

Universal Periodic Review – 14th Session

CSW – Stakeholder Submission

PAKISTAN

Introduction

1. Christian Solidarity Worldwide (CSW), a human rights NGO specialising in freedom of religion or belief (FORB) for all people, wishes to draw attention to Pakistan's domestic human rights situation over the period 2008-2012 with respect to its international obligations.
2. CSW wishes to focus primarily on FORB and related rights. There remains a large gulf between official government assurances about religious minorities in Pakistan, and the reality of life for these groups in society. Recurring issues include false blasphemy accusations and related violence, the abduction and forced conversion of non-Muslim women and girls, impunity for those targeting minorities, and discrimination in employment and education. At present the state is neither preventing nor punishing violations of the law, while the loudest, most aggressive voices of extremism intimidate and sideline other claims to free expression and debate.

Scope of International Obligations

3. Pakistan is a state party to several international human rights treaties. It has most recently acceded to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), though has yet to be reviewed under either instrument. It has also acceded to the Convention on the Rights of the Child (CRC), the Convention on the Elimination of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination against Women (CEDAW).
4. **Recommendations: Pakistan can be commended for its ratification of the ICCPR and the ICESCR, as well as its withdrawal of initial reservations to the ICCPR.**
5. **Pakistan should seek to accede to the Rome Statute of the International Criminal Court.**

Constitutional and Legislative Framework

6. Pakistan has officially been an Islamic Republic since 1964, and Shari'a law was given legal status by its incorporation into the legal code in 1991. Shari'a does not, however, override that code. In practice, its application is usually limited to family law, apart from in the Malakand district of Khyber Pakhtunkhwa, where enforcement of a Shari'a-based justice system has been possible since April 2009.
7. A tension exists within the Constitution, whereby legislation must meet two overarching requirements with differing perspectives. Firstly, the Constitution includes a section entitled "Islamic Provisions", article 227 of which states that all laws must conform to "the injunctions of Islam as laid down in the Holy Quran and Sunnah", with the caveat that "Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens". In the first instance, the Federal Shari'a Court has jurisdiction over disputes. Any subsequent appeals are then made to the Supreme Court. Secondly, the provisions of the Constitution's Fundamental Rights Chapter must be satisfied, article 8 of which declares, "Laws inconsistent with or in derogation of fundamental rights to be

void”, and which pronounces all citizens to be equal (article 25). This includes citizens of all faiths, so any law that discriminates on the basis of faith should, in theory, be unconstitutional.

8. Article 20 of the Fundamental Rights Chapter of the Constitution provides in part for FORB. This chapter also offers safeguards against people being expected to make payments for religious purposes outside their own faith (article 21); against religious compulsion or discrimination within the education system (article 22); and against discrimination concerning access to public places (article 26) and public services (article 27). In contrast, articles 41(2) and 91(3) of the Constitution specify that both the President and Prime Minister of Pakistan must be Muslim, thereby excluding religious minorities from the highest levels of government.
9. Minority interests are referred to throughout the Constitution. The Preamble includes the provision that “adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures”. The word “freely” was removed from this text under General Zia-ul-Haq’s government but reintroduced in 2010, as part of the package of constitutional reforms introduced in the Eighteenth Amendment.¹
10. Article 36 includes a principle of policy on the protection of minorities: “The state shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services.” It is concerning that this principle uses the word “legitimate”, rather than “equal”.
11. The Constitution provides for a restricted form of freedom of expression in article 19:

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.
12. The ICCPR permits a number of specific restrictions on freedom of expression, but these would not extend to permitting the limitation “in the interest of the glory of Islam”. Non-Muslims are at an automatic disadvantage, and the interpretation of this provision varies according to the dominant Islamic theology at any given time.
13. Pakistan’s blasphemy laws and anti-Ahmadiyya provisions are key concerns. Contained within section 295 of the Pakistan Penal Code (PPC), the so-called “blasphemy laws” criminalise insults against religion. Most problematic are sections B and C, which address defilement of the Qur’an and insults against the Prophet Mohammed, punishable by a life imprisonment and the death penalty respectively. They lack any definition of terms and ignore the question of intent. False accusations for personal motives can easily be registered, as evidential requirements are highly inadequate. Sections B and C conflict with the religious freedom provisions in the Constitution by protecting Islam above other religions, as well as stifling freedom of expression on religious topics.
14. Article 260(3) of the Constitution has since 1974 defined the term “Muslim” in a way which explicitly excludes Ahmadis. Since 1984, this has been accentuated by “Ordinance XX”, which introduced sections 298B and C of the Pakistan Penal Code, now known as the “anti-Ahmadiyya laws”. These provisions criminalise basic manifestations of religion or belief as practised by Ahmadis which are labelled as “anti-Islamic activities”. They are listed in the same chapter as the blasphemy laws and

¹ This provision stems from the “Objectives Resolution” passed by the Constituent Assembly of Pakistan in 1949 as founding principles of the new Constitution. It was through this instrument that Islam was declared as the basis of any future constitution. The resolution was formally incorporated into the Constitution in 1973.

are in direct conflict with the fundamental rights to equality and freedom of religion guaranteed in the Constitution. Social prejudice against Ahmadis is legitimised by the state's overtly anti-Ahmadiyya stance expressed in these provisions.

