 15, the only oversight of internment centers is by the Oversight Board which, as noted earlier, is unlikely to be impartial.<sup>239</sup>

Article 5 of the AACPR does provide for the investigation into “abuse or misuse of abuse of force” by either the Armed Forces or by civilian officer. It further provides that crimes under international law constitute an offence under the AACPR, but provides only for that offence to be tried by the Armed Forces in “a procedure to be prescribed under this Regulation in case

of such an event."<sup>240</sup> This presents a number of issues in both law and practice. As far as Amnesty International is aware, no procedure has yet been prescribed, and, further, no prosecutions have been brought against any members of the Armed Forces in relation to human rights violations in FATA and PATA, certainly not in relation to any of the cases documented in this report. It also leaves open the possibility, if such a procedure is ever prescribed, of the use of military courts for the trial of military personnel for serious human rights violations, in contravention of the UN Declaration on the Protection of all Persons from Enforced Disappearance.<sup>241</sup>

For there to be full and adequate accountability of the Armed Forces and the civilian government in FATA and PATA, the ordinary civilian courts should be given jurisdiction to try crimes under international law and to hear and adjudicate all claims of human rights violations, whether committed by armed forces or civilian governments. In light of the ouster, and the general political climate surrounding such cases, it is extremely unlikely at present that the courts will proceed to hear more sensitive cases involving the prosecution of the Armed Forces for human rights violations and crimes under international law. Amnesty International is not at present aware of any such cases being heard in relation to crimes and/or human rights violations committed by the Armed Forces in the Tribal Areas.

The inadequacy of the provisions for the investigation of these cases, and the complete failure to ensure any accountability in practice, are in contravention of international law. Pakistan is obliged to ensure that victims of human rights violations have access to an effective remedy.<sup>242</sup> Investigation will generally form part of any effective remedy. The Committee against Torture has underlined that a "state's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress" and thus a violation of Article 14 of the Convention against Torture.<sup>243</sup> Allegations of torture, enforced disappearance, and any instance of cases of death resulting from the use of lethal force, must be promptly, thoroughly and impartially investigated.<sup>244</sup>

The Constitution of Pakistan gives all citizens the right to seek remedy for violation of their rights via the process of petitioning the High Court of their province or the Supreme Court. Despite this, hundreds of individuals have sought to challenge their detention under the AACPR through *habeas corpus* petitions. The Peshawar High Court registry at Peshawar estimates there are over 300 active *habeas corpus* petitions filed with them, and around another two dozen filed with the Dar-ul-Qaza circuit court in Mingora, Swat, the two main courts where lawyers have sought judicial relief for detainees in the Tribal Areas.

Lawyers seeking to uphold the rights of detainees have challenged the legality of detentions by relying on the Pakistan Constitution, making arguments mainly on human rights due process issues. In the cases of Hameed and Rashid, there was a failure to give families information and access to their relatives in detention is a breach of the Right to Information under Article 19A, or, as in Ayaz's case that he had been kept in illegal custody and without legal justification. However, there are no criminal investigations or prosecutions into the deaths in custody, enforced disappearances or torture and other ill-treatment documented in this report, and this remains the key problem undermining the rule of law and human rights in the Tribal Areas.

Almost all of the cases brought before Pakistan's judiciary have been made before the Peshawar High Court, the highest court in Khyber Pakhtunkhwa Province. A handful of petitions challenging the AACPR have also been submitted before the Supreme Court of Pakistan, as well as 'missing persons' petitions pertaining to alleged enforced disappearances and other unlawful detentions across Pakistan from over the last decade to the present. These include cases of alleged enforced disappearance by the Pakistan Armed Forces, intelligence services, and law enforcement authorities relating to the Tribal Areas such as the 'Adiala 11' case.

Along with Pakistan's obligations regarding investigations under international human rights law, the state must ensure that victims of human rights violations have an effective remedy.<sup>245</sup> The right to a remedy may include any one or a combination of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>246</sup> Rehabilitation may be especially important for victims of torture and other ill-treatment or those who have survived after being subjected to enforced disappearance.<sup>247</sup> Furthermore, there must also be justice and accountability,<sup>248</sup> and victims and the general public have the right to know the truth about the human rights violations the victims have suffered.<sup>249</sup> Presently, both under the law and in practice, Pakistan is failing to guarantee this right to victims, resulting in a complete lack of accountability in the Tribal Areas that perpetuates impunity for perpetrators of violations and abuses.

## 6. CONCLUSION

**"On the one side is the Army, they enter houses without any warnings and arrest people without any reason. They are behaving very harsh with the people. On the other hand everyone is terrified of the Taliban, at any time they might kidnap you, or kill you. Everyone was saying that the Army will come and improve the situation in Bajaur [Tribal Agency], but instead people are as frightened of the Army [as they were of] the Taliban."**

Rostum Khan, a villager from Bajaur Tribal Agency<sup>250</sup>

The state may have reasserted its 'writ' in areas previously controlled by the Taliban over the last three years, but this will have a limited impact on lawlessness in the Tribal Areas without the effective enforcement of human rights protections. All of the people interviewed by Amnesty International for this report, from victims of state violations or Taliban and other armed group abuses, to their relatives, lawyers, and communities, expressed little confidence in the state's ability to protect their rights. The practice of arbitrary detention, the many cases of torture and other ill-treatment, enforced disappearance and deaths in custody documented in this report, and lack of effective justice and remedies are sending the message that the state will act with the same impunity as the Taliban rather than seek to end the cycle of violence that has had such a devastating impact on the Tribal Areas.

The AACPR is the most significant change to the legal landscape of northwest Pakistan in the last decade. The regulations have enabled the continued exclusion of FATA from human rights protections and extended these exclusions to PATA. By creating the AACPR, the Pakistan government has not only failed to address the absence of rule of law in the Tribal Areas, but fundamentally undermined it. While reforms to the FCR have led to some fair trial, arrest and detention improvements, these fall far short of what is required by international

human rights law and are rendered almost meaningless by the AACPR.

The Taliban and other armed groups continue to pose a deadly threat to Pakistan society, as reflected in abuses ranging from indiscriminate and deliberate attacks on civilians, and the brutal, unlawful killing of captured Armed Forces personnel and those they accuse of spying. But the state continues to have a poor record in bringing Taliban and other armed groups perpetrators of abuses to justice in fair trials.

The accountability gap extends beyond just the Taliban. No serving or retired member of the Armed Forces has ever been brought to justice for any of the violations documented in this report. This is evidence of a broader pattern, where investigations into deaths in custody, enforced disappearance and torture and other ill-treatment by the Armed Forces are rare if not completely non-existent. In law and practice the AACPR regime does nothing to address these glaring shortcomings. The lack of formal and effective enforcement of human rights protections under Pakistan and international law due to the AACPR, as well as the FCR and Constitution, makes hopes of justice and redress for victims of violations and abuses even more remote.

The Pakistani authorities must take immediate steps to meet their international and domestic human rights obligations and begin the long process of improving the human rights situation in northwest Pakistan. The state must ensure fundamental rights protections of the Constitution are enforceable in the Tribal Areas by formally extending the jurisdiction of the High Courts and parliament to FATA. These steps can only be made by act of parliament and executive order from the President respectively.

