Call for Submissions issued by UN Special Rapporteur on Freedom of Religion or Belief

**Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16 (SDG 16)**

Response[[1]](#footnote-1) submitted by:

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**Discrimination in law and practice**

** Patterns and examples of discrimination against minority religious or belief communities, in the area of:**

1. **civil and political rights, including but not limited to participation and representation in the public life, access to justice and effective remedies, liberty and security, freedom of expression, assembly and association;**
2. **economic, social and cultural rights, including but not limited to the rights to adequate food and housing, education, employment and healthcare.**

**Legal provisions and practices discriminating against religious minorities**

There exist a wide range of legal provisions, policies, and practices in the political, social, religious, and economic spheres that favour citizens belonging to dominant religion. The legal framework defined by the Constitution of Pakistan 1973 largely provides for equality of rights, on the other hand, the constitution classify citizens in two groups, Muslims and Non-Muslims (Article 260), and there are several embedded discriminations that demonstrate preferential space for the majority religion. For instance,

* The constitution declares name of the country as Islamic republic of Pakistan[[2]](#footnote-2), and proclaim Islam as the official religion of the state[[3]](#footnote-3), and provides role for Islamic principles or law or jurisprudence as a source for law or legislation.
* The constitution entrusts the government to promote an Islamic way of life and promote teaching of Holy Quran, Islamiat and Arabic language, and promote observance of the Islamic moral standards, and secure the proper organization of mosques etc. (Article 31).
* The constitution bars election of any non-Muslim citizen for the office of President[[4]](#footnote-4) and Prime Minister[[5]](#footnote-5) of the country which makes them a second class citizen for all practical purposes.
* The constitution entrusts government to bring all laws in conformity with the injunctions of Islam, and establish a Council of Islamic Ideology[[6]](#footnote-6), an advisory body mandated to assess laws and contribute advice as to whether a law is or is not repugnant to the Injunctions of Islam (Articles 227, 228, 229,230). The legislative assemblies are liable to reconsider the law so made, on the advice of CII.
* The constitution entrusts the government to establish a Federal Shariat Court, which is parallel to criminal courts and parliament. It is tasked with examining as to whether or not any law is repugnant to the Injunctions of Islam. If any provision of law is held by the court to be repugnant to Islamic injunctions, the president or governor is liable to amend the law so as to bring it into conformity with the Injunctions of Islam. The court is also mandated to examine record of any case decided by any criminal court under any law relating to the enforcement of Hudood, and pass orders to enhance the sentence, it may deem fit. The constitution requires appointments of three Ulema with experience in Islamic law, research or instruction, as judges of Federal Shariat Court, where non-Muslims cannot represent as lawyers (Article 203).
* The freedom of speech and expression is guaranteed through Article 19 though subject to imposition of restrictions in the interest of “the glory of Islam”. Such a restriction is discriminatory in a multi-religious context and may be even beyond the comprehension of religious minorities.
* Article 36 that addresses protection of minorities, states “The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services.” The condition of legitimacy for minorities’ rights alone is discriminatory.
* Although government has reserved seats for religious minorities in national assembly, senate and provincial assembly, however the oath of minority representatives is same as that of Muslim. The oath[[7]](#footnote-7) oblige minority politicians to preserve the Islamic ideology.
* The government passed Elections act 2017, however it has developed a fully inclusive electoral roll including majority and minority voters unlike Ahmedi voters whose electoral list is still separate, which is discriminatory provision.
* The government has established a sham national commission for minorities that lacks independence guaranteed by law, autonomy from Government, mandate and competence, adequate resources and powers. The commission established under a Federal Ministry of Religious Affairs, do have membership of religious and political actors, but members of Ahmedi and Bahai communities are not included. The process of establishing minorities’ commission is discriminatory, as the other commissions on human rights, status of women, child rights are established through an act of parliament, unlike minorities commission which has been constituted through an executive order by governments since 1990.
* There exists no law to protect religious minorities against forced conversions. There is law to protect citizens against forced marriages[[8]](#footnote-8), however that provision is not included in FIRs by the police. The actors dealing in forcibly converting minority females particularly minors, and forcibly marrying them off with Muslims, are not prosecuted, and they enjoy impunity. The Lahore High Court has passed a judgment[[9]](#footnote-9) that children below 18 years of age, do not have the capacity to convert to any other religion. But the conversion of minor minority children has not come to an end despite the court issued a judgment to prevent forced conversion of children.
