



Submission to the All Party Parliamentary Group for International Freedom of Religion or Belief

*'The Plight of Minority Religious or Belief Groups in Pakistan and as Refugees: Addressing
Current UK and UNHCR Policy'*

November 2015

Amnesty International UK is a national section of a global movement of over three million supporters, members and activists. We represent more than 518,000 members, supporters, activists, and active groups across the United Kingdom. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

For further information contact:

Freshta Sharif

Advocacy Team - AIUK

0207 033 1557

freshta.sharif@amnesty.org.uk

1) What circumstances minority religious or belief groups living in Pakistan currently face; both vis-à-vis State and non-State actors

In recent years Amnesty International has published extensive research on the situation facing religious minorities in present day Pakistan. In brief, Amnesty International is concerned that religious minorities continue to face discrimination and persecution, especially due to the blasphemy laws. They also face a serious increase in sectarian violence, both indiscriminate and on a targeted basis, from militant groups. Some of these groups are able to conduct their activities with complete impunity, as the Pakistani state security agencies have consistently turned a blind eye and failed to conduct proper, effective investigations and prosecutions.

In our most recent annual report on global human rights conditions we noted that

Religious minorities continued to face laws and practices that resulted in their discrimination and persecution. Dozens of ethnic Hazaras were killed in attacks in Quetta and other parts of Balochistan; the armed group Lashkar-e-Jhangvi claimed responsibility for many of these, saying they were because the Hazaras were Shi'a Muslims. Members of the Sikh religious community staged several protests throughout the year against killings, abductions and attacks on their places of worship in different parts of the country. They complained that the authorities consistently failed to provide adequate protection from such attacks or bring those responsible to justice. The blasphemy laws remained in force, in violation of the rights to freedom of thought, conscience and religion and freedom of opinion and expression. Abuse connected with the blasphemy laws occurred regularly during the year as demonstrated in several high-profile cases.

A mob burned down the homes of a small Ahmadiyya community in Punjab province on the evening of 27 July, after a resident was accused of blasphemy - two children and their grandmother died of smoke inhalation and several others were seriously injured. On 16 October the appeal bench of the Lahore High Court rejected an application by a Christian woman, Asia Bibi, to have her 2010 death sentence for blasphemy overturned. In March, a Christian road sweeper, Savan Masih, was sentenced to death for blasphemy after a friend accused him of making blasphemous remarks during an argument. The accusations provoked a two-day riot in his neighbourhood in Lahore, known as Joseph Colony, when a 3,000-strong mob burned around 200 homes of Christians. Police were warned of the impending attack but failed to take adequate measures to protect the community.

More detailed reporting and discussion of current conditions for religious minorities in Pakistan can be found here:

- [Pakistan: Attack on Ismaili Shi'a Muslims in Karachi is product of "climate of impunity"](#)
- [Pakistan: Amnesty Condemns Attack On Shi'a Mosque In Peshawar](#)
- [Pakistan: Blasphemy sentence against private TV channel will have chilling effect on media freedom](#)
- [Pakistan: Woman Sentenced To Death For Blasphemy](#)
- [Pakistan: Ahmadiyya Community Attacked, Three Killed](#)

2) What circumstances minority religious or belief groups having left Pakistan as asylum seekers currently face

Other organisations and individuals are perhaps better placed than Amnesty International to comment on the daily lived experience of people from minority religious or belief groups in Pakistan seeking asylum in the UK. However we would raise one issue of concern regarding the procedures such individuals have been put through.

For many years, the UK operated a form of 'accelerated procedure' for determining asylum claims that are considered by the Home Office to be capable of being resolved quickly. This procedure was known as the 'Detained Fast Track' system. Individuals in the DFT were detained during the processing of their asylum claim and put through a greatly speeded up determination and appeal procedure. The effect of the DFT system was to produce a refusal rate at first instance of around 99%. This system was found in a series of judgments of the High Court and Court of Appeal to be operating in a fundamentally unfair and therefore unlawful manner¹ and was suspended by the Minister of Immigration in a statement to the House on 2nd July 2015.²

In the years prior to its suspension, individuals claiming asylum from Pakistan were by far the single largest nationality group put through the DFT system, and were put through in quantities disproportionate to their overall asylum-seeking numbers.³ They are therefore likely to have been disproportionately affected by the unfairness found to be inherent in the DFT system as it had been operating prior to its suspension. It is not possible to discern from Home Office statistics the numbers of people from Pakistan put through the DFT system whose claims involved issues relating to religious minority status, however there is no reason to think that they would have been spared this process.

