

Pakistan: Government cleverly dodges criticisms of international community on civil and political rights

Tuesday 14 December 2010, by [AHRC](#) (Date first published: 9 December 2010).

FOR IMMEDIATE RELEASE
AHRC-STM-250-2010
December 9, 2010

A Statement by the Asian Human Rights Commission on the occasion of the Human Rights Day 2010

PAKISTAN: Human Rights Day

Government cleverly dodges criticisms of international community on civil and political rights

The State of Human Rights in Pakistan 2010 report: The state of human rights in Pakistan in 2010 remains grave. The Asian Human Rights Commission (AHRC) has encountered cases and situations indicative of continued systematic abuses of human rights as well as areas critically affected by conflict and the absence of the rule of law. State actors including the police and the judiciary commonly perpetrate, permit, and fail to punish egregious violations of human rights, especially those against women and religious minorities. These violations include forced disappearances, torture, extra-judicial killings, disfiguring attacks on women, forced marriage and religious conversion, rape, domestic abuse, and other crimes.

Pakistan's government has taken positive steps toward ending executions. Since November 2008, the state has not executed a single person of the approximately 7500 prisoners on death row. The years 2009 and 2010 can be termed execution-free years. However, the government has shown its inability to commute death sentences due to strong resistance from powerful groups like judiciary and military establishment.

In 2009, President Zardari stated his intention to reduce the powers centralized in the presidency by Mohammad Zia-ul-Haq in the 1980s and transfer them to parliament. In April 2010, Parliament passed a Constitutional amendment that ended the President's power to dissolve parliament, dismiss government, and appoint military officials and judges.

On the issue of violence against women some progress was made. The bill against sexual harassment was passed by the Parliament while bills against domestic violence and acid-throwing were presented in the National Assembly. Yet these bills face opposition from powerful groups, particularly fundamentalists. The bill against domestic violence has been pending in the Pakistani Parliament for almost three years. The government is trying to get it passed during this year. A bill was also passed that decentralizes health care, raising hopes for improved women's health. Altogether, some courage was shown by the government in introducing legislation for women's rights, but powerful groups blocked making laws against domestic violence.

The judiciary enjoys freedom from pressure from the executive, but there are complaints that in

some cases the administration was hesitant to implement the decisions of the Supreme Court. The judiciary was at loggerheads with the government, but it asserted its independence from the executive. The national judicial policy was to eliminate corruption; a special cell will be set up to eliminate corruption from the judiciary. But, as of yet, that cell has not worked to eliminate corruption from courts. Corruption in the judiciary has increased over the past year because of an increase in pending cases. To fix a date for a hearing, it is common practice to bribe the staff of the court. This practice is not limited to the lower courts but also occurs at the level of higher judiciary with larger amounts.

Pakistan ratified the UN International Covenant on Political and Civil Rights (ICCPR) and the UN Convention against Torture (CAT) in April 2010 but with 'reservations'. Even a cursory look at the reservations makes it absolutely clear that ratifying the UN mechanisms was only a window dressing exercise with little meaning. All the reservations were made by declaring that the provisions of the articles of ICCPR and CAT shall be applied to the extent that they are not repugnant to the provisions of the constitution of Pakistan and the Sharia laws. It is very clever move by the government so that it does not have to be committed to amend local laws according to UN obligations. Whereas it is to be noted here that not a single article of ICCPR and CAT are in conflict with the Constitution of Pakistan or the Sharia laws.

The government has made reservations regarding Articles 3, 6, 7, 12, 18, 19 and 25 of the ICCPR. Article 3 guarantees equality to men and women; Article 7 ensures the right to life; Article 7 of the ICCPR prohibits the practice of torture; Article 12 guarantees the right to liberty of movement and freedom to choose residence; Article 18 ensures the freedom of thought, conscience and religion; Article 19 guarantees the right to freedom of opinion and expression; and Article 25 ensures participation in public affairs, right to vote and universal or equal suffrage and equal access to public office. The reservation on the article 40 of ICCPR shows that all that the government wants to secure impunity on its track record of gross violations of human rights by making a cosmetic change in ratifying the ICCPR. What is really nauseating is the idea that any of the treaty and convention clauses could be 'repugnant' to the provisions of the Pakistani Constitution that guarantees a 'republic'. Reading can fill anyone believing in democracy with horror.

Similarly, the government has declared reservations regarding all important articles of CAT, which provides protection against torture by the state. The government has conveyed reservations on Articles 3, 4, 6, 8, 12, 13, 28, and 30. Inexplicably, these reservations are coming from a government whose president himself has been tortured in custody because of the absence of anti-torture law. Most unfortunately, president Zardari has been fighting a case against his custodial torture for more than a decade to bring the perpetrators before the law.

