

Submission for Pakistan's Universal Periodic Review in the Human Rights Council

April 2012

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Methodology

This submission is the outcome of consultations by Human Rights Commission of Pakistan (HRCP) with its members and its Executive Council, which comprises noted lawyers, academics and civil society activists. HRCP had the advantage of looking at drafts of a number of individual and joint draft submissions for UPR of Pakistan and chose not to cover aspects adequately focused on in other submissions from the country. This submission looks specifically at matters of governance, independence of judiciary, electoral issues, death penalty, internal displacement, ratification of international human rights treaties and domestic implementation, Pakistan's cooperation with the UN system, enforced disappearances, state of religious minorities, the country's prisons and human rights defenders.

Governance

Paragraph 1

As a result of the 18th Amendment to the constitution in 2010, the federal government devolved legislative power for several subjects to the provinces. In the aftermath, several pending legislative measures at the national level lapsed and the provinces were yet to move on those. There was confusion on implementation of Pakistan's obligations under key human rights instruments, including those relating to health, education and labour, after devolution of these subjects to the provinces. The local government system — which the government had credited itself with in its submission before the Human Rights Council in 2008 for bringing governance to the grassroots — was wound up in 2009, when the subject reverted to the provinces' domain. In none of the country's four provinces has any progress been made on holding local government elections since then. Even the constitutionally guaranteed fundamental rights were not available in all of the state's territory. The exclusion of the Federally Administered Tribal Areas (FATA) from the jurisdiction of the high courts and the Supreme Court of Pakistan continued. Following vociferous demands by civil society and the people at large, some amendments were made to the Frontier Crimes Regulation (FCR), under which the administration of justice and governance took place in FATA. However, the amendments did not bring any real change to the system of governance and merely watered down some harsh clauses. The vacuum that had existed in the enforcement of human rights in FATA remained, meaningful judicial review of administrative action was still absent, and the administration's authority to order punitive demolitions, collective punishment and arbitrary detention continued. The extension of the Political Parties Act to FATA in August 2011 allowed the political parties to formally start activities in the militancy-hit region.

However, steps crucial for facilitating political activities were not taken as FATA was outside the jurisdiction of the superior judiciary in Pakistan, and a mechanism to ensure implementation of fundamental rights such as the right to association, freedom of expression and access to information in the region was lacking.

Independence of judiciary

Paragraph 2

According to the resolutions and statements made by bar associations and bar leaders, the superior judiciary is independent of the civilian government. However, it is perceived as being over-politicized in its selection of cases that it chooses to hear. There is a near consensus amongst bar associations that cases are also fixed arbitrarily and appointments of judges to the superior courts lack merit. All High Courts are working at half strength, as numerous vacancies have not been filled.¹ The International Commission of Jurists had also made several recommendations in this respect.² The Supreme Court and the High Courts have taken up a few human rights cases of consequence, e.g. involuntary disappearances and of protection of rights of transgender persons.

Electoral issues

Paragraph 3

The Election Commission of Pakistan (ECP) is yet to become financially and administratively autonomous and independent of the executive's control. Violence in politics and the use of firearms during elections campaigns increased. 329 political activists were killed in violence in 2011 Karachi alone,³ where political and criminal violence usually intertwined. Steps were not taken to check the armed groups linked with political parties in Karachi, or to initiate disarmament efforts despite repeated demands by the people. Violence across Pakistan was expected to grow even more pronounced ahead of the general election expected in 2013. The population census that was to be conducted in 2008 has not been held so far. The census ought to be conducted at the earliest and should be followed by redrawing of electoral constituencies and allocation of seats to provinces in the lower house based on the new census. With the census being delayed it would be difficult to complete the process in a credible manner and well

¹ Report on the ICJ Mission to Pakistan, autumn 2011, http://documents.icj.org/Pakistan_Mission_Report_30.03.12.pdf

² The News, Int'l Commission of Jurists gives 12 proposals to SC, April 20, 2012

³ Human Rights Commission of Pakistan (HRCP), State of Human Rights in 2011, p. 150, <http://www.hrcp-web.org/pdf/AR2011/Complete.pdf>

ahead of the general elections. The members of religious minority communities have been challenging the figures of the last census and insist that their population was undercounted.⁴