The Pakistani authorities must also repeal the AACPR and repeal or reform the FCR in line with international human rights standards. As detailed in this report, the AACPR is in breach of so many human rights standards, and facilitates continued violations of human rights in practice, that it is beyond reform. The AACPR is, in addition, a threat to human rights and rule of law across Pakistan because, as starkly evidenced by the ‘Adiala 11’ case, the Armed Forces are in some circumstances seeking to justify arbitrary and unlawful detentions and enforced disappearances anywhere in the country under it. Furthermore, the continued application of the AACPR and its broad arrest and detention powers undermines the rule of law, rather than encouraging the authorities to improve upon and enforce Pakistan’s regular criminal justice system. As noted above, the regular criminal justice system does not meet international human rights standards on several grounds, but it does provide a range of important human rights safeguards that must be enforced and strengthened in line with those standards.

Orders of the Supreme Court, Peshawar High Court, and all other courts regarding the human rights of individuals in detention must be fully and promptly implemented by the Pakistani authorities. This includes fully implementing court orders to release all those against whom there is no evidence of an offence and to promptly bring all others to justice in fair trials. All cases of deaths in custody, or where there are allegations of torture or other ill-treatment or enforced disappearance must be investigated. Where there is sufficient evidence implicating members of the Armed Forces the courts must bring perpetrators to justice in fair trials without recourse to the death penalty. The authorities must also bring Taliban and other armed groups perpetrators of human rights abuses to justice in fair trials, without recourse to

the death penalty. The inability to do so sends the signal that those who commit human rights violations and abuses are free to act with total impunity and above the rule of law.

By taking these steps to enforce human rights protections in law and practice, the Pakistani authorities will also send a clear and powerful signal that the state recognises its obligation to ensure that the people of the Tribal Areas are able to exercise their human rights and opportunities just as the rest of Pakistan society.

Amnesty International acknowledges that Pakistan faces major challenges in the Tribal Areas in confronting persistent violence by armed groups, re-establishing civil authority and infrastructure after years of conflict, and addressing a continuing humanitarian crisis. But without urgent action by the Pakistan government and authorities to take the measures outlined above, millions in northwest Pakistan will remain locked in a perpetual state of lawlessness.



## 6.1 RECOMMENDATIONS TO THE PAKISTANI AUTHORITIES

### **Reform the legal framework in the Tribal Areas to enforce human rights protections:**

- Repeal the Actions (in Aid of Civil Power) Regulations 2011 relating to the Federally Administered Tribal Areas and the Provincially Administered Tribal Areas;
- Repeal or reform the Frontier Crimes Regulation 1901 (as amended) to bring it into line with Pakistan's international human rights obligations;
- Formally extend the jurisdiction of Pakistan's High Courts and parliament to the Federally Administered Tribal Areas by act of parliament and executive order of the President respectively;
- End the system of administrative detention in the Tribal Areas; and
- Enact criminal and other laws without delay that define and prohibit enforced disappearances, torture and other cruel, inhuman or degrading treatment or punishment consistent with international law, and ensure its prohibition and penalties are clearly stated in the policies of Pakistan's Armed Forces and other security and law enforcement authorities, including those operating in FATA and PATA and other areas of military operations.

### **End deaths in custody, extra-judicial executions and other unlawful killings:**

- Carry out prompt, independent, impartial, thorough and effective investigations into all allegations of deaths in custody, extra-judicial executions and unlawful killings involving the Armed Forces, Taliban and other armed groups, and ensure such investigations are subject to public scrutiny; and
- Bring to justice all perpetrators of human rights violations and abuses in the Tribal Areas, including all implicated Armed Forces personnel and Taliban and other armed group members, in fair trials without recourse to the death penalty.

### **Combating torture and other ill-treatment:**

- Ensure all detainees are brought before an independent and impartial judge or other judicial officer who is empowered to order their release if the detention is not legal or justified, within 24 hours of arrest in line with Article 9(2) of the Constitution;
- Ensure that the courts and detainees' families and lawyers are informed of the location of the detainee and of any subsequent transfers to other places of detention, without delay;
- Ensure that all persons arrested or otherwise deprived of liberty are informed upon arrest of the specific grounds for arrest, and of their rights to contact their families and engage

legal counsel of their own choosing;

- Ensure that the names and ranks of the arresting officers are clearly visible at all times while on duty, and available in writing upon request; and
- Provide human rights training to the Armed Forces, the intelligence services, law enforcement interrogators and prison authorities, and ensure interrogation techniques and training clearly prohibit the use of torture and other cruel, inhuman or degrading treatment or punishment of detainees, and ensure these guidelines are strictly adhered to.

**Stop enforced disappearance, secret, incommunicado and other arbitrary detention:**

- Release anyone who has been subject to enforced disappearance or otherwise held in secret or other arbitrary detention unless they are charged with a recognisable criminal offence and brought promptly to a fair trial in accordance with international standards and without possibility of the death penalty;
- Immediately close all unofficial and secret places of detention;
- Immediately transfer detainees held in secret and other unofficial places of detention in FATA and PATA to officially designated detention centres;
- Amend or replace detainee registers required under the AACPR and FCR in line with international human rights standards. Ensure that an up-to-date, centralized register of all detainees is maintained and kept readily available and accessible to those concerned; including relatives, friends and others with a legitimate interest in the information. The register must include details of the names and places of detention, as well as the names of persons responsible for their detention, date of order of arrest and detention, authority issuing such orders and all transfer, release and revocation orders; and
- Endorse the relevant conclusions and implement all recommendations of the 2010 joint report by special procedures of the UN Human Rights Council on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism.

**Provide accountability and justice for human rights violations:**

- Ensure that all allegations of human rights violations, including enforced disappearance, torture and other ill-treatment, deaths in custody and extrajudicial executions, are investigated promptly, thoroughly and effectively by independent and impartial bodies subject to public scrutiny;
- Bring to justice all perpetrators of human rights violations and abuses in the Tribal Areas, including all implicated Armed Forces personnel and Taliban and other armed group members, in fair trials in accordance with international standards, and without recourse to the death penalty;
- Take all necessary steps to ensure that disciplinary actions and criminal proceedings are taken as appropriate against individual officers who fail to comply with relevant legislation,

policies and procedures governing the conduct of Armed Forces personnel;

- Ensure that whenever Armed Forces personnel are convicted of crimes under international law, the punishment imposed on them is commensurate to the gravity of the offence; and
- Ensure an independent, civilian oversight mechanism to hold all security forces, including the Armed Forces and intelligence services, accountable for human rights violations.

**Protecting witnesses:**

- Establish an effective witness protection programme to ensure the safety of individuals who wish to speak up in Court or public spheres and their families; and
- Ensure that those making a complaint of human rights violations during arrest or detention, and any witnesses, are given adequate protection from reprisals, intimidation or harassment, and promptly investigate and, where there is sufficient evidence, punish those alleged to be responsible for such harassment or the violations they are accused of committing.