15. **Recommendations: Pakistan should repeal the blasphemy laws and, in the meantime, fulfil its earlier commitments to review of the legislation, reopening the debate with emphasis on their misuse, and highlighting their potential threat to citizens of all faiths.**
16. **Pakistan should work to bring the anti-Ahmadiyya provisions in line with its constitutional and international commitments to FORB and, in the meantime ensure that both the prevention and investigation of attacks on this community are strengthened.**
17. **Pakistan should highlight the right to FORB and rights specific to minorities in existing human rights training initiatives with the police and judiciary, as proposed in the late Minister for Minorities Affairs' Minority Rights Awareness Programme.**

Institutional and Human Rights Infrastructure

18. While quick to offer verbal assurances of the government's commitment to human rights, Pakistan's Ministry of Human Rights has shown little evidence of having a significant grassroots impact for much of the reporting period. Legitimate concerns have been expressed about the state's commitment to this ministry, as reflected in limited budgetary provision.
19. March 2012 saw the long-awaited passing of the "National Commission for Human Rights Bill (2012)" into law. It is hoped that this will pave the way for a more meaningful protection of human rights but it is concerning that the bill also empowers the government to restrict foreign funding of NGOs.
20. The creation of the Ministry for Minorities Affairs under a cabinet-level minister in 2008 was an encouraging step forward in the promotion of minority rights in Pakistan, providing a federal level voice for minorities for the first time. Following the assassination of Shahbaz Bhatti, who led the Ministry, the government expressed an intention to continue his interfaith harmony work. This is being pursued by his brother, Dr Paul Bhatti, who advises the Prime Minister on minority issues from within the renamed Ministry for National Harmony. It is unclear whether this position will be retained if there is a change in government, and there are concerns that the over-emphasis of a "harmony" agenda risks shifting the focus of the ministry away from its core responsibilities for the welfare of religious minorities.
21. **Recommendations: Pakistan should expedite the implementation of the National Commission for Human Rights Law (2012) and establish a meaningful, independent and authoritative commission, without restricting the activity of human rights NGOs.**
22. **Pakistan should implement the recommendations of the National Assembly's Standing Committee on Minorities from 2009 towards rendering the Commission for Minorities a more meaningful and accessible body.**

Interaction with International Human Rights Mechanisms

23. In response to its first UPR, Pakistan welcomed contact with the Special Procedures, including their visits. However, only one Special Procedures mandate has officially visited Pakistan, namely the

Special Rapporteur on violence against women in 1999. The Special Rapporteur on FORB has never visited Pakistan despite requesting an invitation and issuing a reminder in 2006.

24. Pakistan has not issued a standing invitation to Special Procedures wanting to visit the country, despite numerous recommendations to this effect during the first UPR. Similarly, there is a concern over Pakistan inadequately responding to official communications from the Special Procedures in a timely fashion.
25. **Recommendation: Pakistan should extend a standing invitation to all UN Special Procedures, acknowledge and accommodate existing requests for invitations, and promptly respond to outstanding correspondence from Special Procedures mandates.**

State Response to Previous Review

26. Pakistan has recently been more disposed towards making human rights guarantees, but this has not led to significantly greater realisation of human rights on the ground.
27. In response to its UPR in 2008, Pakistan expressed a “resolve to continue to safeguard” the rights of religious minorities and to “ensure their representation in all national institutions, through affirmative action, as well as review statutes which lead to discrimination.”²
28. Many recommendations highlighted the need for Pakistan to address laws impeding the full exercise of FORB, including the blasphemy laws and anti-Ahmadiyya provisions. While Shahbaz Bhatti was a Minister, discreet steps were taken to negotiate support for amendments to the blasphemy laws. However, the government reversed its position in the wake of the high profile Asia Bibi case and the murder of Punjab Governor Salmaan Taseer on 4 January 2011, announcing that it had no intention of amending the laws. No such process has even been attempted regarding the anti-Ahmadiyya provisions. The state’s silence accentuates societal fears of engaging in either issue, compounding the volatility of both debates.
29. The experiences of minorities in Pakistan indicate insufficient progress on the protection and redress for victims of injustice, beyond financial compensation (in high profile cases). For example, the primary victims and witnesses of even the most publicised anti-Christian violence in recent years, in Gojra in 2009, were in hiding for months following the attacks. Those arrested for the murder of their family members lost no time in pursuing them once released on bail, and they were forced to flee Pakistan because of the high risk to their lives.
30. Recommendations to provide better protection for human rights defenders in Pakistan have not been addressed. For example, human rights lawyer Parvez Aslam Choudhry, who had worked on controversial blasphemy cases for many years, was forced to flee Pakistan in 2011, after the risk to his life and those of his family members escalated to an untenable degree.
31. **Recommendation: Pakistan should ensure a safe environment for those engaging in public debate on the blasphemy laws and anti-Ahmadiyya provisions. Furthermore it should positively promote religious freedom within its civic institutions including within the education system and publicly combat the misinformation spread by those who support the laws.**