In March 2011, the Supreme Court was informed that the ECP had found 37.18 million votes (45% of registered votes) in the 2007 electoral rolls, which had been used for the 2008 general election, could not be verified. In addition to the authorities' tardiness in drawing up accurate lists, it was feared that the relevant government department had hurriedly clubbed together various lists when they had come under pressure from the Supreme Court in 2007 to complete voters' lists within the time limit fixed by the court. With the relevant department still struggling to register votes it was not certain if the lists would be ready in time for the next election or if they would be accurate.⁵

Not allowing women to vote is a violation of Pakistan's election laws, and constitutionally guaranteed rights and is also a penal offence. In 2011 and early 2012, women were systematically prevented from voting in by-elections in at least three constituencies. Despite credible reports, the ECP did not nullify election results, as required by the law in case of such denial of voting rights. Virtually no action was taken against community leaders and politicians who connived to prevent women from voting.

Under a reported agreement among all contesting parties, women were barred from voting in by-elections on a provincial assembly seat in Shangla district (Khyber Pakhtunkhwa province) in January 2011. Not a single woman cast vote at the 14 female-only polling stations. The District Returning Officer said the ECP officials' efforts to persuade local elders and political parties' representatives to allow women to vote did not succeed. The National Commission on the Status of Women (NCSW) demanded that the ECP declare the elections void, but no action was taken.⁶ In November 2011, in a by-election for a provincial assembly constituency of Kohistan district (Khyber Pakhtunkhwa), only men participated in the voting. Media reports said that a *jirga* (traditional assembly of elders) had decided not to allow women voters to go to polling stations, calling their participation against tribal tradition.⁷

⁴ HRC, Life at Risk, p.14, 2011, <http://www.hrcp-web.org/pdf/Life%20at%20risk.pdf>

⁵ HRC, State of Human Rights in 2011, p. 139, <http://www.hrcp-web.org/pdf/AR2011/Complete.pdf>

⁶ By-elections in Shangla, National Commission for Status of Women, <http://www.ncsw.gov.pk/news-details.php?id=32>

⁷ The Express Tribune, Kohistan by-election: Women, non-residents barred from voting, November 19, 2011, <http://tribune.com.pk/story/294148/kohistan-by-election-women-non-residents-barred-from-voting/>

Again, in by-elections held in Mianwali district (Punjab province) in February 2012, women were barred from voting. The NCSW again demanded action but none was taken.⁸ In the general elections likely in early 2013, restrictions upon women voting are expected to grow, as lack of official action emboldens the perpetrators.

Death penalty

Paragraph 4

Pakistan retained the death penalty for 27 offences. Even though a de facto moratorium on executions in place since December 2008 continued, the courts kept awarding capital punishment. A commitment by the government in June 2008 to end the death penalty for all but the most serious offences was not followed through. An estimated 8,000 death penalty convicts⁹ in Pakistan's jails at the end of 2011 constituted over 11% of roughly 78,000 prisoners in the country.¹⁰ The award of capital punishment by courts seemed to be returning to the pre-moratorium level. Besides not making the moratorium formal — presidential orders every six month deferred executions — the government did not share with the people the reasons that warranted staying all executions and therefore wasted an opportunity to get public backing for abolition of capital punishment.

Death penalty in Pakistan (2004-2011)¹¹

Year	Total executions	Total death sentences
2004	21	455
2005	52	362
2006	83	445
2007	134	319
2008	36	237
2009	0	277

⁸ Dawn, Outrage over preventing women to cast votes, February 28, 2012, <http://dawn.com/2012/02/28/outrage-over-preventing-women-from-casting-votes/>

⁹ HRCP, State of Human Rights in 2011, p. 61, <http://www.hrcp-web.org/pdf/AR2011/Complete.pdf>

¹⁰ Ibid, p. 65.

¹¹ Figures are based on media monitoring by HRCP and represent at least the number of reported convictions/executions in the cited years.

