

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

REFERENCE:
OL PAK 10/2020

7 August 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/6 and 40/10.

We would like to bring to the attention of your Excellency's Government information we have received concerning the **recently established National Commission on Minorities in Pakistan that appears to be inconsistent with the standards set out in the UN Principles relating to the Status of National Institutions and the Supreme Court decision of 19 June 2014.**

Concerns regarding the public incitement to violence and hatred towards religious minorities, in particular the Ahmadis, based on tweets made by public authorities when the establishment of the National Commission on Minorities was debated, were recently expressed in communication dated 8 May 2020 (AL PAK 6/2020). No reply has yet been received.

Previous concerns about the non-implementation of the Supreme Court decision of 19 June 2014, which requested the Government to take concrete measures to protect members of religious minorities and their places of worship, were raised in communication dated 17 July 2018 (OL PAK 3/2018). We take note of the State reply received on 27 November 2018, explaining, inter alia, that minorities, which constitute 3.5 per cent of the total population and consist of Christians, Hindus, Ahmadi, Parsis, Buddhists and Sikhs etc., have made substantive contributions in Pakistan.

In this connection, we offer the following comments on the establishment of National Commission on Minorities (NCM) in Pakistan based on the standards set out for national human rights institutions in the UN Principles relating to the Status of National Institutions, known as "the Paris Principles", adopted by the UN General Assembly in 1993 (A/RES/ 48/134)¹. While the Government of Pakistan is commended in its efforts to establish a national commission for minorities, we respectfully address a number of serious inconsistencies of the NCM with the Paris Principles in our analysis below and encourage your Government's kind review and reconsideration of the key aspects of our concerns to ensure that the commission is in compliance with the Paris Principles.

¹ <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>

The Paris Principles require national human rights institutions to: protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and promote human rights, through education, outreach, the media, publications, training and capacity building, as well as advising and assisting the Government.

The Paris Principles also set out the main criteria that national human rights institutions are required to meet:

- Mandate and competence: a broad mandate, based on universal human rights norms and standards;
- Autonomy from Government;
- Independence guaranteed by statute or Constitution;
- Pluralism;
- Adequate resources; and
- Adequate powers of investigation.

Background

Since 1990, the Government of Pakistan has created several ad-hoc minority rights commissions without statutory authority that were criticised for being ineffective, among other reasons for not having a proper mandate and lacking resources.

On 19 June 2014, the Supreme Court recommended in its orders no. 4 of paragraph 37 (SC SMC 1/2014) that a national council for minorities rights be constituted aimed at safeguarding the rights of the country's minorities.

In January 2019, the Commission for the constitution of the minorities' rights was established by the Supreme Court to implement its 2014 decision. It prepared a draft bill to establish the NCM, with the collaboration of several stakeholders including civil society, that was sent to the Ministry of Religious Affairs to be presented before the Parliament but the Ministry of Religious Affairs allegedly did not provide any feedback on the draft bill. On 19 February 2020, the Ministry of Religious Affairs, in its submission to the Supreme Court, noted that the commission would be constituted through an act of Parliament.

However, on 5 May 2020, the Federal Cabinet of Pakistan established the National Commission for Minorities in Pakistan. In pursuance to the Federal Cabinet's decision vide Case No. 310/16/2020, on 11 May, the Ministry of Religious Affairs and Interfaith Harmony in its notification stated that the Federal Government re-constitute the National Commission for Minorities and its terms of references with immediate effect. This was to be published in the next issue of the Gazette of Pakistan Part III.

Main concerns in relation to the establishment of the National Commission on Minorities

1. Mandate and competence: the NCM was reportedly established through a Cabinet decision and not through legislation as an independent statutory body specifying its composition and its sphere of competence. It also appears that the Cabinet's decision does not have any territorial jurisdiction beyond the capital. Moreover, the terms of reference of the NCM appear to be rather limited to an advisory role, lacking the full autonomy in the methods of operation.

We regret that the lack of legal basis in establishing the NCM appears to fail to fully comply with the substance of the landmark June 2014 verdict of the Supreme Court which calls for the body to, *inter alia*, “monitor the practical realization of the rights and safeguards provided to the minorities under the Constitution and law. The Council should also be mandated to frame policy recommendations for safeguarding and protecting minorities’ rights by the Provincial and Federal Government” (Supreme Court decision, 19 June 2014, Para 37, page 31).

Based on the Paris Principles, a national commission on minorities should not only be vested with competence to promote and protect the rights of minorities, it must also be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence. Furthermore, in terms of its method of operation, the NCM should be able to:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions).

2. Composition: the NCM is made up of six official and twelve non-official members and a chairman. Among these 12 non-official members, two are Muslims, three belong to the Hindu and Christian minorities each, and two members are of Sikh

minority. The Parsi and Kalash minorities of the country are represented by one member each. The six official members include representatives from the Ministry of Interior, Ministry of Law and Justice, Ministry of Human Rights, Federal Education and Professional Training. The Chairman of the Council of Islamic Ideology and the Secretary of the Ministry of Religious Affairs are also official members. It is reported that the NCM has a tenure of three years and the term of non-official members is decided by the Federal Government.

We are deeply concerned about the procedures of selection and appointment of the official and non-official members, the composition of membership of the NCM, as well as the stability of the NCM. First of all, it appears that there was no clearly established procedure prior to the selection and appointment of the members of the NCM. Moreover, the terms of office of the official and non-official members are not determined. It also appears to be at the entire discretion of the Government to extend or terminate the term of any non-official member of the NCM.