**Provide effective remedies:**

- Ensure that all detainees are promptly brought before a court that is empowered to nullify the arrest or detention and release the detainee if the court deems the detention unlawful;
- Implement all court rulings without delay, including High Court and Supreme Court orders in fundamental rights cases and writs of habeas corpus; to investigate cases of unlawful detention; to allow and facilitate the visit of relatives and lawyers to detainees; and
- Provide remedies, including reparation, financial compensation, rehabilitation and satisfaction to the victims, including family members, of enforced disappearance, torture and other ill-treatment and unlawful killings, consistent with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

**Ratify and implement treaties to which Pakistan is not yet party, and cooperate with the UN:**

- Ratify and fully implement in practice the optional protocol to the UN Convention against Torture;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance, make the Declarations under Articles 31 and 32 of the Convention concerning the competence of the Committee on Enforced Disappearances to consider individual and inter-state complaints, and fully implement all provisions of the Convention in law, policy and practice;

- Ratify the Rome Statute of the International Criminal Court; and
- Respond promptly and fully to all requests for information from, extend invitations to and facilitate any visits by, the special procedures of the UN Human Rights Council, especially the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances.

## **6.2 RECOMMENDATIONS TO THE TALIBAN AND OTHER ARMED GROUPS**

- Cease unlawful killings and torture, and all capital and corporal punishments, including public killings, stoning to death, amputations and floggings as a result of quasi-judicial procedures; and cease such procedures;
- Cease all abductions of civilians and hostage-taking;
- Respect the rights of all military personnel taken prisoner or others captured during the conduct of hostilities according to international humanitarian law, particularly as regards the absolute prohibition of murder, torture and other ill-treatment, and cease all unlawful killings of military personnel;
- Publicly condemn abuses of human rights and violations of international humanitarian law and immediately instruct, from the highest levels of leadership, that any individual who is a member or fighting on behalf of the Taliban must respect human rights and international humanitarian law; and
- Remove any members suspected of human rights abuses from positions and situations where they might continue to perpetrate these abuses.

# ENDNOTES

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1 The Pakistan Armed Forces include the Pakistan Army, Air Force and Navy, as well as the civil Armed Forces, which means the Frontier Corps forces under the authority of the Federal Ministry of Interior but whose commanding officers are seconded from the Army: Article 2(a), Actions (in Aid of Civil Power) Regulations 2011. The Frontier Constabulary also operates in FATA acting as a police force, and, in PATA, the ordinary police and Special or Elite Police forces, a form of specially-trained, more heavily armed police force. In FATA, the administration headed by political agents also employs 'khassadars' who act as an informal police force appointed and paid for by the political agent to enforce the law.

2 This report will refer to FATA and PATA collectively as 'the Tribal Areas'. Note that PATA is part of Khyber Pakhtunkhwa province whereas FATA is not.

3 Although this report does not address development issues, Amnesty International recognises that an improvement in the enforcement of economic and social rights, and the rights of women and girls, is critical to addressing the human rights crisis in the Tribal Areas. The Tribal Areas and particularly FATA have some of the lowest rates of education, life expectancy and other health-indicators in Pakistan. Sixty percent of the population lives below the poverty line, the literacy rate is recorded at 17% compared to 56% nationally, and its per capita income is \$250 – half the national average. Poverty, literacy and income rates are even worse for women. Source: Post Crisis Needs Assessment, Kyber Pakhtunkhwa and Federally Administered Tribal Areas, Pakistan, September 2010, [http://fata.gov.pk/pcna/PCNA/PCNA\\_Final\\_Report\\_sep\\_2011.pdf](http://fata.gov.pk/pcna/PCNA/PCNA_Final_Report_sep_2011.pdf) (accessed 24 November 2012).

4 The 2010 report specifically examined the situation in the regions most affected by the human rights crisis at that time. Amnesty International, *As if hell fell on me* (2010). Amnesty International, *As if hell fell on me* (2010) (AI Index: ASA 33/004/2010).

5 As amended by the Frontier Crimes (Amendment) Regulation 2011.

6 Preamble, AACPR.

7 Article 3(4), AACPR.

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8 An enforced disappearance takes place where “persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law” – UN Declaration on the Protection of all Persons from Enforced Disappearance, UN General Assembly resolution 47/133 of 18 December 1992, UN Doc. A/RES/47/133, Preamble. See also section 2.3.

9 See Article 247(7), Constitution of Pakistan. This is explained in more detail in section 4.

10 This is explained in more detail in section 4 (The Tribal Areas – a legal wilderness) below.

11 For more information on the ‘Adiala 11’ and other cases see sections 2.4 and 5.1.

12 *Tehrik-i-Taliban* Pakistan and the Pakistani Taliban Movement will be described as the Pakistani Taliban in this report.

13 Amnesty International has criticised the US ‘targeted killings’ policies for violating the right to life, although the organisation does recognise that some of the killings, when conducted in the context of a specific armed conflict may not violate international human rights and humanitarian law. See Amnesty International, ‘USA: ‘Targeted Killing’ policies violate the right to life’, June 2012, AMR/51/047/2012. See also Press Release, “USA urged to clarify basis for drone killings in Pakistan”, 31 January 2012, <http://www.amnesty.org/en/news/usa-urged-clarify-basis-drone-killings-pakistan-2012-01-31>. For past Amnesty International research on US drone strikes in Pakistan see *As if hell fell on me* (2010), pp. 87-91.

14 For more details on extra-judicial executions during the height of military operations from July 2009 to October 2009 see Amnesty International, *As if hell fell upon me* (2010), pp. 63-66.

15 See, for example, Human Rights Committee, *Eshonov v Uzbekistan*, Communication No 1225/2003, Views, 22 July 2010, para 9.2, UN Doc. CCPR/C/99/D/1225/2003. See also Principle 9, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by the Economic and Social Council in Resolution 1989/65, 24 May 1989.

16 The ‘Adiala 11’ case is discussed in more detailed in section 2.4.

17 Amnesty International interview, September 2012.

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18 Amnesty International interview, September 2012.

19 The UN Human Rights Committee oversees implementation of the International Covenant on Civil and Political Rights, which Pakistan ratified in June 2010. See, for example, Human Rights Committee, *Quinteros v Uruguay*, Communication No 107/1981, Views, 21 July 1983, UN Doc. CCPR/C/OP/2 at 138 (1990), para 14; Human Rights Committee, *El Hassy v Libya*, Communication No. 1422/2005, Views, 24 October 2007, UN Doc. CCPR/C/91/D/1422/2005, para 6.11.

20 A First Information Report (FIR) is a written document prepared by the police when they receive information about an alleged crime, including crimes that directly or by implication relate to torture, other ill-treatment, and unlawful killings. Police are obliged to immediately register an FIR detailing the nature of these crimes, but there is no obligation to investigate the incident (Criminal Procedure Code, 1998, sec. 156; Police Rules, ch. V, rule 25-1.). Clear guidelines for making such a decision do not exist. As a result, throughout Pakistan, FIRs are often either not filed by police or poorly prepared. For more information on the criminalisation under Pakistan law of human rights violations documented in this report see section 4. See also Hassan Abbas (ed.), “Stabilizing Pakistan Through Police Reform”, Asia Society, pp, 34, 88, 114.

21 Amnesty International interviews July-August 2012. Police officers requested that their names be withheld due to the sensitive nature of the case.