2010	0	356
2011	0	313

Internal displacement

Paragraph 5

Pakistan has faced large-scale displacement of population since 2008, for reasons including natural disasters and armed conflict. The number of internally displaced persons (IDPs) in relief camps in Pakistan in 2011 peaked at over 1.2 million. At the end of 2011, around half of these people were still in camps.¹² Efforts to deal with internal displacement remained reactive and a domestic framework to protect IDPs' rights remained lacking. Steps were not taken to benefit from the UN Guiding Principles on Internal Displacement to prevent conditions that might lead to displacement. Consultations with IDPs regarding decision that affected them were rare. Concerns remained about failure to restore livelihoods, safety of the conflict-induced IDPs returning to their native areas and about the voluntary nature of return, especially in the tribal areas and in some flood-affected areas.

Implementation of international human rights obligations

Paragraph 6

Since the last UPR, Pakistan has ratified the ICCPR, the Convention against Torture (CAT), the ICESCR, the Convention on the Rights of Persons with Disabilities, and the Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution and Child Pornography. The country has now ratified almost all key international human rights treaties. However, the pace of domestic legislation has been slow. During 2011-2012, several laws have been made to protect women against discrimination and violence but they are yet to be fully implemented. Mechanisms for the implementation of CAT are still wanted and the convention on enforced disappearances is yet to be signed. Essentially the people of Pakistan did not benefit sufficiently from the ratifications. Progressive realization of economic, social and cultural rights remained a far cry. Even though elementary education was acknowledged as a fundamental right through the insertion of Article 25 (A) in the constitution (through the 18th

¹² HRCP, State of Human Rights in 2011, p. 273, 280, <http://www.hrcp-web.org/pdf/AR2011/Complete.pdf>

Amendment), the government did not make the required financial commitment to realise that right. The allocation for primary education in the 2011-12 budget was Rs 311.26 billion (USD 3.466 billion), for secondary education Rs 46.19 billion (USD 511 million) and for higher education Rs 94.37 billion (USD 1.044 billion). With the priority given to higher education, it was unlikely that Pakistan would meet the MDG on universal primary education by 2015. The total allocation in the federal and provincial budgets was a mere 1.02% of the GDP. In the revised estimates for the same year, it came down to 0.9%. In the budget of 2010-2011, the total allocation was Rs 170.5 billion, but the revised expenditure was 5.5% lower than that amount.¹³ So even the meagre allocations for education went unspent. Similarly, the allocation for health in the combined federal and provincial governments' budgets was just 2.03% in 2011-2012, compared to 2.22% in the previous budget and 2.16% in the revised estimates of 2010-2011.¹⁴

Cooperation with the UN system

Paragraph 7

Pakistan has not extended a standing invitation to UN special procedures mandate holders nor accepted outstanding requests for visits by special procedures. The last time a special procedure visited Pakistan was in 1999. Many requests/follow-up requests by special procedures on human rights defenders; extrajudicial, summary or arbitrary executions; racism; freedom of religion; human rights and counter terrorism; adequate housing; independence of judges and lawyers; freedom of expression; torture; food; IDPs; and freedom of association and assembly have been pending. The first of the pending requests had been made in 2000. Pakistan's reports to the UN treaty bodies have remained late and shoddy. Since the last UPR, Pakistan submitted the fifteenth to twentieth combined periodic report, in 2009, to the Committee on the Elimination of Racial Discrimination (CERD). The report was almost 10 years overdue when submitted. The country also submitted the combined third and fourth periodic report to CRC.

Enforced disappearances

Paragraph 8

¹³ HRCP, Budgeting for Rights, December 2011, p. 13, www.hrcp-web.org/pdf/Budgeting%20for%20rights.pdf

¹⁴ Ibid, p. 16.

Even though enforced disappearances are now firmly in the spotlight as the media, civil society organisations and judiciary pay attention to it, the illegal practice still goes on, with dozens of incidents verified by HRCP from the provinces of Balochistan and Sindh in 2011 alone. The Supreme Court has been hearing since 2007 a petition filed by HRCP and some other organisations for hundreds of missing persons. Many people believed to have been picked up by official security agencies have come back from captivity but to-date no one has been tried or convicted for abducting or illegally detaining them. No compensation has been given to those released from illegal detention. In one case, out of a group of 11 people in security agencies' illegal custody, four were later found dead. On the Supreme Court's intervention, the remaining seven were produced in court in early 2012. They were very weak and had developed renal and other diseases.¹⁵ No one has been held to account in that case either. In Balochistan, bodies of 173 persons stated to be missing were found in 2011.¹⁶

