

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/18, 34/6 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **recent decision of the High Court in Islamabad that ordered obligatory declaration of one's religion or belief in all official documents.**

According to the information received:

Following the passage of the Election Reforms Amendment Bill 2017, a modification was introduced in November 2017 in the oath that election candidates must take when filing their nomination papers. Upon noticing the change of the wording in one of the electoral forms, in which candidates were normally required to affirm the finality of the Prophethood, some opposition legislators vehemently opposed to the modification. When faced with serious accusations and criticism of having compromised on the issue of the finality of the Prophethood, the Government's representatives ascribed the change to a clerical error and restored the original text.

However, the action of the Government did not seem to satisfy those concerned and they filed a petition to the High Court of Islamabad claiming that:

1. Non-Muslims have no right to appear as a Muslim, which would result in taking advantage of the Constitution;
2. Should non-Muslims conceal their religious identity as if they were Muslim this would amount to a breach of an important Constitutional requirement in regard to religious identity/qualification of certain office bearers;
3. Most of the minorities residing in Pakistan hold a separate identification in reference to their names and identity. However, members of one of the non-Muslim minorities do not hold a distinct identification: their names and general attire make them look like if they belonged to the Muslim majority. Through such misidentification, they can gain access to dignified and sensitive posts resulting in accumulation of benefits.

4. The appointment of a non-Muslim to constitutional posts breaches the organic law and rituals. Non-Muslims do not qualify to be elected to certain constitutional offices.
5. The matter of absolute and unqualified finality of prophethood of Muhammad is the unquestionable nucleus of their religion for every Muslim, who has a duty to guard and protect that value. The role of the Parliament as the guardian of this religious core and the right of Muslim majority to expect proper awareness and sensitivity was stressed and the Parliament was urged to take measures which can completely terminate those who scar this belief.
6. It is mandatory for the State to safeguard the sentiments and religious beliefs and also protect the rights of minorities according to the religion of the State of Pakistan, "Islam", declared by the Constitution of Pakistan.

Against those arguments made in the petition, the court ordered that:

1. All applicants must present a sworn affidavit based on the definition of Muslim and non-Muslim provided by Article 260 (3) (a) and (b) of the Constitution in order to get National Identity Card, Passport, Birth Certificate and entry in voter list.
2. That sworn affidavit should be a requirement for appointment in all Government and Semi-Government institutions especially Judiciary, Armed Forces and Civil Services, etc.
3. National Database & Registration Authority (NADRA) must fix a time for any citizen who intends to make correction or change in the already given particulars, especially religion.
4. The Parliament should make necessary legislation and introduce requisite amendment in the existing laws so as to ensure all the terms which are specifically used for "Islam" and "Muslims" are not used by the persons belonging to any of the other religions for hiding their real identity or for any other purpose.
5. The Government of Pakistan shall take special measure ensuring availability of correct particulars of all the citizens so that it should not be possible for any citizen to hide his/her real identity and recognition. Government shall also take immediate steps for conducting inquiry concerning alarming and visible difference in the population record of Qadianis/Ahmadis available with the NADRA and figures collected through recent census.
6. It is binding on the State to take care of the rights, feelings, and religious beliefs of the Muslim Ummah and to also ensure the protection of rights of minorities

in the light of teachings of “islam” being the religion declared by the Constitution of the country.

Based on the above information, we are respectfully sharing our initial assessment of the court decision against the international human rights norms that guide our respective mandates, and provide the following advice:

**1) On the order of the court, obliging declaration of one’s religion or belief in all official documents**

Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) that Pakistan ratified on 23 June 2010, stresses in its Article 2 that the State must ensure that all individuals within its territory and subject to its jurisdiction enjoy the rights recognized in the Covenant, without distinction of any kind, such as [...] religion [...]. This creates the positive obligation to protect the freedom of religion or belief of the persons on its territory and under its jurisdiction as provided in article 18 of the ICCPR. Everyone must be able to peacefully exercise the religion or belief of one’s choice, free of coercion and fear.

The right to manifest one’s religion or belief in private or public must be left at the discretion of each individual in accordance with article 18 of the ICCPR, and no one should be coerced to declare one’s religion or belief. The choice of religion or belief is part of the forum internum, i.e. a non-derogable right which allows for no limitations under international law. Any State policy of such coercive nature that clearly discriminates religious minorities or any individual based on his or her religion or belief therefore violates international human rights law.

Such obligation would furthermore lead to inevitable discrimination against the religious minorities. The Human Rights Council Resolution 16/18 has deplored any advocacy of discrimination or violence on the basis of religion or belief. It has reaffirmed the obligation of States to prohibit discrimination on the basis of religion or belief and to implement measures to guarantee the equal and effective protection of the law. It reminded states to uphold that positive obligation as the impartial guarantors of freedom of religion or belief, as well as other human rights, for all

The former Special Rapporteur on freedom of religion or belief’s recommendations following his visit to Pakistan (para 85, E/CN.4/1996/95/Add.1) stressed that no mention of religion should be included on passports, identity card application forms or on any other administrative document. He also recommended the deletion of the statement required of Muslims regarding non-recognition of Ahmadis as Muslims in passport application forms.

