

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	173
Land:	Pakistan
Kilde:	Freedom House.
Titel:	Freedom in the World 2009 – Kashmir (Pakistan).
Udgivet:	16. juli 2009
Optaget på baggrundsmaterialet:	19. oktober 2009

Title	Freedom in the World 2009 - Kashmir [Pakistan]
Publisher	Freedom House
Country	Pakistan
Publication Date	16 July 2009
Cite as	Freedom House, <i>Freedom in the World 2009 - Kashmir [Pakistan]</i> , 16 July 2009, available at: http://www.unhcr.org/refworld/docid/4a6452aa11.html [accessed 15 October 2009]

Freedom in the World 2009 - Kashmir [Pakistan]

Capital: N/A

Population: 5,100,000

Political Rights Score: 6

Civil Liberties Score: 5

Status: Not Free

Ratings Change

Pakistani-controlled Kashmir's political rights rating improved from 7 to 6 due to the end of military rule in Pakistan as well as the transformation of the Northern Areas Legislative Council into the Northern Areas Legislative Assembly, which was given modestly increased legislative, fiscal, and budgetary powers.

Overview

The end of military rule and election of a civilian administration in Pakistan in February 2008 brought improvements in general political freedoms at the federal level. In addition, reforms proposed by former President Pervez Musharraf in late 2007 led to the transformation of the Northern Areas Legislative Council into an assembly with modestly expanded legislative, fiscal, and budgetary powers. Nevertheless, nationalist groups' demands for representation in the federal parliament remained unfulfilled. Progress on the dispute over Kashmir between India and Pakistan largely stalled after evidence pointed to the involvement of a Pakistan-based militant group in November 2008 terrorist attacks in Mumbai, India.

When British India was partitioned into India and Pakistan in 1947, the Hindu maharajah of Jammu and Kashmir tried to maintain his principality's independence, but he eventually ceded it to India in return for autonomy and future self-determination. Within months, India and Pakistan went to war over the territory. As part of a ceasefire in January 1949 that established the present-day boundaries, Pakistan gained control of roughly one-third of Jammu and Kashmir, but unlike India, it never formally annexed its portion. The Karachi Agreement of April 1949 divided Pakistani-administered Kashmir into two distinct entities – Azad (Free) Kashmir and the Northern Areas. Pakistan retained direct administrative control over the Northern Areas, while Azad Kashmir was given a larger degree of nominal self-government.

A legislative assembly was set up for Azad Kashmir in 1970, and the 1974 interim constitution established a parliamentary system headed by a president and a prime

minister. Nevertheless, Islamabad's influence over the electoral process and governance of the region remained strong. Three rounds of elections have taken place for the assembly, though few observers considered them free and fair. The Azad Kashmir People's Party (AKPP) and the Muslim Conference (MC) are the two main parties contesting the leadership. In the 1996 elections, the AKPP emerged with a majority after the MC boycotted the voting amid accusations of fraud. In 2001, the MC won the elections, but within weeks Pakistani leader General Pervez Musharraf installed his own choice of president, former general Sardar Muhammad Anwar Khan. In 2006, the MC again won a majority of the 41 directly elected seats, and MC candidate Raja Zulfikar Khan emerged as president. MC leader Sardar Attique Ahmed Khan became prime minister after receiving Musharraf's nomination.

The lack of political representation in the Northern Areas has fueled demands for both formal inclusion within Pakistan and self-determination. In 1999, the Pakistani Supreme Court directed the government to act within six months to give the Northern Areas an elected government with an independent judiciary and to extend fundamental rights to the area's residents. The Pakistani government then announced a package that provided for an appellate court and an expanded and renamed Northern Areas Legislative Council (NALC). Elections to the NALC were held in October 2004, but the body had few real fiscal and legislative powers. The court of appeals was established in 2005.