* According to research study “Silence of the Lamb” carried out by Centre for Social Justice, 159 incidents of forced conversion took place during 2013 and 2019, and 16 girls have approached Sindh High Court seeking relief from such forced Marriages in recent years. According to an investigative report “Around 60 Christians were converting to Islam every month in Lahore and surrounding areas during 2009-2011 owing to economic pressures, security, etc.[[10]](#footnote-10) According to a study carried out by University of Birmingham at least 2866 cases of conversion involving women & girls were reported between January 2012 and June 2017 in Pakistan”.[[11]](#footnote-11) Another study by National Commission for Justice and Peace revealed that 1,733 faith conversions to Islam (726 Hindus, 605 Christians, 384 Ahmedi, 3 Sikhs, 2 Kalash, 13 individuals with unknown religious affiliation) had been reported in the national media during 2000 and 2012.
* The bias of the police against minorities has been observed. This includes reluctance to even register cases and investigate allegations of forced conversion.[[12]](#footnote-12) Problems also occur with how the case if registered and recording of the victim’s statement and incorrect charge sheet. This results in problems when the case is taken to the court. Apart from the social mindset and stereotypes making the police bias, there is also great public pressure on the police from the society, specifically conservative right wing parties and people which makes it difficult for the police to function even if they wished to. The impunity given by the State to violence against religious minorities extends to the police by also not providing them adequate resources or protection to combat such bias. The role played by the police fosters an environment of insecurity and presumed impunity for perpetrators and results in further encouragement.
* The courtrooms face great pressure during case hearings of sensitive nature. Often the courtrooms are full of people chanting slogans in favour of Muslim party, in blasphemy or forced conversion case. At times, people demand capital punishment for an alleged blasphemer belonging to minority communities, and sometimes they celebrate the “conversion” of the girl outside the courtrooms by gun firing outside the court building. This not only intimidates the girls giving evidence but puts severe pressure on the judges and lawyers acting in such cases. The girl is made to testify and confirm whether she has truly converted to Islam in this hostile environment.[[13]](#footnote-13)
* The societal bias extends to the judges as well and their own personal and religious beliefs that can cause hindrances in the dispensation of justice. The pressures of the conservative right and religious extremists also influence the judges who may interpret and apply the laws selectively and unequally. The lack of protection given to judges also makes the judges wary of their own personal security.
* The Federal and provincial governments have reserved three up to five percent job quota[[14]](#footnote-14) for religious minorities in public sector through executive orders. The compliance of minority quota is almost half as witnessed by study[[15]](#footnote-15) carried out by Centre for Social Justice. The research report reveal that minorities suffer discrimination in public sectors jobs, and derogatory advertisements are issued where Christians are required for job of sanitary workers, and mostly the minorities are recruited on menial jobs (Grades I-V) to meet the job quota. The implementation suffer due to; a) lack of legal cover, b) lack of implementation and enforcement mechanism, c) lack of reliable data and remedy/ referral mechanism in place to address complaints regarding implementation of job quota. The Supreme Court directed governments to ensure enforcement of job quota reserved for minorities[[16]](#footnote-16), however government is hardly complying with the orders so far.
* The minorities face discrimination in buying property/houses and staying in a rented houses, as Muslims owners mostly deny to sell out or rent out their houses to minority.
* The social and economic discrimination on the basis of religion or belief is widespread in society. The minorities face discrimination in dealing with eatable business especially opening a butcher’s shop. For instance, it is required for a butcher to be a Muslim, as he has to say an Islamic prayer (Takbeer) while slaughtering cow or hen. This practice makes the minorities unable to deal in this, as Muslim customers never visit their shops for buying meat. State does not offer much to counter discrimination.

**Constitutional provisions protecting against discriminatory practices:**

There are provisions of the constitution that provide for equality and non-discrimination for citizens. For instance, Article 25 (1)[[17]](#footnote-17) guarantees equal protection of law, while Article 22 provides protection against coercive religious instruction in educational institutions, and ensures equal treatment in taxation for religious institutions[[18]](#footnote-18). Article 26 (1)[[19]](#footnote-19) provides for equal access of citizens to public places, and Article 27 (1)[[20]](#footnote-20) guarantees non-discrimination in appointment in public services.