22 “Three missing bodies found in Haripur,” Express Tribune, 28 June 2012, <http://tribune.com.pk/story/400341/three-missing-persons-bodies-found-in-haripur/> (accessed 28 June 2012).

23 Amnesty International interview, 7 August 2012.

24 Amnesty International interview, 5 August 2012.

25 “Dumping of bodies in gunnysacks: Court allows police more time to trace killers”, 7 November 2012, Dawn, <http://dawn.com/2012/11/07/dumping-of-bodies-in-gunnysacks-court-allows-police-more-time-to-trace-killers-2/> (accessed 7 November 2012).

26 999 UNTS 171, ratified by Pakistan on 23 June 2010.

27 These circumstances are discussed in more detail below in section 4.8.

28 Human Rights Committee, *Olimzhon Eshonov v Uzbekistan*, Communication No 1225/2003,

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Views, 22 July 2010, para 9.2, UN Doc. CCPR/C/99/D/1225/2003. See also Principle 9, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by the UN Economic and Social Council in Resolution 1989/65, 24 May 1989.

29 Human Rights Committee, Salem Saad Ali Bashasha v. The Libyan Arab Jamahiriya, Communication No. 1776/2008, Views, 2 November 2010, U.N. Doc. CCPR/C/100/D/1776/2008, para 7.3.

30 UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, (26 May 2004), para 15.

31 Geneva Conventions, [III] [relative to the Treatment of Prisoners of War], ratified by Pakistan on 12 December 1951, Rule 47 (Geneva Convention III).

32 Geneva Convention III, Rule 89.

33 Recommended by the Economic and Social Council in Resolution 1989/65, 24 May 1989.

34 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by the Economic and Social Council in Resolution 1989/65, 24 May 1989.

35 UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, (26 May 2004), para 18.

36 At the time of Amnesty International's last report on the region, covering the period from the beginning of these operations in 2004 to the height of the conflict in 2010, information about the treatment and regime for administration of detainees was limited due to conflict-related restrictions on access to most of the Tribal Areas. See Amnesty International, *As if hell fell on me* (2010), p. 66. See also Amnesty International, *Pakistan: Government must provide information on disappearance cases to the courts*, (Index: ASA 33/001/2010); Amnesty International, *Pakistan: Fatal erosion of human rights safeguards under emergency*, (Index: ASA 33/040/2007); Amnesty International, *Pakistan: Human rights ignored in the "war on terror"*, (ASA 33/036/2006); Amnesty International, *Pakistan: Human rights abuses in the search for al-Qa'ida and the Taleban in the tribal areas*, (Index: ASA 33/011/2004); Amnesty International, *Pakistan:*



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Open Letter to President Pervez Musharraf, (Index: ASA 33/003/2004).

37 See section 4.5(ii) for more information on Hameed's case.

38 Amnesty International interview with Niaz and cousin, September 2012. Names have been changed to protect their identities.

39 1465 UNTS. 85, Ratified by Pakistan on 23 June 2010.

40 See e.g. Articles 7 and 4 ICCPR; articles 2, 3 and 16 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Geneva Conventions III, Rule 90; Prosecutor v. Furundzija, Case No. ICTY IT-95-17/1-T, Judgment, P 144, paras 153-156 (Dec. 10, 1998).

41 Ibid.

42 Article 15 U.N. CAT; Human Rights Committee, General Comment no. 20 on Article 7, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1, (1994), para 12.

43 See Article 10 of the ICCPR; the Body of Principles for the Protection of All Persons under Any Form of Detention or imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988, UN Doc. A/RES/43/173; and the UN Standard Minimum Rules for the Treatment of Prisoners Rules 84-93 and 95, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (IV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 (UN SMR).

44 Human Rights Committee, General Comment No 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13, para 15; Article 12 CAT; Prosecutor v. Furundzija, Case No. ICTY IT-95-17/1-T, Judgment, P 144, paras 155-157 (Dec. 10, 1998).

45 See e.g. Articles 4, 6 and 7 CAT.

46 Article 14(3), AACPR.

47 Article 14(3), AACPR.

48 Article 5(3), AACPR.

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49 Article 14(1), AACPR.

50 Article 16 CAT; Article 7 ICCPR.

51 Article 37 of Pakistan's Law of Evidence provides certain legal safeguards for fair trials: "a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused persons grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him." Article 38 of The Law of Evidence provides: "no confession made to a police officer shall be permissible against a person accused of any offence," and Article 39 states that "no confession made by any person whilst he is in custody of a police officer unless it be made in the immediate presence of a Magistrate shall be proved as against such person."

52 Section 163 of the Code of Criminal Procedure, 1898 (Pakistan), as amended by Act II of 1997 (Pakistan Code of Criminal Procedure).

53 Pursuant to Article 12 of CAT and the ICCPR international human rights law binding on Pakistan requires that all complaints of torture and other ill treatment in prisons be investigated promptly, independently, impartially and thoroughly and that prison officials and others found responsible be prosecuted, irrespective of rank. Where victims have suffered harm as a result of torture and other ill-treatment they must be provided with an adequate remedy, including compensation and rehabilitation. See Human Rights Committee, General Comment 20, 3 October 1992, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), paras. 8, 14, 15; Human Rights Committee, General Comment No 31, 26 May 2004, UN Doc CCPR/C/21/Rev.1/Add.13, paras 15 and 18; Article 14 CAT; see also Committee against Torture, General Comment No 2, UN Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007), para 6; Article 2(3)(a) ICCPR; Principle 3, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147, 16 December 2005 (Basic Principles on the Right to a Remedy).

54 See further section 4.5(iii) below.

55 An enforced disappearance takes place where "persons are arrested, detained or abducted

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against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law” – Disappearance Declaration, Preamble.

56 Human Rights Committee, *El Hassy v Libya*, Communication No. 1422/2005, Views, 24 October 2007, U.N. Doc. CCPR/C/91/D/1422/2005.

57 See further above at 2.3, 2.4 and 2.6.

58 Umer Farooq, “Missing persons case: PHC gives ultimatum to agencies, federal, K-P govt”, 7 November 2012, *Express Tribune*, <http://tribune.com.pk/story/461893/missing-persons-case-phc-gives-ultimatum-to-agencies-federal-k-p-govt/> (accessed 10 November 2012).

59 Peshawar High Court order of 11 July 2012. W.P. No. 3305/2009.

60 *Ibid.*

61 The failure of the authorities to provide family and lawyers to access detainees is discussed in more detail in section 4.5(i) below.

62 Amnesty International interview 2 December 2011.

63 Amnesty International interview, August 2012. Name of interviewee changed to protect their identity.

64 See, for example, Human Rights Committee, *Quinteros v Uruguay*, Communication No 107/1981, Views, 21 July 1983, UN Doc CCPR/C/OP/2, para. 14; Human Rights Committee, *El Hassy v Libya*, Communication No. 1422/2005, Views, 24 October 2007, UN Doc. CCPR/C/91/D/1422/2005, para 6.11.

65 Article 9(1), ICCPR. Pakistan law also criminalises unlawful detention: Section 156(c) of the Police Order Act (2002), police officers who “vexatiously and unnecessarily” detain, search or arrest any person may be imprisoned for up to five years and fined.

