

The ITPCM

International Commentary



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PAKISTAN

TO-DAY. SOME INSIGHTS.

Dear Friend

of the ITPCM, we are happy to announce the launching of the *ITPCM International Commentary*.

Given the increasing interest in our bulletin and the issues there debated

we have decided to mould this new format and tool, which constitutes a development of the *old* ITPCM Newsletter. We sincerely hope that you will appreciate our efforts of continuously

improving our dissemination activities.

The goals of the new *ITPCM International Commentary* are more ambitious. We are still inspired and urged by the

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same need to provide invaluable insights and brief analysis over a given country or a cross-cutting issue currently at stake. More than ever we strive now to raise awareness, provide close examinations and dissemination of all that. To this end we keep focussing on international crisis, on those countries suffering emergency situations, on the present challenges international field operations are facing, on country policies and on their political life, civil society aspirations and criticalities. Our interests reflect our areas of expertise: international politics and democratisation processes, conflict prevention and crisis management, human rights issues and development cooperation aspects. We chose to adopt a popular yet rigorous approach to these themes, in the form of short articles, of no more than 2000 words each.

We applied for and were granted an ISSN - International Standard Serial Number - a code that identifies our on-line publication unequivocally and specifically. For searching and quoting purposes, as well as for repository storing it represents a first unavoidable step.

Our contributors are to be found among scholars as well as practitioners, consultants and PhD candidates, journalists and researchers, IOs and NGOs personnel. We aim at providing a multi-faced and comprehensive analysis approach that boasts international and western perspectives as well as the invaluable local and field points of view. We do hope very much that among our readers we will find additional authors interested in contributing to future issues of our Commentary. Next edition is expected to be finalised by the end of November 2011.

The *ITPCM International Commentary* is meant to be an open space for knowledge sharing and advocacy, especially

for those profiles more field and practically oriented. An opportunity to draw attention and information to less debated or often overlooked issues beyond the mere political, social or international column.

The last part of our publication will continue to provide our readers with regular updates of the core set of activities, trainings and researching initiatives undertaken at the ITPCM, whose aim is to address those same issues in a more concrete and operative way. Our website, however, remains the reference and more complete source of information in this regard.

Dear friends of the ITCPM and dear readers, welcome then to the *ITPCM International Commentary* and to this important issues devoted to an extremely relevant theatre nowadays: Pakistan.

Enjoy your reading!

Our warmest regards and best wishes for what we hope to be a peaceful and recovering summer break.

Andrea de GUTTRY
ITPCM Director

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Intro

In the beginning it was Pakstan. By which Choudhary Rahmat Ali, in 1932, while riding on the top of a London bus, first gave name to his future country. He meant, in a new acronym, the five Northern units of India: Punjab, North-West Frontier Province (still known as Afghan Province), Kashmir, Sind and Baluchistan. All those areas, in other words, that hosted the majority of the northern Muslim population of British India back then.

Over time and for linguistic reasons an 'i' was added between 'Pak' and 'stan' to ease pronunciation: Pakistan.

Since its independence, on 14 August 1947, Pakistan has experienced periods of military rule, civil war, political instability and conflicts with neighbouring India. As usual in history, a dense series of events, developments and turning points shaped and moulded the state we all know nowadays. A federal parliamentary republic, with Islam as the state religion, consisting of four provinces and four federal territories.

With over 170 million people, it is the sixth most populous country in the world and has the second largest Muslim population after Indonesia. The majority of them are Sunni; yet the country hosts the second-largest Shi'a community after Iran.

Pakistan holds more records. It has the seventh largest standing armed force and is the only Muslim-majority nation to possess nuclear weapons.

The power of numbers today is unquestioned. But can we really rely upon those data and rankings to describe and grasp nature, role and criticalities of such a big country without prejudice?

Pakistan today is also the over 35,000 citizens and 3,500 security personnel left dead by the war on terror, according to a recently released survey conducted by the Associated Press of Pakistan.

While we write (July 2011) the Taliban released a footage appearing to show the execution-style killing of 16 policemen in the tribal north-west part of the country.

Reality is much more multi-faceted and complex than we tend to represent it. It is bearing this in mind that we made an attempt in that direction, trying to avoid approximations. All contributors to this issue are to be praised for their effort and the intrinsic value of their specific input, opinion or point of view, which is only their own. They accepted to contribute freely and on a voluntary basis. A special thanks goes to Silvia Valentini that helped me to find and contact part of them.

We hope to have enriched the palette by which the country is usually depicted. And to have made it closer and more intelligible to our readers.

Michele Gonnelli

Contributions

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Pakistan North Mountains series. Photo courtesy of Saeed Ur Rehman, Pakistan, 2011.



by Emanuele Sommario

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KILLING OSAMA BIN LADEN: LEGAL IMPLICATIONS

Introduction

The military operation that resulted in the killing of Osama Bin Laden in early May this year spawned a very lively

debate not only within the general public but also among international law pundits. Reactions also came from

a number of institutional actors some of which expressed unease towards the operation. Two UN Special

Rapporteurs issued a joint statement asking the Obama administration to shed some light on the facts in order to allow an assessment of the legality of the [attack](#). Distinguished law professors have labelled the incident as a case of [murder](#) or as an instance of “extrajudicial killing without due process of the [law](#)”.

US and Pakistani authorities have not yet provided a sufficiently accurate factual account of the incident and it is perhaps premature to venture an opinion on its legality under international law. Nonetheless, it might be interesting to briefly examine the episode from a legal perspective as it implicates a number of important legal and political issues.

We will focus our attention on the two main problematic aspects raised by the incident: a) did the US have a right to carry out such an operation on the territory of Pakistan? This question will have to be answered on the basis of what is commonly known as the *jus ad bellum*, i.e. the treaty and customary rules which limit the use of armed force in international relations; b) was the operation conducted in the framework of an armed conflict? The legal qualification of the situation is crucial, as in times of war the intentional taking of life of individuals belonging to enemy armed forces is in many cases considered legal. In times of peace, on the other hand, the standards applicable are those of law enforcement operations, according to which deliberate killings are only allowed as *extrema ratio* in exceptional circumstances.

Could the US use force on Pakistani soil?

There is little question that in the presence of an authorization (or *ex post* acquiescence) by Pakistan, the US intervention should be considered legal from a *jus ad bellum* perspective. It appears that Pakistani authorities had no knowledge of the attack, yet it is unclear whether they had given a general consent for the US to carry out operations on their territory against terrorist suspects. Bin Laden definitely was a suspected criminal with multiple indictments issued against him by US [courts](#). If the US

had permission to apprehend him, attempting to do so would have been entirely legal. Yet the Pakistani PM, speaking to the Parliament a few days after the facts, expressed regret that the “unilateral action” was undertaken without the government’s [concurrence](#). The Parliament itself condemned the US intervention as “a violation of Pakistan’s sovereignty” and the US ambassador to Islamabad was summoned for a protest about the [incident](#).

Unsurprisingly, the US chose to base the legality of the operation not on Islamabad’s consent but rather on the argument that the killing was an act of self defence carried out against a lawful military target. US State Department Legal Adviser Harold Koh [explained](#) that his country was “in an armed conflict with al-Qaeda, as well as the Taliban and associated forces, in response to the horrific 9/11 attacks, and may use force consistent with its inherent right to self-defence under international law.”