Nationalist and pro-independence groups continued to agitate for increased political representation. In October 2007, Musharraf proposed a number of reforms to the governance structure for the Northern Areas, but most groups rejected them as insufficient, saying they lacked a solid constitutional foundation and guarantees of judicial independence. These reforms were postponed due to the imposition of a state of emergency in Pakistan in November 2007, but they were implemented in 2008, yielding modest improvements in the balance of power between the territory and the federal government while leaving most authority in federal hands.

Talks between India and Pakistan over the ultimate status of Kashmir, as well as other confidence-building measures, have occurred regularly since a ceasefire was instituted in 2003. A bus service across the Line of Control (LOC) was launched in 2005, linking the capitals of Indian and Pakistani Kashmir and allowing some Kashmiri civilians to reunite with family members. In 2008, talks and periodic high-level meetings continued for much of the year, but little progress was made toward a comprehensive resolution to the dispute, particularly after Pakistani militants were deemed responsible for a November 2008 terrorist attack on the Indian city of Mumbai.

International aid agencies cited a marked improvement in relief efforts in 2007 and 2008 as Pakistani-administered Kashmir and surrounding areas struggled to recover from a major 2005 earthquake. At least 88,000 people had been killed, 100,000 were injured, and several million were left homeless, most of them in Pakistani Kashmir. Initial reconstruction efforts had been marred by allegations of corruption and political sensitivities that delayed assistance to those in need. The more recent gains came especially in the area of housing, but the rebuilding of schools and restoration of public services remained painfully slow, and inflation in the prices of building materials decreased the value of reconstruction grants to local residents.

Political Rights and Civil Liberties

The political rights of the residents of Pakistani-administered Kashmir remain severely limited, despite a number of improvements tied to the end of military rule and the election of a civilian government at the federal level in February 2008. Neither the Northern Areas nor Azad Kashmir has representation in Pakistan's national parliament.

The Northern Areas are directly administered by the Pakistani government under the Legal Framework Order of 1994; the region is not included in the Pakistani constitution and has no constitution of its own, meaning there is no fundamental guarantee of civil rights, democratic representation, or the separation of powers. Executive authority remains vested in the Minister for Kashmir affairs, a civil servant appointed by Islamabad

who is not accountable to the legislature and who retains a veto over any possible legislation. Elections to the 36-seat Northern Areas Legislative Council (NALC) – of which 24 seats were filled through direct elections and six each were reserved for women and technocrats from each district – were held in 2004, with independent candidates and representatives of national political parties winning seats. In October 2007, Pakistani president Pervez Musharraf announced a package of reforms that would change the NALC into the Northern Areas Legislative Assembly (NALA), devolving some fiscal and legislative powers to locally elected politicians. The NALA would be empowered to legislate on 49 subjects and to vote on budgetary matters. The package would also allow for the election of a chief executive accountable to the NALA (until the next planned elections, the current deputy chief executive became the chief executive), but it would maintain federal control over the judiciary and the region's top executive post, as the Minister for Kashmir Affairs was newly designated as the "chairman" of the legislative assembly. The region would continue to be administered under the Legal Framework Order rather than a constitutional framework like in Azad Kashmir, thus still falling short of compliance with a 1999 Supreme Court ruling on the issue. While implementation of the reforms was delayed amid the political crisis that erupted in Pakistan in November 2007, they did take effect in 2008. While the changes were a positive step in the right direction, the fact that the transformation took place without fresh elections for the assembly or leadership – coupled with the fact that much executive power remains in the hands of an unaccountable official – has led analysts such as the Islamabad-based Institute of Policy Studies to note that the changes appear to be largely ceremonial. In November, the NALA approved a plan calling for the Northern Areas to be renamed Gilgit-Baltistan; the proposal was passed on to the Pakistani government, which had not acted on it by year's end.

Azad Kashmir has an interim constitution, an elected unicameral assembly, a prime minister, and a president who is elected by the assembly. Both the president and the legislature serve five-year terms. Of the 49 assembly seats, 41 are filled through direct elections and 8 are reserved seats (5 for women and 1 each for representatives of overseas Kashmiris, technocrats, and religious leaders). However, Pakistan exercises considerable control over the structures of government and electoral politics. Islamabad's approval is required to pass legislation, and the federal minister for Kashmir affairs handles the daily administration of the state and controls the budget. The Kashmir Council, which is comprised of joint representation from the federal government and regional assembly representatives and is chaired by the prime minister of Pakistan, also holds some executive, legislative, and judicial powers. The Pakistani military retains a guiding role on issues of politics and governance.

