

Pakistan: Unlawful executions in tribal areas

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Amnesty International remains gravely concerned at the execution of Hayatullah Gul, 25, on 26 March 2006 on the orders of a *shura*, or council of persons described in Pakistani media as "local Taleban", in Tiarza, South Waziristan. He was shot dead by the father of a taxi driver whom Hayatullah Gul is alleged to have murdered around two weeks earlier. The "trial" reportedly took only a few hours to complete. The accused had no legal counsel to assist him and no possibility to challenge the conviction and punishment. He reportedly pleaded guilty and was allowed to ask forgiveness from the victim's family, which was refused.

Under Pakistani law, informal councils - *shuras*, *jirgas* or *panchayats* - are not entitled to assume criminal justice functions such as the trial and conviction of criminal suspects and to order their punishment. In the absence of lawful authority under Pakistani law and procedures which meet international standards of fairness, these killings are unlawful and should be treated as a serious crime by the government. However, as yet government officials have taken no steps to hold participants of the council in Tiarza to account.

In April 2006, Amnesty International wrote to the Pakistani government reminding them of their human rights obligations. Such obligations include the duty to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts which constitute abuses of human rights, whether those acts are perpetrated by the state or by private persons. Such punishments, however, must follow judicial proceedings which meet international standards of fairness, and must never include the death penalty.

The case of Hayatullah Gul's execution is widely seen in Pakistan as an instance of "local Taleban justice under Shariah law"(1). Indeed, many observers believe that people described as Taleban appear to have consolidated their control over parts of the tribal areas of Pakistan and to have assumed policing and judicial functions.

Reports of such "local Taleban" meting out instant justice have increasingly been received by Amnesty International in the last few months. In December 2005, at least seven alleged criminals were reportedly killed by local Taleban dispensing their interpretation of Shariah. Amongst them were two Afghan refugees, alleged to be extortionists, who were caught in Miramshah, North Waziristan, and decapitated. Their bodies were then tied to trucks, dragged through the streets before being hung upside down from pylons. Their bodies were later removed after the scene had caused a traffic jam. A government official in Peshawar was later quoted as stating that it was "inappropriate to take any action [against the militants] now, considering the fact that the militants have tremendous local support in their actions against these thugs. Any action against the militants might be construed as in support of the bandits."(2)

Amnesty International is further concerned that Hayatullah Gul was denied even the minimal legal safeguards available to persons accused of crimes in the tribal areas of Pakistan. South Waziristan, the area where the latest incident of informal councils unlawfully assuming criminal justice functions is reported, is one of seven Federally Administered Tribal Areas (FATA) of Pakistan. These areas are under the direct control of the federal government which is represented by a Political Agent who combines the highest administrative, political and judicial functions.

Amnesty International considers the law governing the FATA, the Frontier Crimes Regulation, 1901 (FCR), to be deeply flawed as it does not ensure the human rights protection afforded by

the Constitution of Pakistan, or Pakistan's international obligations as a state party to the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women. For example, under the FCR, people suspected of having committed a criminal offence are heard, without legal representation, by a formally constituted tribal *jirga* or council which submits its recommendations regarding conviction or acquittal to the Political Agent. The Political Agent makes a decision regarding conviction or acquittal but is not bound by the *jirga*'s recommendations. Punishments which the Political Agent can impose include fines, house destruction and imprisonment but not the death penalty. There is no possibility of appealing against conviction or punishment under the FCR as the jurisdiction of Pakistan's higher judiciary, which has appellate powers in Pakistan, does not extend to the FATA.

Amnesty International has appealed to the Government of Pakistan to amend or repeal the FCR as it violates rights guaranteed in the Constitution of Pakistan and international human rights law, including the right to equal protection of the law, the right to fair trial which includes the right to legal counsel and to appeal, and the right to be prosecuted only for offences of which one is suspected, not for offences allegedly committed by a relative.

Hayatullah Gul was not afforded even the flawed protection offered by the FCR. He was not brought before a duly constituted *jirga*, his case was not decided by the Political Agent for South Waziristan and, if the FCR had been applied, the death penalty could not have been imposed on him.

Amnesty International has been informed of other instances in which even the minimal protection afforded by the FCR has been ignored and tribal councils have arrogated criminal justice functions to themselves, "trying", "convicting" and ordering the punishment of alleged offenders. These include:

On 14 March 2004, eight men were publicly executed in Orakzai Agency. Five of the men had allegedly been involved in kidnapping and looting in Mamoonzai area; three had been caught a few days earlier for alleged robbery. The eight men were "tried" together by an informal council of elders and executed immediately after the "verdict".

In mid-June 2005, two men were shot dead by firing squad on the orders of an informal tribal council of elders in Orakzai Agency. They had allegedly killed a taxi driver a few weeks earlier, the victim's family petitioned the tribal elders and named the alleged culprits. The "verdict" was immediately carried out without referral to the Political Agent.

Amnesty International is concerned that the Government of Pakistan, under whose federal responsibility the FATA fall, has failed to curb informal bodies unlawfully assuming criminal justice functions in the tribal areas and meting out punishments which amount to torture or are cruel, inhuman or degrading. Amnesty International urges the Government of Pakistan to now take decisive steps to publicly condemn unlawful trials by *jirga* in the FATA that lead to unlawful killings and other punishments that amount to torture or cruel, inhuman or degrading treatment, and to bring to justice perpetrators of such acts. Amnesty International also reiterates its earlier calls to the government to repeal the FCR and place the tribal areas under the jurisdiction of the regular laws and courts of Pakistan.

ACTIONS

Please write to the authorities listed below:

Expressing concern at the recent execution of a 25-year-old man on the order of a *shura* in the tribal area of South Waziristan;
Respectfully reminding the Pakistani authorities of their obligation to protect the human rights, including the fair trial rights, of all those living within the borders of the country;
Urging them to take decisive action to prevent further instances of tribal justice and, in particular, the application of the death penalty by *shura* or council elders;

Requesting that the government of Pakistan make clear public statements condemning unlawful trials that lead to the abuse of human rights and undertaking to hold to account anyone found responsible for unlawful killing or other illegal acts committed in this context; Expressing concern that executions have taken place in the tribal areas of Pakistan in violation of the very limited safeguards offered by the current laws.

ADDRESSES

President Pervez Musharraf
Pakistan Secretariat
Islamabad
Pakistan

Fax: +92 51 9221422

Email: via www.presidentofpakistan.gov.pk/WTPresidentMessage.aspx

Salutation: Dear President Musharraf

Minister Sardar Yar Muhammad Rind
Minister for States and Frontier Regions
Pakistan Secretariat
Islamabad
Pakistan

Fax: +92 51 9205379

Salutation: Dear Minister

(1) Daily Times, 28 March 2006.

(2) Dawn, 10 December 2005.

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