As is well known, Article 51 of the UN Charter recognizes the “inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations”. Once the existence of an armed attack is ascertained, the State suffering it has a right to respond forcefully while respecting the criteria of necessity, proportionality and immediacy.

Traditionally, the right to self-defence was deemed to arise in the context of inter-State attacks. It is rather controversial whether the notion of ‘armed attack’ as contained in Article 51 also encompasses attacks launched by non-State actors like Al Qaeda. Advocates of a more liberal reading of the provision argue that the letter of Article 51 does not designate States as the sole entities capable of launching an “armed attack”. In addition, they cite UNSC Resolutions 1368 and 1373, adopted in the wake of the 9/11 attacks, whose preambles explicitly recall “the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations”.

Yet the operative paragraphs of the resolutions characterize the events as “terrorist attacks” rather than “armed

attacks”. Indeed, Resolution 1368 calls on all States “to work together urgently to bring to justice the perpetrators, organizers and sponsors” of the attacks, hence suggesting that the apprehension and punishment of Bin Laden should be considered a matter of law enforcement rather than a *jus ad bellum* issue. Moreover, the International Court of Justice (ICJ) has recently reaffirmed a more conservative reading of the provision, arguing that attacks launched by non-State actors can constitute “armed attacks” in the sense of the UN Charter only if they can be attributed to a State.¹ Clearly, if one embraces the ICJ’s stance, the US could not claim to act in self-defence when intervening (without the host State’s consent) on Pakistani territory against Al Qaeda.

Assuming however that self-defence can be exercised against a terrorist organization operating from abroad, the issue of necessity would arise, which is closely connected to the preservation of the sovereignty of the State that is (it is presumed) unwillingly or unknowingly harbouring the terrorists. A case could be made that in such circumstances an armed intervention is really *necessary* only if the territorial State is given a chance to deal with them first but fails to do so.² In such circumstances, the infringement of the local State’s sovereignty could be justified by its failure to prevent its territory from being used in a manner contrary to the rights of other States. In the case at hand, it appears that the US has made no attempt to involve the Pakistani authorities in the operation against Bin Laden. Rather, the Department of State seems to have made a determination that Islamabad was unwilling or unable to apprehend him, a surprising move if one considers that Pakistan has consistently been

1 International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, at para. 139 and Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda), Decision of 19 December 2005, at paras 146 and 160. Note that in both instances some of the judges dissented from the majority’s restrictive reading of Article 51.

2 See for instance N. Lubell, *Extraterritorial Use of Force Against Non-State Actors*, OUP, 2010, at 46.

singled out as a key US ally in the so called “war on terror”.

What is the law applicable to the operation?

As highlighted above, the US maintains that it is involved in an armed conflict with Al Qaeda and that the legal regime governing the raid in Abbottabad is set out in positive and customary International Humanitarian Law. If this were the case, the deprivation of life would have to be assessed against the backdrop of the rules regulating the conduct of hostilities in war, which are obviously much more “permissive” than those operating in times of peace. In brief, during an armed conflict a member of the armed forces of one of the belligerent parties can be made the object of an attack (even a lethal one) at any time, just because he possesses that specific condition, and even if he does not represent a direct and imminent threat to the attacker. What matters is his particular status as a combatant, which permanently turns him into a legitimate military target, unless he is *hors de combat*.³

³ According to Article 47 of Addi-

The same applies to a civilian taking direct part in hostilities, who loses the protection granted to him by IHL for the time of his participation in the conflict. According to the majority of scholars, in an armed conflict scenario there is no obligation to capture an enemy fighter instead of killing him, nor is there a legal duty to solicit his surrender. Hence, if we accept that Bin Laden was the leader of a guerrilla force engaged in an armed conflict with the US (and thus a combatant), and if he did not clearly express his intention to surrender to the SEALs, his killing must be seen as entirely legal. If, on the contrary, he had attempted to surrender and was shot nonetheless, the US troops’ conduct would amount to a war crime.

But was there an armed conflict ongoing in Pakistan at the relevant time? IHL knows two categories of armed conflicts: International

tional Protocol 1 to the 1949 Geneva Conventions (1977), a person is *hors de combat* if: “(a) he is in the power of an adverse Party; (b) he clearly expresses an intention to surrender; or (c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself; provided that in any of these cases he abstains from any hostile act and does not attempt to escape.”

Armed Conflicts (IAC) and Non-International Armed Conflicts (NIACs), i.e. civil wars. According to Common Article 2 of the Geneva Conventions – which apply to IACs – their scope of application covers “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties”. As only States can be Contracting Parties to the Conventions, it is safe to say that only conflicts involving two or more States can be qualified as IACs. Non-State actors such as Al Qaeda cannot be a part to an IAC.

Is it then a NIAC? Common Article 3 of the Geneva Conventions (covering conflicts “not of an international character”) says that such conflicts must occur “in the territory of one of the High Contracting Parties”. Elaborating on this definition, the International Criminal Tribunal for the Former Yugoslavia (ICTY) defined NIACs as situations of “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.⁴ If

⁴ ICTY, *Prosecutor v Tadic*, Case No.



hostilities currently unfolding in Afghanistan between the Taliban on one side and the Afghan armed forces supported by the US and other foreign contingents on the other, almost certainly fit this definition, the same can probably not be said regarding the situation in Pakistan on May 1st 2011. Even though the US had in the past carried out military strikes on Pakistani territory against members of Al Qaeda – mainly by means of drone attacks – it is doubtful whether these incidents taken together (including the operation in Abbottabad) would meet the intensity criteria of a NIAC. The “global war on terror” invoked by the US is not an “armed conflict” in the technical sense of the term. To use the words of an ICRC Legal Adviser: “The phrase ‘war on terror’ is a rhetorical device having no legal significance. There is no more logic to the automatic application of the laws of armed conflict to the ‘war on terror’ than there is to the ‘war on drugs’, ‘war on poverty’ or ‘war on cancer.’”⁵

If the situation does not qualify as an armed conflict, the right to life of individuals should still be protected under International Human Rights Law. Article 6(1) of the Covenant on Civil and Political Rights (CCPR), for instance, affirms that “no one shall be arbitrarily deprived of his life.” But is

IT-94-1-T, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, at para.70

⁵ <http://www.icrc.org/eng/resources/documents/misc/5xcmnj.htm>. See also International Law Association, Hague Conference 2010, Final Report on the Meaning of Armed Conflict in International Law, available at <http://www.ila-hq.org/download.cfm/docid/2176DC63-D268-4133-8989A664754F9F87>

the US bound by Human Rights treaties when acting outside its borders? The answer hinges on whether Bin Laden could be considered to be under US “jurisdiction” during the operation. Washington has consistently ruled out that the CCPR imposes human rights obligations outside American borders. The United Nations Human Rights Committee, however, determined as early as 1981 that the notion of “jurisdiction” is not linked to the place where a violation takes place but rather “to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred”.⁶

So – assuming the US was exercising “jurisdiction” under Human Rights Law – the better view is probably that the situation has to be assessed using the “law enforcement” paradigm, an exercise for which the UN “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” come in handy. The most important, for our purposes, is probably Principle N. 9 according to which “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.” Hence the question becomes: did Bin Laden pose an imminent and serious threat to the lives of the SEALs or of any other innocent bystander? The White House has revealed he was unarmed and yet “he resisted US forces”.