Through the reservations on CAT, the government of Pakistan has explicitly declared that it will not specify torture as the criminal offence in the domestic law. By setting restrictions on ICCPR and CAT the government of Pakistan wants to keep the traditional right to kill, which it has enjoyed.

Of the following actions on human rights issues, the government of Pakistan says that they are neither universally recognized human rights nor do they comport with its existing laws, pledges and commitments, therefore it cannot enact them: 1) to repeal provisions of the Haddood; 2) end ordinances that criminalize non-marital consensual sex and fail to recognize marital rape; 3) decriminalize defamation; 4) review the legislation on blasphemy to align it with the principles of freedom of thought, conscience and religion and inter alia relevant obligations under the ICCPR; 5) review the death penalty with the intention of introducing a moratorium and abolishing it; 6) repeal Zina ordinances; 7) decriminalize adultery; and 8) prohibit in all circumstances the use of the provisions of the Qisas and Diyat law in cases of honour killings.

The negligence of the Pakistani authorities and lack of proper mechanisms to deal with natural disasters put the lives of millions of people in peril after 2010's heavy rains and flooding. The Pakistani people have been drastically affected by the destruction and loss of vast areas of agriculture lands and the toll of the damage on other forms of livelihood as well as on infrastructure necessary to education and health care.

More than 20 million people—or about 12 percent of the entire population—have been affected by the floods. Millions have become homeless and lack clean water, food, and medical supplies. Sanitary conditions have deteriorated, and disease poses a serious threat. Up to 3.5 million displaced children risk death from diseases such as cholera, typhoid, and dysentery, resulting from polluted water and lack of sanitation. Approximately 90,000 pregnant flood victims are currently at risk because of lack of medical services and supplies. In addition, women and girls in the flooded regions are suffering from starvation and malnutrition, anemia, poor hygiene and sanitation, and greater vulnerability to disease.

Large-scale displacement and disorganization has left women and children especially vulnerable to human traffickers. Roshni Missing Children Helpline visited several relief camps in Karachi, Thatta, Dadu, and Sukkur and registered more than 26 cases of missing children. Of these 26 missing children, 21 were boys between 5 to 16 years old and five were girls aged between 12 to 17 years. The organization has managed to recover 3 children; however, 23 children are still missing. The organization further reported that according to the National Disaster Management Authority, about 400 children went missing during the floods. Various NGOs, especially those working in rural areas of Sindh province, also showed their concern over the increasing number of missing children and women. Due to social context and the centrality of the issue of “honor” in interior parts of Sindh, many families are reluctant to report the cases of their missing girls.

Without any legal mechanisms or infrastructure to deal with natural and man-made disasters, some authorities sought to profit from the floods, demonstrating the necessity of stronger, more comprehensive natural disaster legislation. The 2010 floods illustrate just how devastating the effects of the natural disasters that will proliferate and escalate as climate change continues may be, and just how vulnerable Pakistan is to natural threats. The majority of the Pakistani policy makers are not thinking forward to the future and worsening climatic conditions. The country is embroiled in the US-led war on terrorism and now enmeshed in a complex political quagmire where it has found itself fighting a war with itself. Therefore, planners are not able to devote much time to apprise the people of Pakistan on the repercussions of adverse climatic effects.

Torture in custody is a serious problem affecting the rule of law in Pakistan. It is used as the most common means to obtain confession statements. As yet, there has been no serious effort by the government to make torture a crime in the country. Rather, the state provides impunity to the perpetrators who are mostly either policemen or members of the armed forces. Furthermore, there is no means for the protection of witnesses. This discourages victims from making complaints. While international jurisprudence on the issue has evolved into very high standards, the situation in Pakistan resembles the Stone Age. Domestic jurisprudence concerning the use of torture is underdeveloped in Pakistan. The appreciation to exercise the right, as envisaged under Article 14 (2) of the Constitution, has thus far been minimal. To make matters worse, in claims against torture, victims bear the burden of proof, and there are no independent investigating agencies that are empowered to inquire on a complaint against torture.

In spite of the prohibition of torture in the Constitution, the Pakistani Army is running detention and torture cells in almost every city in the country. In a report, the Asian Human Rights Commission has identified 52 such detention centres run by the military where people who were arrested and disappeared are kept incommunicado and tortured for several months to extract the confessions. As

of now there are no independent investigation procedures in Pakistan to investigate cases of torture. In addition, there is an alarming level of insensitivity among legal professionals, including the judiciary, regarding torture in Pakistan.

