PAKISTAN SUPREME COURT CONDEMNS INDEFINITE DETENTION WITHOUT CHARGES

While the US enters its eleventh year of maintaining the Guantanamo Prison that Barack Obama pledged to close by the end of 2009, Pakistan now finds itself in the glare of international condemnation for its own practice of indefinite detention without charges. Just last month, Amnesty International released a report (pdf) in which they pointed out widespread torture and abuse in Pakistan's tribal areas while prisoners are held by the military and intelligence agency without charges:

> Amnesty International research shows that, rather than seeking to apply and strengthen the human rights safeguards of Pakistan's ordinary criminal justice system in the Tribal Areas, the Pakistani authorities are applying old and new security laws that authorise prolonged, arbitrary, preventive detention by the Armed Forces, and breach international human rights law. The Actions (in Aid of Civil Power) Regulations 2011 (AACPR) in particular, along with the century-old Frontier Crimes Regulation 1901 (FCR),5 provide a framework for widespread human rights violations to occur with impunity.

Both the AACPR and FCR come into play in a case argued today in Pakistan's Supreme Court. From Reuters, we learn that although this case addresses just 11 men (now 7 due to four deaths, more on that later), the government now admits that over 700 are being held without charges:

> Pakistan is holding 700 suspected

> Islamist militants without charge under a law that has come under fire from human rights groups, its attorney general said on Thursday.
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> The admission marked the first time that the strategic U.S. ally detailed how many militants it is holding in the tribal areas of the northwest under the Actions in Aid of Civil Power Regulations law.
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> "There is a military operation in Waziristan. Under the law we cannot try these 700 people, nor can we release them, unless the operation is over," Attorney General Irfan Qadir told the Supreme Court, referring to a tribal area near the Afghan border.

The Reuters report, however, seems to miss the mark on several important issues in this story. First, Reuters says the case is about "seven suspected militants held without charge since May 2010". Both Dawn and the Express Tribune point out in their stories today that the case originated with 11 men. Here is how Dawn describes that part of the background:

> The 11 prisoners in the said case went missing from the gate of Rawalpindi's Adiyala Jail on May 29, 2010 after they had been acquitted of terrorism charges pertaining to their alleged involvement in the October 2009 attacks on the Army General Headquarters and the Inter-Services Intelligence's (ISI) Hamza Camp in the garrison town.
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> Later, four of the 11 died in mysterious circumstances. The Supreme Court forced the ISI and military intelligence to produce the remaining seven men in court on February 13 – an unprecedented move. The men, all in deteriorating health, were sent to the Lady Reading Hospital in Peshawar on court orders. After five

> of them recovered, they were shifted to an internment centre in Parachinar.

The other point that Reuters seems to miss comes when Reuters says of the men that the "Supreme Court is calling for their release" while it appears on closer reading of the Pakistani press that the "release" is from military detention into the hands of civilian authorities who would then try the men. Here is the Express Tribune:

> The Supreme Court is investigating the fate of seven Adiala prison inmates who have been held without trial since 2007 even though a judge ordered their release in May 2010.
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> Chief Justice Iftikhar Muhammad Chaudhry said the seven suspects must be put on trial and holding them indefinitely violated their human rights.
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> "These people cannot be kept in illegal custody for an indefinite period because it is against the constitution and basic fundamental rights," he said.
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> "We don't say you should release them… we want you to try them in accordance with the law," he added, adjourning the case until January 28.

The version of this point in the Dawn article, though, seems to leave open the possibility of trial under FCR even while those detained are still in military hands:

> During today's hearing, Attorney General Irfan Qadir revealed that security agencies are holding at least 700 people indefinitely without trial in connection with the "war on terror".
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> He said none of the suspects could be freed until the end of operations in the tribal belt, and declined to say how long they had been in custody.

> “There are about 700 people detained in the tribal areas and they cannot be released until the ongoing military operation in those regions concludes,” Qadir told the court.
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> “The detained men can be handed over to authorities only after the operation is halted in the tribal regions.”
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> He also said that the detainees would be tried under the Frontier Crimes Regulation (FCR).
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> The Chief Justice asked the attorney general as to how the case would be tried under the FCR and questioned him over the basis upon which the prisoners were detained.
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> “These people cannot be kept in illegal custody for an indefinite period because it is against the constitution and basic fundamental rights,” said the CJ.
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> “We don’t say you should release them… we want you to try them in accordance with the law,” he added.
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> The attorney general replied that the prisoners were held from areas under the state of war and hence they would be tried under the FCR.

It is quite encouraging that Pakistan’s Supreme Court is concerned about the issue of indefinite detention without trial. It would be nice if the US Supreme Court showed the same level of concern. Oh, and I wonder where Pakistan got the idea of holding prisoners without charges until the military operation is over?