² UNHRC (2008), *Report of the working group on the universal periodic review – Pakistan*, A/HRC/8/42, UN General Assembly, 4 June 2008.

Freedom of Thought, Conscience and Religion

32. The last three years have seen an increase in religiously-motivated violence in Pakistan, the experiences of religious minorities proving to be precursors for wider religious intolerance. In 2010, Shia and Sufi Muslim sites were attacked, including the popular Data Darbar shrine in Lahore. Ahmadi Muslims continued to be openly discriminated against and singled out for targeted killings by non-state actors, most recently in February 2012. In March 2012, an Ahmadi leader died after experiencing severe torture in police custody.
33. There exist deeply-rooted problems in the police service, prisons, judiciary and court system alike, including the susceptibility of district level staff to bribery or intimidation, and inadequate knowledge of the law. Discrimination against religious minorities on the part of state officials results in extremely limited access to justice for non-Muslims.
34. The continuing risks faced by human rights activists, lawyers and judges dealing with blasphemy cases were highlighted after the judge who convicted Salmaan Taseer's self-confessed killer in October 2011 was forced to flee the country following credible public threats against him and his family.
35. Converts to Christianity are often extremely vulnerable, finding police and local authorities on the side of those perpetrating violence against them.
36. The abduction, forced marriage and forcible conversion of Christian and Hindu women and girls has increased in frequency in the past year, with perpetrators increasingly emboldened by the relatively low likelihood of conviction. The situation of a nurse, Farah Hatim, is a case in point. Abducted in May 2011, she is still in the custody of her captors. Her family made bold attempts to retrieve her via the courts, but Farah was forced to state in court that she wanted to remain with her captors. She indicated privately she had no choice, highlighting the powerlessness of victims in her circumstances.
37. Pakistan's blasphemy laws remain a significant concern. The state is silent on the matter but prosecutions under the blasphemy laws show no sign of abating. Two decades of misuse of the blasphemy laws have resulted in a situation where a blasphemy accusation can now easily be used to incite violence if publicised locally. Accusations are thus frequently used to settle personal scores, to target religious minorities or to further extremist agendas. Local court hearings are often attended by large and aggressive groups of supporters from the claimant's side, threatening defendants, lawyers and judges alike. In prison, those accused of blasphemy are at risk of religiously-motivated discrimination and assault. In numerical terms, the majority of the victims are Muslim; however religious minorities represent a disproportionate percentage and are more likely to experience violence following a blasphemy accusation.
38. Discrimination and misinformation about religious minorities in the national education curriculum has been highlighted as one root cause of the increasingly negative perceptions of these groups by the majority, including the view that they are not Pakistani citizens. An overhaul of key textbooks has long been recommended and this task has now been made the responsibility of provincial governments, for which progress is inconsistent.
39. **Recommendations: Pakistan should bring to justice the murderers of Shahbaz Bhatti, under conditions of fair trial, providing long-term security measures for the lawyers and judges involved both in this case and in the appeal case pertaining to Salmaan Taseer's murder.**

40. **Pakistan should prioritise the swift prosecution and deterrence of hate speech and incitement to violence, implementing and strengthening existing legislation on hate speech and mosque loudspeaker use.**
41. **Substantive measures should be taken to strengthen the rule of law for minorities and other vulnerable groups, including conditions of fair trial, police protection for witnesses, judges and lawyers in blasphemy cases and a courtroom police presence to deter mob intimidation.**
42. **Pakistan should provide a mechanism for minority concerns to be raised in broader state policy debates.**
43. **Given its importance for future generations, Pakistan should accelerate and prioritise the reform of the national school curriculum to eliminate discriminatory teaching materials and practice; introduce material on Jinnah’s founding vision for Pakistan and the positive contributions made by religious minorities to the country.**