The fact that he appeared to be

⁶ Human Rights Committee, *Lopez Burgos v. Uruguay*, Application No. 52/1979, 29 July 1981, at para 12.2.

unarmed is per se not conclusive. The US commandos might have reasonably believed that he could hide a gun or a hand grenade and that he was ready to use it. But if “unarmed” means that they were positive he did not carry a weapon and that no one was in arm’s reach, then the US would have to make the case that the “resistance” he put up was in itself life-threatening.

Conclusion

It is understandable that a sizeable part of the international community and world public opinion seemed to be little concerned about Bin Laden’s fate. After all, he openly claimed responsibility for acts of terrorism amounting to crimes against humanity and has incited others to commit similar acts. But if there is one thing we should expect from States that act as heralds of human rights and the rule of law, it is that they give even to their fiercest enemies a human treatment. As a part of it, terrorists should be arrested and brought before a court of law. Their guilt should be established by means of a trial that respects certain fundamental tenets and only after such a procedure can they be punished (even with death, if the national criminal code envisages such a penalty). However, every taking of life by a State outside the parameters outlined above constitutes an extrajudicial killing and represents a serious violation of international law.

Pakistan North Mountains series. Photo courtesy of Saeed Ur Rehman, Pakistan, 2011.



Kabbadi Match in Derawar (Kabbadi is an indigenous sport of Punjab). Photo courtesy of Rahat Dar, Pakistan, 2010



by Iqbal Haider Butt

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UNFINISHED DEVOLUTION IN PAKISTAN?

With the dissolution of last tranche of seven ministries on 29th June, 2011, a total of seventeen erstwhile federal

subjects have been transferred to the provinces under the 18th Amendment to the constitution and the pro-

cess of provincial autonomy has been at least theoretically completed in Pakistan. In practice, however, this

political decision has not been backed up by technical and financial planning and the provinces are unable to take responsibilities of dissolved federal subjects - mainly because they don't have either resources or the staff to run ministries. The skeptics argue that the federal government has undertaken provincial autonomy as a fiscal measure to cut down its expenditure and shift its burden upon the provinces. The pending issues between the federal and provincial governments have created a governance vacuum that will especially hamper public functioning of the social development sectors i.e. education, health, women and youth affairs, etc. The Parliament enacted the historic 18th amendment April last year on the recommendations of Parliamentary Committee on Constitutional Reforms that consisted of 26 representatives of alle lected political parties.

Another Implementation Commission of members from ruling and opposition parties later thrashed out details of the amendment through 68 formal and informal meetings and executed the 18th amendment by dissolving 17 ministries in three tranches: Dec 2010, April 2011 and June 2011.

After its formal implementation, the federal government at least on papers has now powers over only five subjects - finance, defence, foreign affairs, communications and revenue. Given the unprecedented nature of the new constitutional development, the Prime Minister Yousuf Raza Gilani announced to commemorate July 1 as the national day of provincial autonomy. The spirit of 18th amendment is rooted in the original constitution of 1973, which was adopted unanimously by the sitting and opposition parties and later abrogated by the martial law government in 1977. At that time there were three lists of subjects made within the constitution:

(i) federal list, (ii) provincial list, and (iii) the concurrent list that included all those subjects that were to be jointly taken care of by the federal and provincial governments. The concurrent list comprised of 47 different subject matters.

The founders of the 1973 constitution had reached an understanding that the concurrent list will be removed from the constitution ten years after its promulgation. That did not hap-

pen due to imposition of Martial law in the country. The government of General Zia preferred to run Pakistan as usual - from a strong centre in its capital Islamabad.

When implemented in its letter and spirit, the 18th amendment would have profound impact on the way the country is governed and with promised powers and funds, the provinces will command political authority over public matters in Pakistan.

Federalism and Provincial Autonomy in a Diverse Country

Pakistan's problematic relationship with federalism and provincial autonomy dates back to its formative phase when its founding father Muhammad Ali Jinnah, popularly known as Quaid- Azam (The Great Leader), advocated greater political autonomy in the framework of the United India against the strong centralized tendencies of the Indian National Congress. Having frustrated in getting greater autonomy for Muslim majority provinces, he opted for independence of the country on 14 August 1947. After his early death, the strong bureaucratic set-up of the colonial institutions could command authority over the new state in the absence of strong political parties and the leadership like the Leader himself could offer. Nevertheless, in theory, all three constitutions of Pakistan (1956, 1962 and 1973) have adhered to the principles of federalism.

This dichotomy in theory and practice has long persisted in the constitutional and political development of the country.

In Pakistan's multi-ethnic milieu the abolishment of the centralized rule over provincial autonomy comes along successive periods of constitutional and political struggle against hegemony of the federal governments. The ethnic diversity of Pakistan is composed of 59.1 percent Punjabis. Others are 13.8 percent Pakhtuns, 12.1 percent Sindhis. 7.7 percent muhajirs (Urdu-speaking migrants from Upper and Central India), 4.3 percent Balochs, and 3 percent members of other ethnic groups. The sub-national complexity is compounded by predominance of Punjabis in the Pakistan Army, who have been traditionally the

main recruiting nursery even for the colonial forces before the independence of the country. According to the Inter-Services Public Relations (ISPR), the public relations arms of the forces, the Punjabis made 71 percent of the army in 2001. Their number is gradually decreasing after former President General Musharraf introduced a new recruiting policy to induct less represented ethnicities into the army. By 2007 the Punjabi number had fallen to 57 percent and was planned at 54 percent by 2011.

Due to strong Army links and long military regimes the nationalists of the smaller provinces have been equating Punjab as the envoy of centralized rule in Pakistan - the successor of colonial masters. Muhajir-dominant bureaucracy, especially in the earlier decades of Pakistan, was also held responsible for denying rights of the lesser developed ethnicities. The state policy of pursuing one nation, one language and denial of political autonomy was thus regarded as beneficial to the relatively affluent ethnicities.

The country's disintegration (1971) after a military action by the state in 1969 is often attributed to the nationalist resistance and failure of the federal government to accommodate provincial autonomy. One of its units the East Pakistan had rebelled against hegemony of the centralized rule subsequently incubating a new country, Bangladesh. The nationalist sentiments in the similar Eastern Unit had accentuated as back as 1952 on the questions of the status of Bengali language as the lingua franc and removal of popularly elected government of Jugtu Front, a coalition of East Pakistani opposition parties, in 1954.

The centre also deposed elected government of Balochistan province compelling another to resign in North West Frontier Province (NWFP) in 1973. That resulted in military action in Balochistan.

The centre is also accused of instigating small scale insurgency in Balochistan province that heightened after murder of a nationalist leader Nawab Akbar Bugti in 2006. Nawab Bugti was former chief minister of the province. After his death the occurrences of human rights abuses by the state security forces, ethnicity based kill-

ings of Punjabis and inter-ethnic tensions have increased.

The case of national census also signifies inter-provincial and inter-ethnic relations in Pakistan.