Religious minorities

Paragraph 9

The difficulties of members of religious minority communities in Pakistan, including Muslim minority groups, increased amid growing extremism and intolerance and the state's failure to ensure effective protection and to bring to justice the perpetrators of violence and hate speech. Hundreds of Hindu families from Balochistan were reported to have left the country because of lawlessness, intimidation and abductions for ransom.¹⁷ At least six Ahmadis were killed on account of their faith in 2011 and 99 in 2010, including 86 following attacks on two Ahmadi congregations in Lahore. Incidents of discrimination and violence against Ahmadis are far too numerous to be recounted here.¹⁸ Three persons were awarded capital punishment on blasphemy charges and at least eight others were booked under that law in 2011. The government had announced its intention in late 2010 to amend the blasphemy laws, apparently to include procedural safeguards to prevent abuse, but after protests by radical elements it said it had no plans to change the law. Punjab Governor Salman Taseer was murdered by one of his police guards for criticizing the law. No headway was made on arresting the killers of Federal Minister for Minorities Shahbaz Bhatti. Mr. Bhatti, a Christian, was the only non-Muslim member of the federal cabinet. The official Commission on Minorities was ineffective to the point that it was not known who members of that commission were and how members of religious minority communities could approach the Commission. The Commission did not even have a website or any known email address. Targetted killing of members of Hazara community in Balochistan increased and at least 106 were killed in the first 10 months of 2011. The perpetrators roamed free. HRCP's warnings on the situation in Gilgit Baltistan were ignored and the region plunged into brazen sectarian bloodshed in 2012 after many Shias were murdered.

¹⁵ The Express Tribune, Adiala Prisoners' case: Seven prisoners presented before SC, Feb 13, 2012, <http://tribune.com.pk/story/335737/adiala-prisoners-case-seven-prisoners-presented-to-the-court/>

¹⁶ HRCP, State of Human Rights in 2011, p. 67, <http://www.hrcp-web.org/pdf/AR2011/Complete.pdf>

¹⁷ HRCP, State of Human Rights in 2011, p. 130, <http://www.hrcp-web.org/Publications/AR2010.pdf>

¹⁸ A summary can be seen in HRCP's annual report, the State of Human Rights in 2011, pp. 84-86, <http://www.hrcp-web.org/pdf/AR2011/Complete.pdf>

Prisons and prisoners

Paragraph 10

A failure to consider non-custodial sentences and the tendency to lock people up at the slightest excuse has led to overcrowding in Pakistan's prisons, in particular in Punjab province. At the end of 2011, there were around 78,000 prisoners in jails across the country against the authorized detention capacity of 42,600 inmates. In Punjab, against the holding capacity of 21,527 prisoners, there were 53,402 inmates at the end of 2011.¹⁹ All but two of Punjab's 32 prisons had inmates in excess of authorized capacity. In Sindh, 26 prisons held 13,931 prisoners against the capacity of 10,560.²⁰ In Punjab, around 65% (35,215) inmates were detained under trial and were yet to be convicted. 10,865 inmates in Sindh were under trial, including 267 out of the total 307 juvenile inmates in Sindh.²¹ Detention in excess of capacity also stretched healthcare for inmates, and some jails had no permanent medical officer for inmates. At least 92 inmates were reported to have died in prisons across Pakistan in 2011.²²

Human rights defenders

Paragraph 11

The work of human rights defenders became more dangerous amid increasing lawlessness and extremism. The government generally failed to provide a safe environment to those working to promote and defend human rights. Those working for the rights of women and minorities or highlighting excess by state agencies were at greater risk. Three out of the around 100 HRCP district coordinators were murdered in 2011. These included Siddique Eido (Pasni), who was abducted by men in security agencies uniform. His body was found months later. The other two were Naeem Sabir (Khuzdar) and Zarteef Afridi (Khyber Agency) who were shot dead in targeted killings. Their killers have not been brought to justice.

¹⁹ Statistics by the Punjab Prison Department, as on December 31, 2011.

²⁰ Statistics by the Sindh Prison Department, as on December 31, 2011

²¹ Statistics provided by the prison authorities in Sindh and Punjab at the end of 2011.

²² HRCP, State of Human Rights in 2011, p. 61, <http://www.hrcp-web.org/pdf/AR2011/Complete.pdf>