66 Article 9(2), AACPR.

67 See further at 4.5(i) below.

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68 Articles 3 and 14, Declaration on the Protection of all Persons from Enforced Disappearance, Adopted by General Assembly resolution 47/133 of 18 December 1992. (Disappearances Declaration).

69 Disappearances Declaration, Article 7 provides that “No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.”

70 See, for example, Human Rights Committee, *El Awlani v Libya*, Communication No. 1295/2004, Views, 29 August 2007, UN Doc. CCPR/C/90/D/1295/2004, para 6.4, where the Committee held an enforced disappearance to be in breach of Article 9 ICCPR, amongst other articles.

71 Disappearances Declaration, Article 13(1); Human Rights Committee, General Comment No 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13, para 15.

72 Disappearances Declaration, Article 13(4).

73 Disappearances Declaration, Article 14. Human Rights Committee, General Comment No 31, 26 May 2004, UN Doc CCPR/C/21/Rev.1/Add.13, para 18.

74 Disappearances Declaration, Article 14; Human Rights Committee, General Comment No 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13, para 18.

75 Amnesty International has highlighted this case for several years. For more information see: Amnesty International, Open letter: Pakistan must resolve the crisis of enforced disappearances (2012); Pakistan must account for missing victims of enforced disappearance (2012) (Index: ASA 33/012/2012); ‘The bitterest of agonies’: End enforced disappearances in Pakistan (2011), (Index: ASA 33/010/2011).

76 The 11 men are Dr. Niaz Ahmad, Muhammad Aamir, Mazharul Haq, Shafiqur Rehman, Abdul Saboor, Abdul Majid, Abdul Basit, Muhammad Shafiq, Said Arab, Gulroze Khan and Tehseenullah.

77 Amnesty International interviews with relatives, 2011 and 2012.

78 Section 3(1) and Section 26 of the Maintenance of Public Order Ordinance 1960 issued by the District Coordination Officer (DCO) Rawalpindi

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79 Amnesty International interview with relatives of Mazhar ul Haq, August 2012.

80 Muhammad Aamir died on 15 August 2011; Tehseenullah on 17 December 2011; Said Arab on 18 December 2011; and Abdul Saboor on 20 January 2012. Amnesty International interview with Tariq Asad, a lawyer for the Adiala 11, September 2012. These deaths are discussed in more detail in section 2.1 above.

81 Amnesty International interview, September 2012.

82 Amnesty International, Pakistan must account for missing victims of enforced disappearance, PRE01/198/2012, <http://www.amnesty.org/en/for-media/press-releases/pakistan-must-account-missing-victims-enforced-disappearance-2012-04-16> (accessed 16 April 2012).

83 Submission to Supreme Court on behalf of the Director-General of the Directorate for Inter-Services Intelligence and Judge Advocate General, Pakistan Armed Forces, 28 February 2012, para 3.

84 In the recent past, the Supreme Court of Pakistan has ordered criminal investigations into cases on other matters concerning top ranking government officials, including the Prime Minister. This was recently seen in the Contempt of Court case against Yousef Raza Gillani who was given a symbolic imprisonment in court and then duly disqualified from office: Contempt proceedings against Syed Yousaf Raza Gillani Prime Minister of Pakistan, Crl.O.P.6/12, Suo Moto Case No.04 of 2010. It was also seen in the case of the current Prime Minister, Raja Parvez Ashraf where the Court ordered criminal investigation against him upon being implicated as the former federal minister for water and power, amongst other government officials, in the Rental Power Projects case: Case No.7734-G/2009 & 1003-G/2010.

85 Amnesty International, *As if hell fell upon me* (2010), pp 29-32.

86 Hassan Abbas (ed.), "Stabilizing Pakistan Through Police Reform", Asia Society, p.49.

87 For a more detailed summary of Taleban abuses during the conflict in northwest Pakistan in 2008-9 see Amnesty International, *As if hell fell on me* (2010), pp. 38-48.

88 "Taliban claims responsibility for Jamrud mosque bombing", *The Nation*, 20 August 2011, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/islamabad/20-Aug-2011/Taliban-claims-responsibility-for-Jamrud-mosque-bombing> (accessed 24 September 2012).

89 Interview with Muhammad Talha, Pakistani Taliban spokesperson for Dera Adam Khel,

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conducted on behalf of Amnesty International, 18 October 2012.

90 Amnesty International, *As if hell fell on me* (2010), p. 39.

91 See common article 3(1)(d) of the Geneva Conventions, absolutely prohibiting “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”

92 Declan Walsh, “Taliban Gaining More Resources From Kidnapping”, *New York Times*, 19 February 2012, [www.nytimes.com/2012/02/20/world/asia/pakistani-taliban-turn-to-kidnapping-to-finance-operations.html](http://www.nytimes.com/2012/02/20/world/asia/pakistani-taliban-turn-to-kidnapping-to-finance-operations.html) (accessed 22 November 2012).

93 Analysis of the Layeha for this report is based on copies distributed by members of the Hafiz Gul Bahadur faction of the Taliban in North Waziristan and distributed by members of the Mullah Nazeer faction of the Taliban in South Waziristan between July and August 2012. For further analysis of human rights abuses arising out of Taliban quasi-judicial proceedings see also Amnesty International, *All who are not friends, are enemies: Taleban abuses against civilians* (2007), (Index: ASA 11/001/2007), <http://www.amnesty.org/en/library/info/ASA11/001/2007>.

94 Layeha 2011-2012, para 3.

95 Layeha 2011-2012, para 15.

96 Amnesty International interview, October 2012.

97 Amnesty International interview, October 2012. Name of interviewee changed to protect relatives of the victim.

98 Amnesty International interview, August 2012. Name withheld on request.

99 Amnesty International interview, October 2012. Name of interviewee changed to protect their identity.

100 Amnesty International interview, October 2012.

101 Statement of Hafiz Gul Bahadar of 15 June 2012. See also Declan Walsh, “Taliban Block Vaccinations in Pakistan,” *New York Times*, 18 June 2012. Available at: <http://travel.nytimes.com/2012/06/19/world/asia/taliban-block-vaccinations-in-pakistan.html> (accessed 24 August 2012).

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102 Ibid.

103 Amnesty International interview, 16 June 2012.

104 Layeha 2011-2012, para 1.

105 Interview on behalf of Amnesty International, September 2012.

106 Amnesty International interview with Pakistani Taliban spokesperson, 10 November 2012.

107 Ehsanullah Ehsan video message [undated], obtained by Amnesty International in July 2012.

108 Ehasanullah Ehsan interview released to the media July 2012. The release on ransom of foreigners held by the Pakistani Taliban has been justified on these grounds. See, for example, "Ransom payments and terror: how freeing hostages helped a Taliban leader who threatens the UK", The Telegraph, 15 March 2012.

109 Ibid.

110 See for instance common article 3(1)(a) to the Geneva Conventions; ICRC Study of Customary International Humanitarian Law, Rules 1 and 2.

111 ICRC Customary IHL Study, Rule 11.

112 ICRC Customary IHL Study, Rule 12.

113 See common article 3 to the Geneva Conventions, and Rules 1, 2 and 5 ICRC Customary IHL Study.

114 Rules 1, 2, and 5 ICRC Customary IHL Study.

115 Articles 12 and 13, International Covenant on Economic, Social and Cultural Rights, ratified by Pakistan on 17 April 2008.