The census scheduled in 1991 was conducted in 1998 and the next one due in 2001 has not been completed so far. This delay is attributed to inter-ethnic tensions and accusation of nationalist political leadership of especially within Sindh and Balochistan provinces against others for trying to fudge data of the census to show higher number of people of certain ethnicities.

It was this context of mistrust that the provinces could not reach to a resource allocation formula among themselves. Since the provinces have been largely dependent upon federal financial transfers in Pakistan, the distribution of resources are decided on the basis of National Finance Commis-

sion (NFC) Awards. The federal governments are constitutionally bound to implement NFC Awards every five years. However, there have been only four conclusive NFC Awards (1974, 1991, 1997 and 2009-10) and one presidential distribution order (2006). The delay in implementation has been due to lack of reaching to consensus on the resource distribution.

The latest (seventh) NFC Award (2010) is a landmark achievement of the present democratic government. It is the first time after secession of East Pakistan that the distribution of resources among provinces is based not only on population but also on other factors like backwardness, inverse population density and revenue collection/generation. Additionally, the provinces were allocated 56 percent of the net divisible pool in the first year (2010-11) and 57.5 percent during the remaining period of the Award.

The present NFC award is an effort to appease smaller provinces, which was duly accepted by the biggest province Punjab. Moreover, a special package for the Balochistan province (biggest in land, smallest in population) was introduced in 2010 by the federal government under the name of Aghazi-Haqooq Balochistan "Beginning of the Rights of Balochistan". Under this package and the NFC Awards, Balochistan would be paid 120 billion rupees on account of royalty of its Gas Resources in equal installments of Rs 12 billion for ten years.

The Current Debate: Political vs. Fiscal Autonomy

The due jubilation and political rhetoric apart, the announcement of provincial autonomy is still in doldrums. Whereas the political process to dissolve the concurrent list and 17 subjects has been completed, the



Wall chalking in favour of demands for a new province HAZARA - presently part of the Khyber Pukhtunkhawa (KPK) province. Photo courtesy of Rahat Dar, Pakistan, 2011

technical input for making this shift is blurred and massive work has to be done for smooth functioning under the provinces. At this point it is apprehended that not responding with immediate actions would cause unprecedented damage to macro-level national development in Pakistan. Some of the key concerns are:

i. **The Future of National Policies and Institutional Governance:** After years long input, the country was able to formulate national policies in sectors like education, youth affairs, labour, population in 2009 and 2010. It had taken 22 years, for example, to devise the national framework for youth development for the first time in Pakistan in 2009. After devolution of these ministries, the future of the national policies and commitments is in limbo. The provinces need to act urgently to reach to a consensus and adopt appropriate policy framework in their jurisdiction, which is missing at this juncture. It is feared that in absence of such frameworks the national and international commitments may go stray with massive over-lapping and lack of a national direction.

In education sector only, the introduction of constitutional clause 25-A will go unresponded.

Under this radical clause the state has been bound to mandatorily provide free and quality education to all eligible children from 5 to 16 years. After the dissolution this right to education is apprehended to be violated and a fundamental right to be denied to the citizens.

The institutional confusion was best witnessed during months' long public controversy over the fate of Higher Education Commission (HEC). The federal government in April 2011 announced to disband the HEC. Activ-

ists from almost every sphere of life and the Vice Chancellors, academics and students came out to the streets and government had to withdraw its decision.

ii. **Funding and Resource Allocation Issues:** No costing has been done to implement the provincial autonomy. No one knows what the cost of provincial autonomy is and who will bear it? [In a briefing prepared by the finance division of the Balochistan province during a policy dialogue organized by a youth development organization BARGAD, it was told that the expenditure roughly amounted to 100 billion rupees in capital terms]. It is also still unclear how the provinces will fund on-going development projects initiated under the Public Sector Development Programme (PSDP). What are the liabilities and assets to be distributed among provinces and the centre? In the first federal budget after the 18th amendment there are zero funds available in 16 dissolved subjects and in comparison to 2010-11 budget, the federal government has withheld allocation of worth 41.166 billion rupees. This is easily deducted that there can be no action taken before costing and fixing this funding and assets issue.

iii. **Staffing, Structures and Capacity Issues of Provinces:** The provinces lack matching structures, staff and capacity to run many dissolved ministries.

That means that practically the provincial set-ups cannot handle many social development issues properly on their own and would act on discretion of the personal approaches of respective chief ministers of the provinces. The new institutional mechanism will have to be established from the scratch and a route map for building capacity of the responsible offi-

cial will have to be developed. The provinces attach this issue also to financial resources.

Furthermore, the issues of national regulation and standardization and Inter-province coordination have to be resolved.

The die-hard proponents of the 18th amendment and provincial autonomy argue that the haste to introduce the reforms was inevitable to appease sense of deprivation in smaller provinces especially Balochistan. That's why the proper planning was skipped during the introduction of the 18th amendment.

One of the decent methods was to declare a transitory phase of 2 to 3 years for policy clarity and financial planning and gradually implement the provincial autonomy; so that stakeholders especially the provinces were able to duly take responsibility of the dissolved subjects.

This lack of planning also speaks of how planning and research work is neglected in countries like Pakistan, where the reforms introducers implement first on political impulses and think only afterwards. It is ironical that the constitutional reforms commission still thinks the pending issues as "implementation" problem and not the design faults.

The process of the devolution also exposes weak and elitist political parties that may have been very stubborn and vocal for provincial autonomy, during the last six decades. But when it comes to actual work, they have no home work nor proposals available, for fiscal autonomy of the provinces, beyond principles and rhetoric. For that may be the political parties will have to sacrifice more space within their ranks to professionals.

Wall chalking in favour of demands for a new province HAZARA – presently part of the Khyber Pukhtunkhawa (KPK) province. Photo courtesy of Rahat Dar, Pakistan, 2011



Islamabad at night fall. Photo courtesy of Saeed Ur Rehman, Pakistan, 2010.

First they came for the communists,
and I didn't speak out because I wasn't a
communist.
Then they came for the trade unionists,
and I didn't speak out because I wasn't a
trade unionist.
Then they came for the Jews,
and I didn't speak out because I wasn't
a Jew.
Then they came for me
and there was no one left to speak out
for me.

Martin Niemöller

by Saeed Ur Rehman

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PAKISTAN: FRIEND OR ENEMY OF THE “FREE WORLD,”?

The postcolonial state of Pakistan, initially demanded because of the fear of the majoritarian oppression in a

unified India, became a majoritarian state, almost immediately after its creation. It is important to point out here

that majoritarianism does not signify democracy. Before two years of Pakistan's 'independence' were complete

(in March 1949), the state of Pakistan began the process of determining the objectives of its future constitution called Objectives Resolution. It was a move fraught with paradoxes: members of the Constituent Assembly were asked by Liaqat Ali Khan, the Prime Minister, to vote on things generally believed to be beyond the realm of democracy which is a worldly way of governing the affairs of human subjects. The first sentence of Objectives Resolution was: "sovereignty over the entire universe belongs to God Almighty alone and the authority which He has delegated to the state of Pakistan through its people."¹

It was paradoxical because Liaqat Ali Khan, a Prime Minister, wanted the members of the Constituent Assembly to vote whether God Almighty had sovereignty over the entire universe or not. When the minority members of the Constituent Assembly objected to the metaphysical and communal nature of the contents of the resolution, it was because the state of Pakistan was attempting an ambiguous way of relating with the citizens. This way of dealing with the citizens was against the idea of the modern state and the nature of the state-citizen contract. The justification of the state's right to govern the lives of individuals is derived from the state's ability to abolish the natural condition of *bellum omnium contra omnes*, the war of all against all². But the state of Pakistan employed the concept of sovereignty against the idea of universal citizenship when it sought to define its constitutional objectives.