As detailed by Human Rights Watch (HRW) in a 2006 report, individuals and political parties who do not support Kashmir's accession to Pakistan are barred from the political process, government employment, and educational institutions. HRW noted that the 2006 Azad Kashmir legislative elections were flawed and "greeted with widespread charges of poll rigging by opposition political parties and independent analysts." However, unlike the 2001 elections, the polls featured few instances of physical violence and harassment – aside from threats – against candidates or their supporters, possibly because of the greater international presence in the wake of the 2005 earthquake. In general, antiaccession parties and individuals are subject to surveillance, harassment, and sometimes imprisonment by Pakistani intelligence and security services.

Azad Kashmir receives a large amount of financial aid from the Pakistani government, especially following the earthquake, but successive administrations have been tainted by corruption and incompetence. Aid agencies have also been accused of misusing funds meant for rebuilding schools and hospitals. A lack of official accountability has been identified as a key factor in the poor socioeconomic development of both Azad Kashmir and the Northern Areas. However, the region benefited in 2008 from improvements in accountability at the federal level and the transfer of some budgetary powers to the NALA. Pakistani-controlled Kashmir was not rated separately in Transparency International's 2008 Corruption Perceptions Index.

The Pakistani government uses the constitution and other laws to curb freedom of speech on a variety of subjects, including the status of Kashmir and incidents of

sectarian violence. Media owners cannot publish newspapers and other periodicals in Azad Kashmir without permission from the Kashmir Council and the Ministry of Kashmir Affairs, and publications with a proindependence slant are unlikely to receive such permission, according to the U.S. State Department. Several dailies and weeklies publish in the Northern Areas, mostly under the auspices of the K-2 publishing house, and provide for some scrutiny of official affairs. In recent years, authorities have banned several local newspapers from publishing and have detained or otherwise harassed Kashmiri journalists. In a review of media freedom covering 2008, the local nongovernmental organization (NGO) Intermedia reported that Azad Kashmir had a dozen instances of violations (including harassment of journalists, attacks on media properties, and gag orders), while the Northern Areas registered three instances, an improvement over 2007. In addition to official pressure, journalists have sometimes faced harassment and attacks from nonstate actors. Internet access is not usually restricted but remains confined to urban centers. Deliberately limited telephone and mobile-telephone access has been expanded since the 2005 earthquake. The presence of foreign media and aid organizations has also helped to partially open up the tightly controlled information environment.

Pakistan is an Islamic republic, and there are numerous restrictions on religious freedom. Religious minorities also face unofficial economic and societal discrimination and are occasionally subject to violent attack. Sectarian strife between Shiite Muslims, who form a majority in the Northern Areas, and the increasing number of Sunni Muslims, many of whom are migrants from elsewhere in Pakistan, continues to be a problem. The influx of non-Kashmiri Sunnis, with the tacit encouragement of the federal government and army, has led to dwindling economic opportunities for the local population. In 2008, the South Asia Terrorism Portal described the assassination of a government official and his family in Gilgit as a "suspected sectarian incident."

Freedoms of association and assembly are limited. Following a harsh crackdown on such freedoms across Pakistan in late 2007, restrictions returned to previous levels in 2008. The constitution of Azad Kashmir forbids individuals and political parties from taking part in activities that are prejudicial to the ideology of the state's accession to Pakistan. Police in recent years have regularly suppressed antigovernment demonstrations, sometimes violently, but there were no reports of deaths or lengthy detentions in 2008.

NGOs are generally able to operate freely. Programs run by the Aga Khan Foundation, an international development organization that focuses on members of the Ismaili sect of Shia Islam, have faced harassment and violence by Sunni extremist groups, but no such attacks were reported in 2008. The situation for labor rights in Pakistani-controlled Kashmir is similar to that in Pakistan.