116 See Convention [I] [for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field], ratified by Pakistan on 12 December 1951.

117 Common Article 3, Geneva Conventions; Rule 89, ICRC Customary IHL Study.

118 Article 247(7).

119 Supreme Court and High Court (Extension of Jurisdiction to certain Tribal Areas) Act 1973

120 See also Article 199 which describes the jurisdiction of Pakistan's Supreme Court and

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provincial high courts.

121 Article 247(3), Pakistan Constitution.

122 In 1994 the Pakistan Supreme Court ruled that the Provincially Administered Tribal Areas Criminal Law (Special Provisions) Regulation 1975 and the Provincially Administered Tribal Areas Civil Procedure Regulations 1975, laws that vested judicial powers in the hands of executive authorities for the purposes of arbitrating criminal and civil disputes in the PATA in a manner similar to the Frontier Crimes Regulation 1901, was unconstitutional. See *Government of North Western Frontier Province v. Muhammad Irshad* PLD 1995 SC 281. North Western Frontier Province is the old name for Khyber Pakhtunkhwa province.

123 Sana Haroon, *Frontier of Faith*, Hurst & Company London, 2007, p 25.

124 *Sumunder vs. State* (PLD 1954 FC 228).

125 Amnesty International, *As if hell fell upon me* (2010), pp. 26-29.

126 Formerly Article 6 FCR, prior to amendment by Frontiers Crime (Amendment) Regulation 2011 (FC(A)R 2011)

127 Articles 38-39 FCR as amended by FC(A)R 2011.

128 Article 11A FCR as amended by FC(A)R 2011. Anyone for whom there are “reasonable grounds for believing that he has been guilty of an offence punishable with imprisonment for ten years” is also automatically not entitled to bail.

129 Articles 47-48, 50, 55 and 55A FCR as amended by FC(A)R 2011.

130 See Amnesty International, *As if hell fell on me* (2010), pp. 26-29.

131 Articles 40-45 FCR as amended by FC(A)R 2011.

132 Article 22 FCR as amended by FC(A)R 2011.

133 Amnesty International interviews conducted throughout 2011 and 2012. The interviewees requested anonymity due to the sensitivity of the information.

134 The President signed two separate Regulations into law under powers vested in the President by the Constitution under Articles 247(4) and 247(5), which allow the President to issue “regulations” with respect to “the peace and good government” of PATA and FATA respectively to specify which laws should or should not be extended to these Tribal Areas. See also, specifically,



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Article 245 in relation to the Armed Forces taking action in aid of civil power.

135 Preamble, AACPR. Article 245(1) of the Constitution also provides that “The Armed Forces shall, under the directions of the Federal Government, defend Pakistan against external aggression or threat of war, and, subject to law, act in aid of civil power when called upon to do so.”

136 Article 3(4), AACPR.

137 Amnesty International interview, 12 September 2012.

138 Amnesty International has a number of concerns with the FCR and the AACPR, but has focused on its key concerns related to the rights of detainees. The fact a provision is not mentioned in this document does not necessarily mean Amnesty International has no concerns about the text of the provision or how it may be applied in practice.

139 Articles 44 and 45, AACPR.

140 Articles 40(4), 41 and 44, FCR as amended by FC(A)R 2011.

141 Article 45, FCR as amended by FC(A)R 2011.

142 See, for example, Human Rights Committee, Concluding Observations on Yemen, UN Doc CCPR/CO/84/YEM (9 August 2005), para 13 and on Madagascar, CCPR/C/MDG/CO/3; and UN Doc ref for CAT in fn 144 is: CAT/C/USA/CO/2.

(11 May 2007), para 23; Committee against Torture, Conclusions and recommendations of the Committee against Torture: USA, 25 July 2006, para 22.

143 Articles 9(2) and 9(3), AACPR.

144 Article 2(I), AACPR.

145 Article 9, Constitution of Pakistan.

146 Human Rights Committee, *Albert Mukong v Cameroon*, Communication No. 458/1991, Views, 21 July 1994, para 9.8. See also *Danyal Shafiq v. Australia*, Communication No. 1324/2004, Views, 13 November 2006, para 7.2. To qualify as a “law” for purposes such as article 9(1) of the ICCPR, the legislation “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.” (Human Rights Committee, *Danyal Shafiq v Australia*, para 7.2). Such laws must also be compatible with other provisions of the ICCPR (Human Rights Committee, General Comment no 34, UN Doc

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CCPR/C/GC/34 (12 September 2011), para 26). Overly broad and imprecise legislative provisions will for instance violate the prohibition of arbitrary detention, if detention under the provisions would unjustifiably infringe rights such as freedom of thought, conscience and religion, freedom of opinion and expression, freedom of association or freedom of assembly (See, e.g., Human Rights Committee, General Comment no 34, UN Doc CCPR/C/GC/34, particularly paras 34 and 46; *Albert Mukong v Cameroon*, Communication No. 458/1991, Views, 21 July 1994, paras 9.7-9.8).

147 Human Rights Committee, *Danyal Shafiq v Australia*, para 7.2.

148 Article 55A(2) FCR as amended by FC(A)R 2011.

149 Article 55A(3) FCR as amended by FC(A)R 2011.

150 Article 9(4) of the ICCPR requires that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” This right applies even during times of public emergency that threaten the life of the nation, including situations of non-international armed conflict. See also Human Rights Committee, General Comment No 29, paras 3 and 16 [“even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation ... In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party’s decision to derogate from the Covenant”]. See further Human Rights Committee, *Vuolanne v Finland*, Communication No. 265/1987, 2 May 1989, para. 9.6; see also *Kulov v Kyrgyzstan*, Communication No. 1369/2005, Views, 19 August 2010, para 8.5; See also Human Rights Committee, General Comment No 32: Article 14 (Right to equality before courts and tribunals and to a fair trial), UN Doc CCPR/C/GC/32 (23 August 2007) paras 19-24. Principle 4 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that, “Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.” (Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988, UNGA Res 43/173, annex, UN Doc A/43/49 (9 December 1988).

151 HRC, General Comment no 32, para 19.

152 See also Concluding Observations of HRC: Moldova and Uzbekistan, UN Docs.

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CCPR/C/MDA/CO/2 (2009) §24; CCPR/C/UZB/CO/3 (2010) §16; Concluding Observations of CAT: Kyrgyzstan, Azerbaijan, UN Doc. A/55/44 (2000) §§74(d), UN Doc. A/55/44 § 68(d) and 69(d); see also Principles 12 and 18, Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

153 Article 18, AACPR.

154 As discussed above at section 4, the AACPR invokes Article 245(3) which excludes the high courts from jurisdiction.

155 Article 10(3)(a), AACPR.

156 Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, 2 July 2002, UN Doc A/57/173, para 7.

157 Article 9(3), Constitution of Pakistan.

158 Articles 9(4)-(8), Constitution of Pakistan.

159 Article 9(9), Constitution of Pakistan.

160 Article 2(1) and 14, ICCPR.

161 For detailed analysis of this legislation, see Tariq Hassan, "Supreme Court of Pakistan: The Case of Missing Persons," Asia-Pacific Journal on Human Rights and the Law, vol. 10 no. 2 (2009), pp. 4-6, <https://lawlib.wlu.edu/lexopus/works/67-1.pdf> (accessed December 15, 2010).