In other words, the state was declaring monotheistic citizens as ideal citizens and, despite their equal citizenship, polytheistic citizens were rendered enemies of the state because the state had declared the faith of the majority as its source of sovereignty.

¹ Hamid Khan. *Constitutional and Political History of Pakistan*. Karachi: Oxford University Press. 2009. p. 57

² Thomas Hobbes. *On the Citizen* (*Cambridge Texts in the History of Political Thought*). Trans. Richard Tuck. Cambridge: Cambridge University Press. 1998. p. 30; Friedrich Nietzsche. "On Truth and Lie in an Extra-Moral Sense." *Portable Nietzsche*. Trans. Walter Kaufmann. New York: Penguin Books. 1982. p. 44.

The minority citizens became non-participatory citizens because the source of political power existed in the realm of metaphysics only accessible to the majority. By adding an extra source of conflict, the state failed in its promise to abolish the state of nature and created a new reason for conflict. The state of Pakistan declared war on some of its own citizens by enunciating exclusionary, instead of universal, sources of legitimacy and political power. Citizenship and representation were no longer enough. The non-monotheistic citizen had to face another hierarchy which did not exist before the state's declaration of its own objectives.

This was the start: the ordinary citizens had to embrace the clichés and the state was afraid of all things Indian in the region and Soviet in the world. Soon Pakistan was forging and solidifying alliances with neo-colonial America, Pahlavi Iran, and other anti-Soviet countries or, one can say, the neo-colonial empire was facilitating these alliances. In a document declassified in 2001, after 50 years, reveals that the USA was planning to use Islam as a friendly tool of the "free world" for its cultural and defence against the spread of communism as early as 1951³.

In the meanwhile, Pakistan was ready to do anything as long as it produced enough surplus weaponry and finances to thwart the imagined and real threats coming from India. For its anti-India foreign policy, Pakistan lent its services to whoever was willing to hire the state. The citizens of Pakistan and their opinions did not matter. The state had become a mercenary state that was willing to profit by any means available as long as there was enough surplus to deal with India. The not-so-covert war against the Soviet Union in Afghanistan, and alliance with the USA, was mostly for the profitmaking of the military and bureaucratic elite and was detrimental to the interests of religious and sectarian minorities and non-Muslim citizens of Pakistan.

³ Enclosure to Dacca Despatch No. 13, August 7, 1951; Declassified on October 27, 2001.

What had begun as a majoritarian policy, in the guise of democracy, took fascist overtones by the time Zulfikar Ali Bhutto had banned alcohol and declared the Ahmedis as non-Muslims. After Bhutto, Zia ul Haq turned almost all the state machinery into instruments of hyper-Islamization. And placed Pakistan's civic identity and the public sphere under siege. The police had started harassing anyone pre-martial hetero-normativity. What was normal in the "free world" was abnormal in the state which was busy protecting the "free world" against the possible onslaught of communism and the policy of creating cultural bulwarks through Islamization had resulted in Saudisation and Wahabisation and those whose collective name was used to justify all this, the citizens, are still "reaping the whirlwind."

After the collapse of the Soviet Union, those who had practiced guerrilla warfare with American and Israeli weapons assumed that they were capable of blessing the world by imposing their Wahabist and anti-people reading of Islam on the entire world. They were willing to ignore the absence of the military-industrial complex that sustains long-term overt and covert wars. They were willing to divide the world into the house of peace (where Muslims live) and the house of war (where infidels live). Their alliances with the states that sponsored them were purely strategic. If the state of Pakistan supports them, it is a virtuous state otherwise they were ready to declare the entire state machinery non-Muslim and a legitimate target of guerrilla/jihadist operations. The so-called "free world" tried to forget the problem by not having any post-Afghan-Jihad strategy for co-opting the informal war machines it had unleashed on the region. The moment the USSR disappeared, the magnanimity of democratic countries also disappeared. A Pakistani general described the situation to Tariq Ali thus: "Pakistan was the condom that the Americans needed to enter Afghanistan. We've served our purpose and they think we can be just flushed down the toilet."⁴

⁴ David Barsamian. *Louder than Bombs: Interviews from the Progressive Magazine*. Cam-

In the absence of a formal structure based on revenue-extraction and the social contract, the state tried to monopolize informal violence in vain after promoting it for over a decade in Afghanistan and it failed. Now the state of Pakistan is facing what it tried to impose on others at its inception. When sovereignty was assigned in Allah through a vote of 21 to 10 in 1949, a large number of non-Muslim citizens were minority citizens were disenfranchised and were stopped from heading the state (the Census of Pakistan in 1951 recorded 22% of the total population as Hindu in East Pakistan alone). Now the Islamists are

declaring the state of Pakistan as a client state of America and declaring it non-Islamic and therefore a valid target of jihad. The state of Pakistan has become an unwitting victim of its own policies. It is feeling as vulnerable as its minorities have always felt.

Pakistan, since its inception, has been ideologically divided between becoming a security state and an economic state as if national security were something separate from the food security, social security, economic security and human security of the people. Now there is no economic security and both the citizen and the state are equally vulnerable. The state is selling its skills to the high-

est international bidders: the skill of creating insecurity anywhere needed, be it Afghanistan or India. In the last 63 years, the state lost 147,570 square kilometres of its territory because of its neglect of Bengali citizens and they successfully declared independence and created Bangladesh. Now the Balochistan province is simmering in a similar way and the future of the province is uncertain. Emergency is the sole arbiter of Pakistan's international relations and also the most profitable export now.

bridge, MA: South End Press. 2004. p. 42.

Islamabad at the crack of dawn. Photo courtesy of Saeed Ur Rehman, Pakistan, 2010.



A privileged viewpoint. Photo courtesy of Saeed Ur Rehman, Pakistan, 2008.



by Diego Abenante

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IS PAKISTANI CIVIL SOCIETY AWAKENING?

The current wave of political unrest in the MENA (Middle East and North Africa) region enables us to throw light on some crucial questions re-

garding the relationship between democracy and authoritarianism in the Muslim world. We would argue that the changes going on in the Arab

world may be the signal of a more general process that may interest Muslim societies. The crucial elements of this process include the emergence of the

middle class, the new political activities of the younger generations, and the apparent crisis of the mainstream opposition parties.