** Laws and policies restricting the right to manifest freedom of religion or belief of minority religious communities, including blasphemy, national security and counter-terrorism laws; laws and policies with regard to the registration of faith-based organizations and associations; and those pertaining to religious property, religious educational institutions and places of worship and of burial.**

**In providing the above-mentioned information, please also include examples of discriminatory practices in the provision of both public and private services, on the grounds of religion or belief, and highlight the relevant legal provisions that protect against and sanction such practices.**

* The Article 20 of the constitution of Pakistan guarantees absolute right to religious freedom, which ensures profession, practice and propagation of religion, however, it leaves a wide gap of protection for religious minorities.
* There is no legal limitation on changing religion, however, right to conversion to Islam only is socially accepted. Any Muslim converting to any other religion, or any converted Muslim trying to re-convert to any other religion, is liable to be killed on the pretext of apostasy. It means, right to conversion is a one way stream.
* There is no any such law that clearly defines adopting or limiting atheistic beliefs, however there is no provision in any state document (identity card, passport etc.) to register atheists. It means, right to adopt atheistic beliefs is limited.
* Citizens are required to reveal their religion to obtain birth certificate, national identity card (NIC) and Passport. In case of changing religious affiliation in national documents from any other to Islam is easy, however getting religious affiliation changed from Islam to any other is not that easy, even if a minority (Christian or Hindu etc.) is issued a NIC with religious identity as Muslim mistakenly by National Database and Registration Authority (NADRA).
* While registering or renewing national documents, a Muslim has to sign a declaration[[21]](#footnote-21) that is derogatory and discriminatory against members of Ahmedi community.
* The people changing their religious affiliation from Islam to Ahmedi (legally non-Muslims in Pakistan) in their 60s or 70s made the Islamabad High Court to pass judgment[[22]](#footnote-22) about declaring religion a must for acquiring national documents.
* The registration requirements for faith-based organizations are not reasonable, because religious organizations are treated as NGOs, so they have to get registered, and meet all requirements as that of NGOs.
* Blasphemy is prohibited, the sections 298, 298 A, 298 B, 298 C specifically limit Ahmedi community’s right to religious freedom. While sections 295B and 295C are mostly misused to settle personal vendettas. According to data compiled by Centre for Social Justice, 1,549 individuals (720 Muslims, 516 Ahmedi, 238 Christians, 31 Hindus, 44 persons with unknown religious affiliation) were alleged of committing blasphemy during 1987 and 2017. The data reveal that at least 75 individuals (39 Muslim, 23 Christians, nine Ahmadis, two Hindus and two persons with unknown religious affiliation) had been killed till 2017 in incidents involving allegations or presumed commission of blasphemy. At least five persons were murdered by policemen on duty while total 11 lost their lives after being attacked in the police custody, in addition to this, five more were assassinated or died in mysterious circumstances while in the jail. At least lives of 18 were lost during mob-attacks.
* The government has failed to introduce any amendment in blasphemy laws to bring them in conformity with principles related to religious freedom. The Criminal Laws (amendment) Act 2017 does not provide protections against fair trial, presumption of innocence, proportionality of punishments, etc.
* The literature against Islam, and any material published by Ahmedi community is banned.
* The non-Muslims have to participate in Islamic religious rites in schools, and they have to study Islamic education as a subject. Only Islam is taught in educational institutions and teaching of other religions is not offered in schools.
* The portrayal of the minorities in the media is problematic, and history of minorities is negatively portrayed. The textbooks of Pakistan continue to maintain hate material and discrimination against minorities and their religions, which is verified by several studies[[23]](#footnote-23) carried out by different organizations and educationists. Besides, minority students are bound to study either Islamiyat or Ethics that oblige them to learn the teaching of eight religions rather than one of their own conviction like Muslim students. The government has not introduced religious education for minority students, giving them an opportunity in educational institutions to study about a particular religion, they follow.