162 Criminal Procedure Code (1898), Chapters V-VIII, XIII, XIV, XIX.

163 The Committee against Torture has underlined that administrative detention, particularly where prolonged, makes those detained vulnerable to torture and other ill-treatment and has recommended states to "abolish the practice of administrative detention": See, for example, Committee against Torture, Concluding observations of the Committee against Torture: Jordan, UN Doc: CAT/C/JOR/CO/2, para 12.

164 The UN Human Rights Committee has explicitly confirmed that, as the language of article 9 of the ICCPR indicates, the requirements of articles 9(1) and 9(4) apply to preventive or administrative detention: see Human Rights Committee, General Comment No 8, UN Doc.

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HRI/GEN/1/Rev.6 at 130 (2003), para 4.

165 Article 15(1) ICCPR provides in part that, “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed”.

166 Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc E/CN.4/2006/98, 28 December 2005, para. 46. See similarly Working Group on Arbitrary Detention, Report to the Commission on Human Rights, UN Doc E/CN.4/2004/3, 15 December 2003, paras. 64-65.

167 UN Human Rights Committee, General Comment No 34, para 25.

168 See Amnesty International, *As if hell fell on me* (2010), pp 26-29.

169 Article 16(1), AACPR.

170 Article 14(2), ICCPR.

171 The Human Rights Committee has stated that the presumption of innocence “imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond a reasonable doubt [and] ensures that the accused has the benefit of the doubt” – see Human Rights Committee, General Comment No 32, para 30.

172 Articles 14(3)(b), (d) and (e), ICCPR.

173 Amnesty International, *Pakistan: Legalizing the impermissible: The new anti-terrorism law* (1997), (Index: ASA33/034/1997), <http://www.amnesty.org/en/library/info/ASA33/034/1997/en>.

174 Article 14(1), AACPR.

175 Article 10, Constitution of Pakistan.

176 Article 11, FCR as amended by FC(A)R 2011.

177 Article 48, FCR as amended by FC(A)R 2011.

178 Amnesty International’s concerns with the collective punishment provisions of the FCR are discussed in more detail in its report *As if hell fell on me* (2010), pp. 26-27.

179 Article 21 FCR as amended by the FC(A)R 2011. Collective punishment is prohibited under customary international criminal law and in non-international armed conflict – see Rule 103, ICRC

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Customary IHL Study. The Human Rights Committee has also stated that states may “in no circumstances” invoke a state of emergency “as justification for acting in violation of international humanitarian law or peremptory norms of international law, for instance... by imposing collective punishments” – see Human Rights Committee, General Comment No 29, para 11.

180 Cited in Jirga Decision [undated] attached to Order of Court of Assistant Political Agent, 25 April 2012, Case No. 12-IV-2012/APA JAM.

181 Article 9(6), AACPR.

182 Article 2(i), AACPR (FATA) and Article 2(h), AACPR (PATA).

183 Disappearances Declaration; Principle 11(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988 (the Body of Principles); Rule 7(2) of the Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 (the SMR).

184 Human Rights Committee General Comment 20, para. 11.

185 UN Joint Study on Global Practices in relation to Secret Detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Working Group on Arbitrary Detention represented by its Vice-Chair, Shaheen Sardar Ali; and the Working Group on enforced or involuntary disappearances represented by its chair, Jeremy Sarkin, UN Doc. A/HRC/13/42, 19 February 2010 (the Joint Study), p. 5.

186 Special Rapporteur on torture, Report to the General Assembly A/56/156 (2001) para 39(d); Report of the Special Rapporteur on Torture, E/CN.4/2003/68 (2002), para. 26(e); the Joint Study, pp. 5-6.

187 Human Rights Committee General Comment 20, para. 11.

188 Principle 12, Body of Principles; Disappearances Declaration, article 10(3). Similar considerations apply in a situation of non-international armed conflict, see Rule 123, ICRC Customary IHL Study.

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189 Principle 12, Body of Principles. Disappearances Declaration, article 10(2).

190 Government of Khyber Pakhtunkhwa Province provided Amnesty International with a copy of all prescribed internment centers on 2 December 2011. The list of detainees from District Jail Swat and Judicial Lockup Malakand was dated 12 August 2011.

191 Or have informed, if the detainee is not able to contact their family and friends.

192 See, for example, Disappearances Declaration, Article 10(2); Principle 16(1), Body of Principles; Rule 92, SMR. The Human Rights Committee has stated that people arrested or detained on criminal charges must be permitted to contact their families “from the moment of apprehension” (Human Rights Committee Concluding observations on Democratic People’s Republic of Korea, 2001, UN Doc CCPR/CO/72/PRK, para. 18). Where this is not possible has called for “the mandatory notification of relatives of detainees without delay.” (Human Rights Committee, Concluding observations on India, 1997, UN Doc CCPR/C/79/Add.81, para. 23. See also the Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment 2001, UN Doc A/56/156, para.39(f), where it is stated that a relative must be informed of the arrest and place of detention within 18 hours “in all circumstances”.)

193 See, for example, Disappearances Declaration, Article 10(2); Principle 1 of the Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; Principle 17(1), Body of Principles.

194 See, for example, Committee against Torture, Conclusions and Recommendations: Russian Federation, 6 June 2002, para 8(b).

195 Principles 15 and 19, Body of Principles; See also Rules 37, 92 and 95 SMR.

196 See e.g. Rules 125 and 126, ICRC Customary IHL Study.

197 Human Rights Committee General Comment 32, §§32 and 34. The UN Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, also provide at Principles 1 and 7 that all persons arrested or detained have “prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.” See also UN Standard Minimum Rules, Rule 93.

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198 WP No. 3305/2009, Peshawar High Court, order of 26 June 2012, para 4.

199 Ibid. It is not clear to which law the authorities were referring, as neither the FCR nor the AACPR provide for the right of families and lawyers to have access to detainees. Article 10(1) of the Constitution does refer to the right of detainees not to “be denied the right to consult and be defended by a legal practitioner of his choice”, although Article 10(3) states that this is not applicable to those detained pursuant to a regime of preventive detention.

200 Amnesty International interview, 30 July 2012. Name withheld on request.

201 Committee against Torture, General Comment No 2, para 13.

202 Internment Orders, Office of the Inspector-General of Prisons, Government of Khyber Pakhtunkhwa, dated 11 May 2012.

203 Amnesty International interview, 30 July 2012. Name withheld on request.

204 Human Rights Committee, General Comment No 8, UN Doc. HRI/GEN/1/Rev.6 at 130 (2003), para 4; see also, for example, Human Rights Committee, Concluding Observations on India, CCPR/C/79/Add.81 (4 August 1997), para 24.

205 Article 9(7) AACPR.

206 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

207 Pursuant to Article 10 of the FCR as amended by the FC(A)R 2011 (FATA) and Article 245(3) of the Constitution of Pakistan (FATA and PATA).

208 While international human rights law will continue to apply, international humanitarian law confers similar obligations on parties to a non-international armed conflict. See Rules 118-121 ICRC Customary IHL Study.