In this context, Pakistan seems to be a useful case for comparison. From a historical point of view, Pakistan may be viewed as a Janus-faced society, looking simultaneously towards the Middle East and South Asia. Indeed, Pakistani history in itself can be viewed as the result of two different pressures, one towards greater identification with the Central Islamic lands, and the other towards South Asian culture. From the ethnic and religious points of view, the lands that constitute nowadays Pakistan have strong ties with the central Islamic lands. Let us remember that the region has been Islamized mainly by populations coming from Central Asia, and that many Pakistani families today are proud of their Turkish, Mogul or Arabic names. For centuries, in the highly hierarchical South Asian Muslim society, being of Western Asian or Middle Eastern origin has been a guarantee of noble (*ashraf*) status. Other important connections have been established over the centuries through the networks of scholars and holy men that have travelled from the central Islamic lands, the Arabian peninsula and Central Asia, to the Indian subcontinent. For the *shī'as* of Pakistan, in particular, since the 16th century, there have been strong links with Iran. The movement for the establishment of Pakistan in the 1940s has perhaps even strengthened the Middle Eastern bonds, with its emphasis on Islam as the basic symbol of the Pakistan movement.

Obviously Pakistan is also part of the South Asian cultural milieu. Setting aside the linguistic bonds (Hindu-Urdu), the models of popular religious devotion that are central in local Islam bear strong links with the South Asian religious environment. Let us look also at the political system. Unlike the Middle East, Pakistan has never aligned itself to the "one-party system" group of states. On the contrary, its political system is fully akin to the South Asian tradition of multi-party system, be it in the "dominant party" or "bi-polar" variants. For most of its democratic history, Pakistan has been characterized by a tendency to endlessly create and redefine politi-

cal organizations. This rich political party history resulted in a typical intra-party factionalism and fragmentation along personal and charismatic lines. Another very important difference between Pakistan and the Arab scenario is that, despite the frequent attempts of both civilian and military governments to influence the elections results, Pakistani polls have generally been acknowledged for being substantially reliable. Moreover, since its birth in 1947, Pakistan has had a history of mass political participation, and of popular political passion; something that has its roots in the colonial devolution of power. All of this obviously depicts a sharp difference from the state-controlled political systems of most Arab states, as in Egypt or Tunisia, where elections were universally recognized as manipulated by the regimes in power.

This notwithstanding, Pakistan's overall political performances in the last sixty years bears many similarities with the Arab scene. Like most of the latter, Pakistan has often been depicted as a "failed state" for its consistent failure in establishing a stable democracy. The country has seen military governments for almost half of its life, and most important, during "democratic" regimes the elected politicians have generally served their role in a very similar way to the "neo-patrimonial" governments of the MENA region. Since the 1970s, with the return to "democracy" after twelve years of military rule, the central role played by patron/client relations and ethnic/family connections in the running of central and provincial institutions, has been the rule in Pakistan. At the same time, the other state institutions, as the judiciary and Parliament, have not been able until very recently to exercise control on those holding power at the center.

Given the similarity between the two cases, it is tempting to make a comparison between the current wave of protests in the Arab countries, and the massive public demonstrations that have marked the last two years of the Musharraf regime, from 2007 to 2008. As it is widely known, during the latter period of the Musharraf government, the opposition grew steadily, overcoming the mainstream MRD (movement for the restoration of democracy), and becoming a popu-

lar wave of protests. In particular, the opposition against the regime intensified after Musharraf's attempts to put the Supreme Court under control, and to destitute from office the Chief Justice Iftikhar Muhammad Chaudhry in 2007. In the long run, the protest would, first, force Pervez Musharraf to declare a state of emergency, in November 2007, and then to allow new democratic elections in 2008.

Throughout this process, the similarities with the Arab democratic movements are evident. First of all, in sharp contrast to a commonplace about Muslim societies, in the Middle East as in Pakistan, the protests have seen the active participation of a newly active middle class. In Pakistan the demonstrations were dominated by the lawyers (the so called "black suits"), while, in the course of the events, it embraced other professionals, businessmen, shopkeepers and students. The protests witnessed the coming at the centre of the stage of social forces that had previously been largely absent or silent in politics. Traditionally, these social *strata* in Pakistani politics would express themselves through the mainstream parties – basically, the Muslim League and the Pakistan People's Party, and to a lesser extent the other smaller opposition parties or the Islamic organizations. The traditional style of political participation was normally centered on the "patron-party" system. According to this model, the various social groups would try to defend their interests through the intercession of an established political leader, at the provincial or national level. The events of 2007-8, instead, marked a sharp change in the political scene. It became clear that the middle classes had lost confidence not only in the Army-supported government, but also in the established opposition parties. They decided therefore to go directly into the streets to express their dissatisfaction. As said before, the protests were later strengthened by further groups as the university students, particularly from the western-style private colleges of the big cities like Lahore or Karachi. Therefore, the demonstrations did not grow out of the traditional political forces. This fact seemed to mark an important development in the Muslim societies. As Bertrand Badie has said, pol-

itics in the Muslims societies seems to live in a “post-marxist” scenario, where political movements are more individualized and spontaneous, and where ideology plays a much lesser role than in the past.

A second important similarity between the Arab protests and the Pakistani case concerns the social roots of these developments. As it is has been noticed by many observers, in Egypt and Tunisia and to a different extent in Saudi Arabia, Syria, Bahrein, Yemen, the protests have been made possible by a demographic change and by the growth of the new media and internet networks. Both conditions have created the basis for the protests. A very similar scenario can be observed in Pakistan. It must be said that, unlike most Middle Eastern countries, Pakistan has inherited by the colonial past a tradition of almost-independent English-language newspaper. Moreover, as for Al Arabiya and Al Jazira televisions in the

Arab world, Pakistan has witnessed in the last ten years a rapid growth of satellite televisions. Although generally belonging to big interests groups, these channels – as Aaj, Dawn, Indus – have created an autonomous arena of news communications, free from governmental interference. At the same time, it must be stressed that, as for the MENA region, Pakistan has been part of the so-called “demographic revolution”. According to recent estimates, the population under 15 years of age constitute slightly less than 40% of the total population. Another very important element is the crisis in consensus of the main Islamists parties. In fact, neither in the Arab states nor in Pakistan the protesters have chosen to be represented by the mainstream Islamist organizations, be it the Muslim Brotherhood in Egypt or, in Pakistan, the Jama’at-i-Islami or the other religious parties representatives of the *‘ulama*. Although these parties were obviously part of the anti-Mush-

arraf front since the US and NATO actions in Afghanistan in 2002, these same parties, as their more “secular” counterparts, have been taken by surprise and marginalized by the protests. There are obviously limits to the similarities between the two regions. We should consider that, after the dismissal of the Musharraf government, the 2008 elections have seen a comeback of the Pakistan People’s Party in power. Therefore, although successful in ousting Musharraf from power, and in forcing the Army to go back to the barracks, the pace of change has apparently been interrupted in Pakistan. On the other side, in the Arab countries is too early to assess the overall effect of the democratization movement. Nevertheless, the analogies between the Arab revolts and the Pakistani one seem to be relevant, and to be worth of deeper analysis.

Pakistani on a friday morning. Photo courtesy of Saeed Ur Rehman, Pakistan, 2011.



Pakistan North Mountains series. Photo courtesy of Saeed Ur Rehman, Pakistan, 2011.



by Silvia Valentini

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WHAT SCENARIO FOR THE 2013 ELECTIONS?