Pakistani laws apply in the Northern Areas at the executive's approval, according to the U.S. State Department's human rights report. The judiciary is not empowered to hear cases concerning fundamental rights, contravention of the LFO, or cases against the executive. While the Northern Areas does have a three-member chief court to review lower court decisions, as well as a three-member appellate court that entertains appeals, all judicial appointments in the Northern Areas are based on three-year contracts subject to discretionary renewal by the bureaucracy instead of a judicial council, leaving the judiciary largely subservient to the executive. Meanwhile, the Supreme Court of Pakistan is not allowed to take up cases concerning the Northern Areas as they are considered to be outside its purview. Azad Kashmir has its own system of local magistrates and high courts, whose heads are appointed by the president of Azad Kashmir. Appeals are adjudicated by the Supreme Court of Pakistan. There are also Islamic judges who handle criminal cases concerning Islamic law. In April 2007, local lawyers protested the appointment of Justice Mohammad Reaz Akhtar Chaudhry to the Azad Kashmir Supreme Court over the court's most senior judge, Justice Manzoor Hussain Gilani, arguing that it violated constitutional conventions and rules of seniority. The newspaper *Dawn* reported that the Azad Kashmir Supreme Court rejected a petition by the lawyers challenging the appointment and ordered that future petitions of a similar nature not be entertained by the courts.

According to the independent Human Rights Commission of Pakistan, Pakistan's Inter-

Services Intelligence operates throughout Azad Kashmir and the Northern Areas and engages in extensive surveillance (particularly of proindependence groups and the press), as well as arbitrary arrests and detentions. In some instances, those detained by the security forces are tortured, and several cases of death in custody have been reported. Impunity for acts of torture and other mistreatment of civilians by the military and intelligence services remains the norm. The territory also continues to be governed by the colonial-era Frontier Crimes Regulations, under which residents are required to report to local police stations once a month.

A number of Islamist militant groups, including those that receive patronage from the Pakistani military, operate from bases in Pakistani-administered Kashmir. Although infiltration into the Indian-controlled section has declined since 2004, neither the militant groups nor the Pakistani military has abandoned this practice altogether. In February 2007, under international pressure, law enforcement agencies took steps to curb Islamist activities in the region, closing the Gilgit offices of the Al-Akhtar Trust, listed by the United Nations as a financial facilitator for terrorist groups, including Al-Qaeda.

Tension between Islamist, pro-Pakistan groups and the pro-independence Kashmiri groups – as well as some local residents – has reportedly intensified in recent years. In June 2007, a land dispute broke out between villagers in Azad Kashmir and the Islamist organization Jamaat-ud-Dawa (JUD), an alternative name for the regrouped Lashkar-e-Taiba that was identified by the United States as a terrorist organization. Following the alleged torture of two men and the killing of a 17-year-old boy by JUD members, a mob burned down a temporary hospital the group had established after the 2005 earthquake. Sporadic instances of terrorist attacks and sectarian violence continued in 2008.

Several hundred families displaced by shelling between Indian and Pakistani forces around the LOC prior to the 2003 ceasefire remain unable to return to their homes and have largely been excluded from earthquake-related assistance schemes. The Azad Kashmir government manages relief camps for refugees from Indian-administered Kashmir, the bulk of whom arrived after the situation on the Indian side worsened in 1989. Many more of the refugees (roughly 1.5 million) live elsewhere in Azad Kashmir and throughout Pakistan.

The status of women in Pakistani-administered Kashmir is similar to that of women in Pakistan. While the HRCP reports that honor killings and rape occur less frequently than in Pakistan, domestic violence, forced marriage, and other forms of abuse continue to be issues of concern. Women are not granted equal rights under the law, and their educational opportunities and choice of marriage partner remain circumscribed. As in some parts of Pakistan, suspected Islamists occasionally mount attacks against NGOs that employ women and on their female employees.

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