Secondly, members of the minorities were given a non-official membership while various ministries of the Government that should have played advisory roles were given official membership in the NCM. In addition, the composition of the membership does not fulfil the principle of pluralism. Thirdly, the NCM is temporarily granted a tenure of three years without a clear official act that establishes the specific duration of the NCM and its renewability.

According to the Paris Principles, the composition of the NCM and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, in this case of minorities, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights (in this case of minorities) and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

In order to ensure a stable mandate for the members of the NCM, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

3. Guarantees of independence: some of the appointed members of the NCM as described above are reportedly members of the ruling party, holding political office. This presents a serious challenge in guaranteeing the institution's independence. In order to ensure the independence of the NCM, we reiterate that the NCM must enjoy full functional and financial autonomy that is clearly spelt out in legislative or Constitutional text. The NCM shall have an infrastructure, in particular adequate funding, which will enable the smooth conduct of its activities. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence as well.

4. Pluralism: while two representatives of the Muslim majority have been included in the current composition of membership of the NCM, representatives from certain religious minorities, including Muslim minorities such as the Ahmadis and Shias, Bahais, and others, appear to have been excluded. We are seriously concerned that the NCM does not meet the requirement of pluralism as set forth in the Paris Principles. Without a pluralistic representation of minorities which reflects, as much as possible, the country's diversity, the NCM cannot be fully viewed as an institution that represents the country's minorities. We are also concerned that the Ahmadis have been asked to accept themselves as non-Muslims in order to be considered as members of the NCM. Any exclusion of significant or particularly vulnerable minorities, including minority women, would not only be discriminatory, it might also damage the credibility and effectiveness of the NCM to create any positive impact, and address the main challenges of minorities rights as well as religious intolerance.

Article 2 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Pakistan on 23 June 2010, requires State parties to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as [...] religion [...]. Therefore, we would like to stress that no one, including Muslim minorities, such as the Ahmadis, and other minorities, should be discriminated based on the religious or belief identity. Moreover, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of the General Assembly in its Article 2 (1) stressed that "No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief." In Article 4 (1) of the 1981 Declaration, it further encouraged that "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life." In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on grounds such as religion.

We would also like to take this opportunity to remind your Government that everyone has the right to freedom of thought, conscience and religion as provided in Article 18 (1) of the ICCPR. This right shall include freedom to have or to adopt a religion or belief of one's choice. In General Comment 22, the Human Rights Committee

in its paragraph 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 bring to the attention of your Excellency’s Government the international standards regarding the protection of the rights of persons belonging to minorities, including religious minorities. Article 27 of the ICCPR protects persons who belong to ethnic, linguistic and religious minorities to enjoy their own culture, use their own language, and practice their own religion with other members of their group. This right imposes positive obligations on states not to deny the exercise of these rights among themselves. Moreover, Article 26 of the ICCPR contains a general right to equality without discrimination on grounds such as religion, language or ethnicity, in fact or in practice, and stresses that all persons are equal before the law and entitled without discrimination to the equal protection of the law.

Similarly, article 1 of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. requires that States protect the existence and the national or ethnic, linguistic or religious identity of minorities within their respective territories and encourage conditions for the promotion of that identity. Article 2.1, stipulates that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination, and in article 2.2, persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

In light of the above, we urge the Government of Pakistan to review the legal basis of the NCM, and encourage its establishment through legislative or Constitutional texts as an independent statutory body specifying its composition and the broad sphere of its competence across the country. We would like to stress the importance of guaranteeing the independence of the the NCM and the need for its operational and financial autonomy. Moreover, we urge the Government to undertake a serious review of the current composition and membership of the NCM. It would be imperative to establish clear procedures in the selection and appointment of the members as well as having an official act that specifies the tenure of the NCM. We call on the Government to reverse its decision to exclude certain Muslim minorities, in particular the Ahmadis, and other minorities. We would also like to encourage consultations to be undertaken with all minorities, as well as other civil society actors to ensure that the needs of minorities who are most often excluded or marginalized are duly taken into account. We appeal to the Government to respect and implement the 2014 decision of the Supreme Court to ensure

that the work of the NCM is credible and effective to be perceived as an independent and inclusive institution.

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, in light of the concerns raised by the information in this letter, we would like to request your Government's response to the information and concerns transmitted in this letter:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain what measures are envisaged to ensure that NCM is established by legislative or Constitutional texts and is consistent with the requirements of Paris Principles to be an independent and pluralist institutions.
3. Please provide the measures the government is taking to uphold the principle of pluralism to ensure the participation of all minorities in the NCM, including Muslim minorities, such as the Ahmadis, and other minorities as well as other members of the civil society, academia and Parliament.
4. Please explain what measures the government is taking to ensure that the NCM has formal and operational independence across the country, including adequate human and financial resources.
5. Please explain what measures the government is taking to ensure that the NCM has a broad mandate as set forth in the Paris Principles and is empowered to make policy recommendations, investigate human rights violations, and propose remedies dealing with minorities' human rights issues including freedom of religion or belief.
6. Please explain what measures will be put in place to ensure that the selection procedure and appointment of the members of the NCM is consistent with the requirements of the Paris Principles.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

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