Towards 2013 elections

If the government led by President Zardari's Pakistan People's Party accomplishes its five years duration,

new general elections are due to be held in 2013, and it would be the first time in Pakistan since 1977 a government

elected democratically terminates its mandate with no intervention of military coup. The Election

Commission of Pakistan (ECP) is the main electoral executive figure. The ECP is accountable for holding elections to the local governments, the national assembly and the four provincial ones. The Commission though has often connived with bureaucrats and manipulated polls. For instance when General Pervez Musharraf ruled the country, the chief election commissioner (CEC) would be personally selected by the president. The CEC has witnessed rigging in general and local government elections and presidential referendum. Thus during the eight years of his rule, Musharraf modeled the political system in favor of the military, its civilian allies and the Islamist parties.

This has resulted in today, as yesterday, ECP rather hampered autonomy, capacity and neutrality; traits to be added to the commission inadequate resources, poorly trained staff, to the point that even high level positions are occupied by regular civil servants and bureaucrats who do not benefit from training programs or perspectives of promotion.

Besides, the commission does not have any program to evaluate past exercises and has suffered from political and constitutional reforms made up to empower the military and parliaments elected through manipulated polls. Additionally election tribunals fail to solve post election controversies as they are stuck with delays and corruption and still a number of discriminating laws remain in place such as the those (list laws) that outline eligibility criteria based on religion for the electoral candidates. In such conditions the organization has proven to be ineffective, with its regulations ignored by politicians, military and by its own officials. The ECP's shortage of liability, efficiency and autonomy has harshly restricted its faculty to supervise trustworthy elections and a neat political transition.

A democratic transition is currently ongoing in the country though it is still a weak process, especially since 2008 national polls were known to have been widely manipulated. Elections have been historically gerrymandered in Pakistan and such a practice have deteriorated trust in electoral institutions, inflamed

domestic violence and strengthened authoritarian power. Another flawed election may be expected at the hand of the military and civilian administration, which would destabilize even more an already fragile state.

The democratic transition is only likely to last if the electoral laws and institutions will manage to supervise reliable voting and guarantee a serene shift of power to the new elected government. So far consecutive military governments have been ensuring the perpetration of their regimes both rigging the polls at national, provincial and local level, and conniving respectively with the Pakistan Muslim League (PML) and the Pakistan People Party (PPP). Nevertheless it is interesting to notice that earlier last year the parliament has modified the constitution (amendment 18th) abrogating the bend introduced by Gen. Musharraf. The package consolidates parliamentary democracy and makes the appointment of the top officials of the ECP clear and subordinate to the supervision of the parliament. In fact a joint parliamentary committee including members of government and opposition are to finally confirm members and CEC of the ECP designated in the National Assembly in consultation between the leader of the opposition and prime minister.

Only a month later (a month later than what?), in May 2010,, the ECP, assisted by the international community, drafted a 5-year plan comprising fifteen electoral reform objectives and one hundred twenty nine specific sub-goals, giving directions for a number of issues; including human rights policy, voter registration, and election dispute mechanisms. And if those few progresses are encouraging, the words of leader of PML opposition party, Nawaz Sharif are even more, as he has often been expressing his support for a transition towards democracy and against any unconstitutional instruments.

Similar claims though need facts and consistent actions to follow. Equally the population census planned for autumn 2011 - the last exercise were conducted for the national elections of 2002 and for the local ones of 2005, both under Gen. Musharraf and both affected with gerrymandering - in

view of the 2013 general election, needs to be carried out free of flaw and rigging in order not to threaten a transition to civilian government and to ward off the risk of brutal ethnic conflict especially in Karachi, the financial heart of Pakistan. Aggravated ethnic, political and sectarian violence in the city is in fact exacerbating yet delicate relationship between PPP (with Sindhi majority) and Muttahida Qaumi Party (MQM with Mohajir majority).

A twisted electoral process could cause street riots and in any case increase the violent conflicts between MQM, PPP and the Awami National Party (with a Pashtun majority) in Karachi and in the rest of the country. Dysfunctional government and state structure are in fact considered one of the main agent for the spread of ethnic violence and the rise of militant Islam that never stopped in the country.

Ascending militant Islam.

As stabilization in the Federally Administered Tribal Areas (FATA) is problematical due to the delays of the government in the implementation of political and economic reforms, the Taliban groups took control over the region. Military operations in FATA have been unsuccessful and law and state institutions are still a colonial heritage that keep the region segregated from the rest of the country, withholding political rights and economic opportunities to the population. The feeling of frustration that rises especially amongst young people for the lack of proper education, health care and economic growth makes the religion more appealing. 15,000 out of 20,000 madrassas in Pakistan support intransigent doctrines. During the years of the Afghan conflict, external capital has funded extremists and supplied weapons to Pakistan. Today's Al-Qaida and Afghan Taliban are a result of the Saudi and American bolster to the Afghan anti-Soviet mujahedin during the 1980s, and to the Saudi support to radical Islam against the Pakistani Sufism.

One of the consequences of such arising of Islamic fundamentalism with violent means is the consolidation of the "Punjabi Taliban" group. Punjab is the most populated region of Pakistan

with three-fifth of the population living there. The south is particularly flourishing of Saudi-funded religious institutions. The Punjabi Taliban are a wide grouping of radical movements, many coming from collaborations with the Inter-Services Intelligence (ISI) in the Kashmiri conflict. The movement is a mixture of ISI backing against Indian militants, Arabian Gulf support in south Punjab and anti-Shia inclination in central Punjab.

Military and political leaders themselves have called on Islam as a fount of stoutness. The military dictator mandatory? for the murder of former prime minister and president Zulfikar Ali Bhutto, boosted orthodox Muslims in the bureaucracy and military, backed Islamist parties and introduced sharia law.

Both the assassinations of the minorities minister Shabbaz Bhatti on

March 2nd and of governor of Punjab Salman Taseer on January 4th were claimed by Punjabi Taliban.

According to Amir Rana of the Pak Institute for Peace Studies, the terrorist organization is divided in three main branches. Punjabi Taliban who provide foot soldiers. "Pushtun Taliban" who provide logistics to contrast American battle against Pushtun Taliban of Afghanistan. Al Qaida that provides the ideology.

Pakistani military conceded the Pushtun Taliban network to develop as long as they were supporting ISI allies Afghan Taliban. Soon though, in 2009, under U.S. pressure, they had to force them out of South Waziristan and Swat Valley into North Waziristan.

ISI is held accountable for nearly everything including the murder of Benazir Bhutto and the radical chat show on TV. Though it is interesting

to mention that quite a credence is given to a complot theory. A former ISI head recently referred to Shabbaz Bhatti killing as an episode similar to "Raymond Davis case" – the CIA security officer who murdered two Pakistani citizens in the street of Lahore. According to the retired ISI official in fact, the episode is part of an American intelligence tactic aimed at destabilizing Pakistan to prove somehow that the country's nuclear weapons are not safe in Pakistani hands.

Pakistan has still the world's fastest growing nuclear arsenal and this is likely to remain a concern for the international community for a long time.

Pakistan North Mountains series. Photo courtesy of Saeed Ur Rehman, Pakistan, 2011.