209 Preamble, AACPR.

210 Article 3(4) AACPR.

211 International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), 8 July 1996, para 25.

212 See for example the UN Basic Principles on the Use of Force and Firearms by Law

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Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (UN BPUFF), which provide in a footnote that, “In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term ‘law enforcement officials’ includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.”

213 Article 9 provides that “No person shall be deprived of life or liberty save in accordance with law.”

214 UN BPUFF, Principle 9.

215 UN Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 (17 December 1979), Article 3.

216 See, for instance, International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), 8 July 1996, para 25 and Human Rights Committee General Comment 31, UN Doc: CCPR/C/21/Rev.1/Add.13, 26 May 2004.

217 J-M Henckaerts and L Doswald-Beck (eds), International Committee of the Red Cross, Study of Customary International Humanitarian Law, Volume 1: Rules, 2005 (the ICRC Customary IHL Study), Rule 1.

218 ICRC Customary IHL Study, Rule 6.

219 ICRC Customary IHL Study, Rule 7.

220 ICRC Customary IHL Study, Rule 14.

221 ICRC Customary IHL Study, Rule 15.

222 Amnesty International interview, 2 December 2011.

223 Article 247(7), Constitution of Pakistan. On 13 August 2012 the Peshawar High Court accepted a number of petitions challenging the jurisdiction of Pakistan’s Anti-Narcotics Force operating in the FATA. The Court also called on the government to extend its jurisdiction so that it could hear appeals from FATA, although these comments have no legal effect. However, at time of writing, Amnesty International was not aware of any plans by the Pakistan Government to do



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extend the jurisdiction of the Peshawar High Court to FATA. See Umer Farooq, “Anti-narcotics drive hindered: PHC partially accepts petitions against ANF,” The Express Tribune, 14 August 2012, <http://tribune.com.pk/story/421643/anti-narcotics-drive-hindered-phc-partially-accepts-petitions-against-anf/> (accessed 14 August 2012).

224 Article 245, Constitution of Pakistan. See further in section 4.

225 Peshawar High Court order of 26 June 2012, WP No. 3305/2009, para 2.

226 Peshawar High Court order of 26 June 2012. WP No. 3305/2009, para 3.

227 President Balochistan High Court Bar Association vs. Federation of Pakistan, Supreme Court Order of 12 October 2012, Constitution Petition No.77 OF 2010. Azam Khan, “SC on Balochistan: ‘Produce missing persons or we will order FC personnel’s arrest’”, Express Tribune, 26 July 2012, <http://tribune.com.pk/story/413296/sc-on-balochistan-produce-missing-persons-or-we-will-order-fc-personnels-arrest/> (accessed 20 November 2011).

228 Peshawar High Court order of 26 June 2012. WP No. 3305/2009, para 3.

229 Judge Advocate General Brig. Nobahar specifically referred to Article 10A, which enshrines fair trial protections to all citizens of Pakistan, and Article 13, which prohibits punishment more than once for the same offence and self-incrimination. Mufti Abdul Basis vs. The Federation of Pakistan, Civil Petition No.99/2011, Supreme Court Order of 2 June 2011, para 1. Fundamental rights protections under the Constitution of Pakistan are discussed in more detail in section 5.1 (Accountability and Remedies) below.

230 Mufti Abdul Basis vs. Federation of Pakistan, Civil Petition No.99/2011, Supreme Court Order of 2 June 2011.

231 For example, in the Adiala 11 case, the petitioners have asked the Supreme Court to direct the Pakistan Ministry of Defence and other governmental authorities to file a complete report regarding at the death of some of the detainees, and to declare that the detainees were in “illegal confinement” and “subjected to torture”: Mst Rohaifa widow of Syed Zain ul Abideen v. Federation through Secretary Ministry of Defence, Constitution Petition No. 1/2012, Supreme Court of Pakistan, 26/05/2012. The petition is still pending before the Supreme Court. For more information on this case see section 2.4.

232 Human Rights Committee, General Comment No 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13.

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233 Several Amnesty International interviews conducted between 2011 and 2012.

234 The Working Group on Enforced or Involuntary Disappearances concludes its official visit to Pakistan, 20 September 2012, available at:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12549&LangID=E>  
(accessed 20 September 2012).

235 Amnesty International interview, October 2012.

236 Amnesty International interview, September 2012. Further information on this case is at section 2.3.

237 See, for example, Disappearances Declaration, Article 13(3); Principle 15, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989; UN Office of the High Commissioner for Human Rights, Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004), para. 112.

238 Article 2(3)(a), ICCPR.

239 Article 14, AACPR.

240 Article 5(3), AACPR.

241 Article 16(2), AACPR.

242 Article 2(3)(a), ICCPR.

243 Committee against Torture, General Comment No 3 on Article 14, 19 November 2012, UN Doc. CAT/C/GC/3, para 17.

244 Article 12, CAT; Disappearances Declaration, Article 13(1); Human Rights Committee, *Baboeram v Suriname*, Communication No. 146/1983 and 148 to 154/1983, Views, 4 April 1985, UN Doc. CCPR/C/24/D/146/1983, para. 14.

245 Article 2(3)(a) ICCPR; Principle 3, Basic Principles on the Right to a Remedy.

246 Principles 19-23, Basic Principles on the Right to a Remedy; Committee against Torture, General Comment No 3 on Article 14, 19 November 2012, UN Doc. CAT/C/GC/3, para 2.

247 Committee against Torture, General Comment No 3 on Article 14, 19 November 2012, UN

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Doc. CAT/C/GC/3, paras 11-15.

248 Principle 3(b), Basic Principles on the Right to a Remedy.

249 Principles 22(b) and 24, Basic Principles on the Right to a Remedy; Committee against Torture, General Comment No 3 on Article 14, 19 November 2012, UN Doc. CAT/C/GC/3, para 16.

250 Amnesty International interview, 20 November 2012. Name of interviewee changed to protect their identity.



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## **‘THE HANDS OF CRUELTY’**

### **ABUSES BY ARMED FORCES AND TALIBAN IN PAKISTAN’S TRIBAL AREAS**

Thousands of men and boys have been arbitrarily detained by security forces in Pakistan’s Tribal Areas, as the Pakistan Armed Forces has recaptured territory from the Taliban over the last three years. Many of those detained have been tortured and are never seen again. Some are returned dead to their families, or their bodies are dumped in remote areas. Investigations into these incidents are rare.

The Taliban continues to commit abuses, killing scores of civilians accused of “spying”, launching suicide attacks in mosques, schools and other public places, and executing captured soldiers.

After a decade of insurgency, Pakistan’s Tribal Areas remain in a state of crisis. Bordering Afghanistan, they are one of the poorest, least developed parts of Pakistan. Added to this is the legal vacuum that prevails in the region. In the Tribal Areas, the courts are barred from upholding the fundamental rights protections guaranteed under Pakistan’s Constitution. This has allowed state and non-state actors to commit violations and abuses with impunity.

Rather than investigating and prosecuting the perpetrators of these abuses, the authorities have given sweeping powers of arrest and detention to the Armed Forces, cementing the culture of impunity. Without urgent action by the Pakistan government to guarantee respect for human rights, millions will remain locked in perpetual lawlessness in the Tribal Areas.

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