**2) On the use of sworn affidavit as a requirement for appointment in all Government and Semi-Government institutions especially Judiciary, Armed Forces and Civil Services, and on singling out the population record of Qadianis/Ahmadis**

Article 5(1) of the ICCPR forbids any State, group or person to engage in any activity or perform any act aimed at destroying or limiting to a greater extent of any of the rights and freedoms recognized in the Covenant. We are concerned that the coercive measure of this proposed sworn affidavit will discriminate and disadvantage religious minorities, singling out members of the Ahmadis confession. It also appears to be a disproportionate measure that may lead to further religious intolerance and violence against members of that community.

The Human Rights Committee (the United Nations highest authoritative body with regard to interpretation of international human rights law) in its General Comment 22, Para. 2 raised concern of any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

Moreover, the rights to freedom of opinion and expression are protected under article 19 of the ICCPR. While freedom of expression can be restricted if the high threshold established under article 19 (3) is strictly met, the right to freedom of opinion cannot under any circumstance be restricted. The use of sworn affidavit as a requirement for certain public appointments would in this connection represent a de facto attempt to restrict the right to freedom of opinion, in violation of article 19(1) of the ICCPR. As underlined by the Human Rights Committee, it would be incompatible with article 19 of the ICCPR and therefore impermissible to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers.

According to Article 25 of the ICCPR every citizen shall have the right and the opportunity (without any of the distinctions mentioned in article 2 of the Covenant and without unreasonable restrictions) (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (c) To have access, on general terms of equality, to public service in his country. The Human Rights Committee's General Comment 25 (CCPR/C/21/Rev.1/Add.7) elaborates further in its paragraph 11 that any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. We consider that a compulsory declaration of religious affiliation would negatively impact on the right to participate in the public affairs of one's country.

Human Rights Council's Resolution 16/18, Para 6 (b) calls upon all States to foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion, and to contribute openly and on an equal footing to society.

Article 26 of the ICCPR stresses that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion [...].

Further, recognizing that the High Court order will adversely affect persons belonging to religious minorities in Pakistan, we would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR which guarantees minorities, inter alia, the right to profess and practice their own religion, and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end (article 1), recognizes that persons belonging to religious minorities have the right to profess and practise their own religion without discrimination (article 2) and requires States to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).

**3) *On the argument that the State has to take care of the (...) "feelings" (...) of the Muslim Ummah***

Freedom of religion or belief primarily confers a right to live and act in accordance with one's religion or belief but does not bestow a right for believers to have their religion itself protected. When people's religious feelings are hurt, it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion. The question as to whether criticism, derogatory statements, insults or ridicule of one religion may negatively affect an individual's right to freedom of religion or belief can only be determined objectively and, in particular, by examining whether the different aspects of the manifestation of one's right to freedom of religion are accordingly negatively affected.

Allow us to respectfully refer Your Excellency's Government to the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Its paragraph 17 states that "prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the ICCPR. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26 of the ICCPR.

In conclusion, and to summarise, the Supreme Court Order that is the subject of this communication, is a source of serious concern to our mandates since it appears to contravene some of the most fundamental rights protected under international law by the ICCPR including, the duty of the state to respect and ensure all the rights contained in the Covenant, in the respect of the integrity of each of them (Article 2); and the right of everyone living under their jurisdiction to freedom of thought, conscience and religion or belief (Article 18); to freedom of opinion and expression (Article 19); to equality before the law, to equal protection and non-discrimination, including on account of their ethnic, religious or linguistic differences (Articles 5, 26 and 27). I respectfully urge that the decision is promptly and thoroughly reviewed, against Pakistan's international legal

obligations under the ICCPR. If the court order was complied with, we are concerned that this will lead to both direct and indirect discrimination and the increased vulnerability of the religious minorities in Pakistan, who are already facing discrimination and acts of intolerance and social hostility. The Government should anticipate the possibility of aggravated discrimination and strengthen national protection against it.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Are the provisions cited above summary of the “Court Order obliging declaration of one’s religion or belief in all official documents”, accurate? A copy of the order, with an officially authorized translation would be appreciated, so that our final assessment can be made and further shared with your Government.
2. Assuming that the contents of the court order is accurately described, please explain how that order and any intended amendments in existing legislation that may result from it are compatible with international human rights obligations of Pakistan regarding non-discrimination and the right to freedom of religion or belief and the right of the religious minorities, under ICCPR.
3. Please provide measures that your Excellency’s Government is considering to take to ensure the universal equality before the law of all persons living in Pakistan, their equal protection under the law, and to prevent against what may become an aggravated, legal and institutional source of discrimination of religious minorities, that may further nurture acts of religious intolerance or violence in the country.

We would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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