It is in the day-to-day work of the lower judiciary that this underdevelopment is most visible. One example is the practice of the lower court judges allowing indefinite remand custody of the detainees frequently although it is clear that anyone detained in Pakistan will be subjected to torture. The court fails to make use of the leeway available in the Criminal Procedure Code of Pakistan, which would allow a judge to demand a reason from the investigating agency for demanding the custody of an accused rather than transferring the accused into judicial custody. This year witnessed an increase in torture in custody, including torture in armed forces torture cells, torture in open places as well as in private torture cells of the police. In the presence of independent and powerful judiciary and elected parliament, law enforcement agencies have shown their power through torture in open places. According to reports there has been an increase of 13 percent in cases of torture as compared with previous year.

A complete absence of the rule of law was noted throughout Pakistan. Extra judicial-killings have been a common practice of law enforcement agencies. Video clips surfaced showing extrajudicial killings by army personnel. No action has been taken against army officials although the Pakistani Army has made its own inquiry committee, which has denied any misconduct. The Supreme Court of Pakistan was prominent in taking action against civilian government and politicians but has conspicuously ignored incidents of extrajudicial killings and mass graves in areas where army conducted operations for many years. The courts cannot take actions against the military or paramilitary forces who are killing people after their arrests in Balochistan province and Khyber Pakhtoon Kha province.

The law enforcement agencies, particularly Army, Frontier Corps and state intelligence agencies, were proved to be involved in numerous cases of disappearances, torture and extrajudicial killings during detentions by the court proceedings, but no action has yet been taken by the courts and government. In Balochistan province, every month at least five to six persons are disappeared and after some days their tortured dead bodies are found.

The WikiLeaks scandal in which leaked US diplomatic cables became available in international media revealed that America has ignored reports of extrajudicial killing by the Pakistani army as their exposure would undermine the war against terror. The U.S. forces were instrumental in perpetuating human rights abuses by condoning them.

Disappearances in Pakistan have become a routine matter seemingly accepted by authorities and including the courts as unsolvable because of the involvement of powerful institutions, such as the Army and national intelligence agencies. The major political parties, who are in sizeable numbers in the Pakistani Parliament, are also silent on the issue of enforced disappearances and torture in military detention cells. The agony of the disappearances is that the menace continues in civilian government and every month, on average, at least 5 to 6 persons are abducted by persons in plain clothes-sometimes in presence of police-and disappeared. The police refuse to lodge a first incident report (FIR), saying that intelligence agencies are involved. Besides this, the Pakistan Air Force and Navy are also running their detention centers where torture in the name of national security is common.

The police are running private torture cells in the jurisdiction of each police station, keeping detainees for many days. In rural areas, police stations are notorious for rape and few crimes are reported. There are many cases in which police have intentionally committed acts of torture in open places to show its power and scare the local population. The incidence of rape and honour killings

has also increased, and powerful people are enjoying impunity because of their connections with political parties. Further, killings and lynching have increased because of the failure of the rule of law and weakness of the lower courts.

Religious minorities remain insecure and unprotected because of the misuse of blasphemy law and ineptness of the government and its authorities with regard to the actions of Muslim extremist groups. These groups enjoy impunity because of the government's interest in political expediency and support from powerful institutions like the Pakistani army and national intelligence agencies.

In view of the continuous increase of the human rights violations and ineptness of the authorities to execute the rule of law the Asian Human Rights Commission urges the government to:

Withdraw all the reservations on the ICCPR and CAT and ratify it in its true spirit so that the law enforcement agencies are made accountable before the law and human rights abuses should be lessened with the passage of time so that Pakistan might become part of the civilized world.

Stop the menace of torture in custody by any authority whether it is police or army. Make torture a crime by law. For this purpose introduce a bill banning all forms of torture and inhuman and cruel treatment.

Prosecute the perpetrators of extrajudicial killings. Release all those who are disappeared by the law enforcement agencies including intelligence agencies and bring all missing person before the courts and if there is any case it should be tried according to the laws of the country.

The government must manage the aftermath of the 2010 floods that affected 20 million Pakistanis, killing 2,000, and the demands of repairing the extensive damage to infrastructure and recovering economically. The floods also exacerbated human rights threats within Pakistan, tying civil society and government to disaster relief efforts while causing widespread displacement, illness, and extreme poverty, as homes and livelihoods were destroyed, that has left disaster victims especially vulnerable to abuse, kidnapping, and trafficking.

There is drastic need of stopping the corruption at all levels of government.

All forms of violence against women should be made part of the legislation.

Journalists must be provided protection and the perpetrators who attack, torture and kill them must be prosecuted.

* *The State of Human Rights in Pakistan 2010 report:*

<http://www.humanrights.asia/resources/hrreport/2010/AHRC-SPR-007-2010.pdf>