** Circumstances in which religious communities are prevented from administering their own affairs without State interference.**

** Gender-based discrimination: the multiple and intersecting forms of discrimination faced by minority women and girls who are members of minority religions or belief-based communities.**

* Christian marriage and divorce laws carry discrimination on the basis of gender, and are not in harmony with human rights standards. The Hindu and Sikh marriage laws are passed but rules and regulations for their proper implementation are yet to be framed, while family laws for Parsis, Bahai and Kalash community are never introduced.

** Examples of laws (constitutional and other legal provisions) and policies at the national and local levels, or public statements by political and religious leadership that impose a uniform understanding of national identity around one dominant religion.**

** Examples of family and personal laws, particularly those related to marriage, divorce, inheritance and alimony that impose beliefs traditions of the predominant religion on religion or belief minorities.**

* Legally, inter-religious marriages are permitted, and it is not required for one spouse to convert. The marriage of minority female with Muslim male is socially accepted, but not vice-versa. For minority male to marry off a Muslim female, conversion to Islam is the only option. Otherwise, the couple have to live in hiding to avoid any untoward incident.
* Divorce is permitted, however unequal divorce rights in family laws for Christians make conversion the only means to escape marriage. Conversion to Islam make the marriage of Christian couple dissolved.

**The effects of discrimination**

** Displacement and forced migration of religious or belief communities owing to discrimination, exclusion or land rights violations.**

** Instances of communal violence against religious minorities, and incitement to such violence, and the adequacy of state responses.**

** Disaggregated data showing the impact of instances of conflict and communal violence on religious communities and minorities.**

** Examples of religious or belief communities at risk of statelessness.**

* The minorities face significant problems with hate speech, false rumours and stereotypes that sometimes leads to violent attacks on minorities settlements and worship places. The members of minority community face social hostility on pretext of blasphemy allegation mostly. In case of a blasphemy allegation against minority members, provocations from the mosques are made, instigating Muslims to attack Christians or Hindus settlements or their places of worship, for teaching them a lesson for act of insulting injunctions of a majority religion.
* There are several instances of communal or mob violence against religious minorities where worship places are desecrated, minority settled are set to fire, minority persons are burnt alive, and minority belongings are looted. The police administration fails to prevent such violent attacks, and let the mob implement their plans. The arrests are made by the policy, but mostly they are released on bail or acquitted by the court, allowing perpetrators of violence to enjoy impunity.
* A study “Shattered Souls” confirms that social hostility is the reason behind migration of religious minorities particularly Sikhs from KP to Punjab. Whereas, there are reports that verify minority families’ migration (particularly Hindus, Christians and Ahmedis) to other countries to lead a safe and secure lives, free of social hostility.
* The government has not taken stringent efforts to investigate and prosecute perpetrators that commit crimes against minorities. The government has failed to enact and enforce law to prevent discrimination and mob attacks against minorities, despite Pakistan ratified human rights treaties and voted for several declarations that carry provision of adopting measures against religion based discrimination.
* As per the reports of United States Commission on International Religious Freedom (USCIR) reveals that minorities in general and religious minorities particularly are being neglected and ignored by the policy makers. The Pakistan was included in the category of ‘Countries of Particular Concerns’ for the year 2018 and 2019 for several violations of religious freedom.
* It has been observed in several case studies that the intolerance towards religious minorities’ groups is increased in the recent past. Such a behavior of intolerance created an environment that gradually excluding them from the social mainstream. Furthermore, there are laws and policies based on religious preference that undermine the principle and objectives of equal citizenship. Thus, in the light of international standards of human rights, domestic legislative frameworks must reflect the compliance of international commitments.
* Such situation created a disharmony among the society and disturbed the social fabric. It is appreciable that the successive governments, in different eras, have introduced laws and policies, and also established additional arrangements for protecting the rights of minorities. It is also applaudable that the committees being constituted by the governments ensured the representation of religious minorities. Yet, the major concern in this regard is that the representation is not converted into effective and meaningful participation. The representation of religious minorities in such type of committees that are mandated to draft laws and policies regarding the minorities’ affairs, have no any authority and powers to influence the decisions.
* To ensure representation in different committees, and to have control over the outcome of the decision making are two different aspects that need to be catered parallel. The AWAM believes that existing mechanisms for ensuring minorities' presence in the decision-making process is not sufficient for the implementation of the right to the effective participation of minorities. Hence, for making the participation effective and factual, more energies and arrangements from the decision makers are required. In addition to this, the authorities must create such arrangement that can ensure the effective involvement of minorities in the decision-making processes, specifically, that are directly related to them and have an impact on their identity. It is also equally important to consider their participation in drafting, interpretation, implementation, and evaluation of laws and policies affecting them and their identity.
1. This response to call for submission on “Eliminating intolerance and discrimination based on religion or belief, and the achievement of SDG 16”is prepared by Suneel Malik and Naseem Anthony in May 2020. [↑](#footnote-ref-1)
2. Constitution of Pakistan, **Article 1(1)**: Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan. [↑](#footnote-ref-2)
3. Constitution of Pakistan, **Article 2**: Islam shall be the State religion of Pakistan. [↑](#footnote-ref-3)
4. Constitution of Pakistan, **Article 41 (2):** A person shall not be qualified for election as President unless he is a Muslim of not less than forty-five years of age. [↑](#footnote-ref-4)
5. Constitution of Pakistan, **Article 91 (3):** After the election of the Speaker and the Deputy Speaker, the National Assembly shall, …, proceed to elect without debate one of its Muslim members to be the Prime Minister. [↑](#footnote-ref-5)
6. Website of Council of Islamic Ideology <http://www.cii.gov.pk/> [↑](#footnote-ref-6)
7. <http://www.pakistani.org/pakistan/constitution/schedules/schedule3.html> [↑](#footnote-ref-7)
8. Pakistan Penal Code Section 498 B: Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of either description for a term, which may extend to seven years or for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees. [↑](#footnote-ref-8)
9. <https://sys.lhc.gov.pk/appjudgments/2019LHC4414.pdf> [↑](#footnote-ref-9)
10. Aoun Sahi, The News International, 16 March 2011. [↑](#footnote-ref-10)
11. A study by the University of Birmingham (Accessible at: https://www.birmingham.ac.uk/Documents/college -

