

Mandates of the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief

REFERENCE:
AL PAK 5/2018

23 July 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues and and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 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 **discriminatory provisions in the Pakistani domestic law and related acts of persecution against the Ahmadiyya minority**.

According to the information received:

Several provisions in the ordinary and constitutional law of Pakistan establish discriminatory treatment to Ahmadis on the basis of their religion or belief, contributing to increased religious intolerance and persecution.

Constitutional Law

The Second Amendment to the Constitution of Pakistan, which entered into force in 1974, listed the Ahmadiyya minority among the groups that are deemed to be non-Muslim. This provision is still included in the current Constitution (Chapter 5, Section 260 (2)) and deprives Ahmadis of their identity as Muslims under Pakistani law.

Electoral Law

The electoral law of Pakistan requires Ahmadis to register in a separate electoral list and declare themselves non-Muslims in order to be allowed to vote. However, as the acknowledgment as non-Muslim would violate the most fundamental tenet of Ahmadis' faith, the majority Ahmadis prefer to renounce their right to vote than to renounce their faith; the electoral law thereby prevents the Ahmadis from participating in the national elections.

This electorate scheme with a particular restriction to Ahmadis has replaced a system of separate electorates for all religious minorities in force until 2002, which required non-Muslims to register as a separate category and vote for non-Muslim candidates. In this context, whilst other religious minorities were subsequently included under a single electoral list, the current legislation provides that a separate non-Muslims voter category remains applicable only for Ahmadis.

The legal requirement for a separate electorate list for the Ahmadis, in addition to potentially depriving Ahmadis from their political rights, exposes their religious affiliation to others. This can place them at risk, since registered Ahmadi voters become vulnerable to targeted attacks by those who reject their faith. Reportedly, related incidents of religious persecution include the use of offensive languages, bombings and killings.

Penal Code

Articles 298B and 298C of the Penal Code of Pakistan, as amended by Ordinance XX, prohibit Ahmadis from posing as Muslims directly or indirectly, declaring or propagating their faith publicly and making a call for Muslim prayer.

In addition, the “Blasphemy Law”, inserted under article 295C of the Penal Code, defines Ahmadi’s belief in the prophethood of Mirza Ghulam Ahmad as blasphemous insofar it defiles the name of Prophet Muhammad and prescribes a mandatory death penalty for such an offence.

Reportedly, Ahmadis have been arrested, charged and sentenced to death under the “Blasphemy Law” for simply professing their faith. Moreover, it was alleged that State authorities have been complicit in filing false charges and employing disproportional use of force against Ahmadis.

Law on National Identification and Travel Documents

Under the Pakistani domestic law, citizens are required to declare their religion in order to apply for a passport or a Computerized National Identity Card (CNIC). For both cases, self-declared Muslims have to sign a declaration attesting that they consider Mirza Ghulam Ahmad to be an “imposter prophet” and his followers to be non-Muslim. Taking into account Ahmadis’ belief in the prophethood of Mirza Ghulam Ahmad and their self-identification as Muslims, this legal requirement prevents them from obtaining national identification and travel documents.

We express our grave concerns at the discriminatory provisions against Ahmadis under the Pakistani Constitution and domestic law, which contribute to the negative stigmatisation of that community, as well as acts of retaliation and persecution based on religious differences. We are also concerned that the participation of the Ahmadiyya minority in the political process has been severely undermined with the legal requirement for registration in a separate non-Muslim electoral roll, especially in the context of the upcoming national elections, scheduled for 25 July 2018. We are concerned about the mandatory death penalty for blasphemy offences. We are also concerned about the legal requirement that prevents Ahmadis from obtaining national identification and travel documents, thereby discriminating them in law and practice on the basis of their religion or belief. Furthermore, we express concern at the increased acts of persecution against

Ahmadis that are related to the discriminatory legal provisions, including those allegedly committed by law enforcement officials. These constitutional and legal provisions appear to be incompatible with international human rights law, including the Conventions ratified by Pakistan, in particular Articles 18, 19, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the national legislation, as reported above, is consistent with Pakistan's obligations under international human rights law, in particular when it comes to the fundamental principles of non-discrimination and equality before the law.
3. Please provide information on the measures taken to ensure that Ahmadis are provided with national identification and travel documents in light of international human rights law.
4. Please provide details of measures taken to ensure an equal participation of members of the Ahmadiyya minority in national political process, particularly with regard to the upcoming elections scheduled for 25 July 2018.
5. Please provide information on measures taken to bring the Penal Code into line with Pakistan's obligations under international human rights law, in particular with articles 18, 19, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR).
6. Please provide details of the measures taken to ensure an equal protection under the law of all persons living in Pakistan as well as measures to prevent any forms of discrimination of religious minorities, including the Ahmadis.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We will publicly express our concerns as, in our view, the information on which our concerns are based appears to be sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential human rights implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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.

Fernand de Varennes
Special Rapporteur on minority issues

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the fundamental rights in accordance with the principles as set forth in article 18, 19, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR) that your Excellency's Government ratified on 23 June 2010, guaranteeing the right to freedom of religion or belief, freedom of expression, equality and non-discrimination as well as the protection of the rights to persons belonging to ethnic, religious or linguistic minorities.

We would like to recall that 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.

We would further like to bring to your Excellency's Government attention the international standards regarding the protection of the rights of persons belonging to religious minorities, in particular to article 27 of the ICCPR, that guarantees minorities, *inter alia*, the right to profess and practice their own religion.

Moreover, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 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 practice 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).

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 [...].

In this connection, we deem it appropriate to also make reference to Human Rights Council Resolution 16/18, which 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.

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.

We would like to reiterate the recommendations provided by the former Special Rapporteur on freedom of religion or belief following his visit to Pakistan (para 85, E/CN.4/1996/95/Add.1). He 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.

We would also like to refer your Excellency's Government to Article 25 of the ICCPR which states that every citizen shall have the right and the opportunity (without any of the distinctions mentioned in article 2 of the ICCPR 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 the right to participate in the public affairs of one's country.

Finally, the repeal of blasphemy laws has been called for by the Special Rapporteur on freedom of religion or belief, and is a recommendation of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, Para. 17 and Human Rights Committee General Comment No. 34. Such repeal is particularly urgent in situations where the laws carry death sentences, such as in Pakistan. Blasphemy laws have shown to violate freedom of religion or belief. Individuals belonging to religious minority groups are disproportionately charged with "blasphemy", for practicing their faith.