Children in Lahore. Photo courtesy of
Rahat Dar, Pakistan, 2010



by Murat Yucer

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HUMAN RIGHTS ISSUES IN PAKISTAN

"The information presented and opinions expressed herein are those of the author and do not represent the views of the United Nations, Agencies or partners"

Overview

Pakistan has essentially been featuring as an integral part of the theatre for military and intelligence opera-

tions focussed both within Pakistan and Afghanistan since Soviet times and subsequently during the "War on

Terror" era until today. It has suffered two major natural disasters since 2005 while escalated conflict between mili-

tants, government and international forces persists on Pakistani soil – all of which exacerbate the human rights situation.

According to World Bank/Asian Development Bank report (Damage Needs Assessment 2010) last year's flood alone lead to an estimated recovery and reconstruction cost amounting to between US\$ 8.7-10.8 Billion¹, in areas which were already acutely under-developed and lacking in basic services.

As history has proved time and again, ultimately it is the civilian population that has borne the brunt and the cost of the geo-political landscape with all of its negative ramifications on the human rights situation in the country.

Furthermore, there is a lack of appropriate legislation or policy concerning the internally displaced and the Government of Pakistan is not signatory to the 1951 Refugee Convention²; in addition the existence of problematic laws (i.e. Blasphemy Laws as reflected in Pakistan Penal Code) also continue to pose challenges for the advancement of fundamental rights and freedoms in Pakistan.

Refugees

While European countries have expressed great concern with the influx of refugees/migrants from North Africa in the wake of civil unrest and conflict – war and civil strife in neighbouring Afghanistan has resulted in about 1.7 million registered Afghans in Pakistan as of 2011 - hosted for decades in the country.³

According to preliminary data from a UNHCR pilot vulnerability survey of the refugee population, tens of thousands of these refugees suffer from critical medical condition (including HIV, AIDS etc), mental disability and severe physical disability. Thousands more are being periodically detained (notably with respect to the 14 For-

eigners Act) and/or deported with a wide range of refugee women remaining at risk of violence & honor killing or who are survivors of sexual and gender-based violence (GBV).

Pakistan shares 2200 KM border with Afghanistan and Torkham is the official Entry/Exit Point between Afghanistan and Pakistan in K.Pukhtunkhwa, where thousands of Afghans and Pakistanis cross the official Exit/Entry point on daily basis both legally and illegally (mostly illegally). Many of the detention and deportation cases take place at this area.

In sum, the continuing protection issues faced by Afghan refugees include the following, bearing in mind that the Government of Pakistan is still not signatory to the 1951 Refugee Convention:

- Legal protection : lack of documentation; arbitrary arrest, harassment, detention, risk of deportation; freedom of movement; push factors for induced return (e.g. camp closure/relocation without viable alternatives)
- Physical protection – e.g. Gender-Based Violence (GBV), civilian character of asylum.
- Social protection – e.g. needs of Extremely Vulnerable Individuals, lack of response mechanisms, access to services, health, education etc.

Internal Displacement

Apart from the protracted Afghan refugee population, hundreds of thousands of Pakistani families have been displaced as a result of conflict within Pakistan, particularly from the Federally Administered Tribal Areas (FATA) notably Mohmand, Bajaur, Orakzai, Kurram, North and South Waziristan and FR Tank. In addition last year's flood affected 20 million people and approximately 1.7 million homes were either partially or totally destroyed.⁴

The ongoing military operations in the places of origin may have increased the rate of human rights violation (Physical rights, legal rights, safety &

security) which pose protection risks to the civilian population. Due to the involvement of some Internally Displaced Persons (IDPs) in the conflicts, there are repercussions on the safety & security in the camps leading to arrests & detentions of IDPs. This operation in the camps has negative impact on the overall situation/welfare of the IDPs. Some of the parties involved in the conflict are not respecting national and international human rights laws and are committing violations of such laws and standards (i.e. kidnapping, execution in public, killing, bombing of civilian infrastructure etc.).

It is probable that the population will be at continued risk of gender-based violence. Women and girls are most vulnerable groups in harmful traditional practices such as early marriages, forced marriages, restriction on female education, restrictions on females, "swara" (where crime committed by male is compensated by giving a female in compensations) etc. Cultural taboos will likely continue to restrict reporting of GBV-related issues.

However, The FATA area remains under a special legislative regime (Frontier Crimes Regulations Law) which is dominated by tribal laws and *jirga* justice - which calls for a specific protection strategy and a different *modus operandi*; limiting sometimes the possibility of humanitarian agencies to provide assistance to returning populations. In addition as mentioned earlier there currently lacks national IDP policy and registration that would facilitate human rights protection for IDPs.

Blasphemy Law

The blasphemy law has been in place since the Colonial era but only a limited number of cases resulted in convictions during that time.⁵ However, after religious scholars and clerics increasingly influenced policy making during General Zia's rule, a new set of stricter blasphemy laws were passed, after which the number of cases escalated. The definition of the term blasphemy proves vague, yet

¹ Pakistan Floods 2010, Preliminary Damage Needs Assessment, November, 2010, Prepared by Asian Development Bank and World Bank

² <http://tribune.com.pk/story/202214/signing-the-refugee-convention/>

³ <http://tribune.com.pk/story/202214/signing-the-refugee-convention/>

⁴ Source for NDMA data: <http://www.pakistanfloods.pk/response/gender-a-child-cell/press-release>

⁵ <http://jinnah-institute.org/events/196-the-current-blasphemy-law-is-mis-used-for-injustice->

it carries a mandatory death sentence under section 295C of the Pakistan Penal Code, which forbids defaming the prophet Muhammad (PBUH). Trials concerning charges under § 295-C must take place in a Court of Session with a Muslim judge presiding.

Several other sections of Pakistan's Criminal Code also comprise its blasphemy laws. § 295 forbids damaging or defiling a place of worship or a sacred object. § 295-A forbids outraging religious feelings. § 295-B forbids defiling the Quran. Except for § 295-C, the provisions of § 295 require that an offence be a consequence of the accused's intent. Defiling the Quran merits imprisonment for life.⁶

⁶ <http://pkpolitics.com/discuss/topic/history-of-blasphemy-law-in-pakistan>

The topic has been focus of much heated debate given that between 1988 and 2005, Pakistani authorities charged 647 people with offences under the blasphemy laws.⁷ Fifty percent of the people charged were non-Muslim. Twenty of those charged were murdered soon after the charge was laid. Concerns about the continued implications of the law, especially on minorities have been taken up both nationally and internationally. The main concerns expressed have been that these laws are used as a tool to intimidate, harass, repress and persecute minorities or to settle personal enmities. The debate has been so heated to the extent that Salman Taseer, former Governor of Punjab was assassinated by his own body-

⁷ <http://www.waqarhussain.net/blog/2010/11/blasphemy-law-in-pakistan/>

guards in January this year for speaking out in defence of Asia Bibi - who was sentenced to death by hanging on a charge of blasphemy in November 2010. The former Federal Minister of Minority Affairs, Shahbaz Bhatti was killed as a result of his vocal call for reform of the legislation. The Pakistan Taliban claimed responsibility for that killing.

However despite such developments and various efforts by civil society, human rights activists and government officials to reform or repeal the laws, no change has yet been achieved and many assumingly remain in fear of consequences for any slip of the tongue.

Mosque and Shell. Photo courtesy of Saeed Ur Rehman, Pakistan, 2011.



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the ITPCM venue in Pisa, archive photo

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