artslaw/ptr/ciforb/Forced-Conversions-andForced-Marriages-in-Sindh.pdf). [↑](#footnote-ref-11)
12. Life on the Margins: A study on the minority women in Pakistan, Jennifer Jag Jivan, Peter Jacob, National Justice and Peace Commission 2012 [↑](#footnote-ref-12)
13. *Ibid*. Forced Conversions and Forced Marriages In Pakistan, Legal briefing on behalf of the Bar Human Rights Committee of England and Wales, Zimran Samuel, March 2013. [↑](#footnote-ref-13)
14. 3% quota in Khyber Pakhtunkhwa, while 5% quota in Punjab, Balochistan, Sindh and Federal govt. service. [↑](#footnote-ref-14)
15. <http://csjpak.org/csj/pdf/Study-implementation-of-Job-Quota-AA.pdf> [↑](#footnote-ref-15)
16. <http://www.supremecourt.gov.pk/web/user_files/File/smc_1_2014.pdf> [↑](#footnote-ref-16)
17. Constitution of Pakistan, Article 25 (1) All citizens are equal before law and are entitled to equal protection of law. [↑](#footnote-ref-17)
18. Constitution of Pakistan, Article 22 (1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own. (2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation. [↑](#footnote-ref-18)
19. Constitution of Pakistan, Article 26(1): In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth. [↑](#footnote-ref-19)
20. Constitution of Pakistan, Article 27 (1): No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth. [↑](#footnote-ref-20)
21. **Declaration for Muslims:** I hereby solemnly declare that (ii) I do not recognize any person who claims to be a prophet in any sense of the word or of any description whatsoever after Muhammad (PBUH) or recognize such a claimant as prophet or a religious reformer as a Muslim. (iii) I consider Mirza Ghulam Ahmed Quadian to be an imposter nabi and also consider his followers whether belonging to the Lahori or Quadiani group to be non-Muslims. [↑](#footnote-ref-21)
22. <http://www.dawahislamia.com/resources/Justice%20Shaukat%20on%20Khatm-e-Nabuwwat%20Episode.pdf> [↑](#footnote-ref-22)
23. “A Missed Opportunity”, “Connecting the Dots”, “Teaching Intolerance in Pakistan-Religious Bias in Public School Textbooks” and “Religious Inclusion: A pathway to educational reforms” [↑](#footnote-ref-23)