The DFT remains suspended at present, while the Home Office pursues its attempt to appeal the cases to the Supreme Court. However, the Minister for Immigration has stated that the Home Office intend to reintroduce a reformed version of the DFT at an unspecified future date. Amnesty International is seriously concerned at this prospect and believes that the DFT should be permanently halted. It will be imperative that any reintroduction of a reformed DFT system is closely monitored, both for religious minority claimants from Pakistan and all other asylum claimants.

3) What the current UK and UNHCR policy regarding each minority Pakistani religious or belief community is, whether changes to current policy are required, how these policies and Upper Tier Tribunal Decisions are related and how any changes should be done.

The UK's refugee procedures are based on the principle of individual determination. This means that each person who lodges an asylum claim must have the individual facts of their case considered and a reasoned decision must be reached as to whether or not they demonstrate an entitlement to international protection under the UN Refugee Convention.

¹ See e.g. *Lord Chancellor v Detention Action*, [2015] EWCA Civ 840; *R(Detention Action) v SSHD* [2014] EWCA Civ 1634

² Rt Hon. James Brokenshire MP, House of Commons: Written Statement (HCWS83), 2nd July 2015, <http://www.parliament.uk/documents/commons-vote-office/July%202015/2%20July/6-Home-Asylum.pdf>

³ Immigration Statistics, Q2 – April to June 2015, <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2015/asylum#asylum-appeals>

In order to bring a level of consistency to this process, both the Home Office and the Upper Tribunal of the Immigration and Asylum Chamber develop forms of guidance for asylum decision makers. The Home Office publish 'Country Information and Guidance' reports (CIGs) which aim to set out summaries of relevant case law and country evidence and offer guidance to UK Visas and Immigration caseworkers on how these should generally be interpreted and applied in individual cases. They can be found at <https://www.gov.uk/government/publications/pakistan-country-information-and-guidance>. CIGs are, from time to time, revised to take into account new country evidence and developments in case law. In relation to religious minorities in Pakistan, the Home Office CIGs that are currently operative were published in February 2015 and relate to:

- Christians and Christian Converts
- Ahmadis
- Shi'a Muslims

In addition, more generic CIGs on Pakistan may also be relevant in cases involving religious minorities.⁴

The Upper Tribunal of the Immigration and Asylum Chamber issues 'Country Guidance' determinations. As Mr Justice Blake, former president of the Upper Tribunal, has explained,

Such guidance will normally involve an intense examination of country of origin information including expert reports and the any advice given by UNHCR. Guidance is given on issues that are considered to be of general assistance to judges of the FtT and the parties because the issues regularly arise. The case is submitted to the Reporting Committee by the judges deciding the case in conjunction with the Country Guidance Convenor.⁵

Where an issue arising in an asylum case has been previously considered in a CG case, the First Tier Tribunal judges must refer to it in deciding the subsequent appeal. Where there is no material change in the evidence that was considered in the CG appeal and the evidence is the same or similar, Tribunal judges should regard the guidance as authoritative and apply it. Only if there is significant new evidence that indicates that the CG case is effectively out of date should a Tribunal judge depart from its findings regarding country conditions. As such, Country Guidance cases are the point at which authoritative asylum guidance on a country is made in the UK. CIGs remain crucially important, however, as they most directly affect initial asylum decision making by UKVI caseworkers.

While the UN Refugee Convention itself notes that 'the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees', the UNHCR does not have a direct role in producing UK policy on entitlement to asylum or in decision making on individual cases.⁶ UNHCR produces its own guidance documents, known as 'Eligibility Criteria', the most recent of which relating to the issue of religious

⁴ See e.g. UKVI, Country Information and Guidance, Pakistan: Fear of the Taliban and Other Militant Groups, July 2014; Prison Conditions, July 2; Women, July 2014, <https://www.gov.uk/government/publications/pakistan-country-information-and-guidance>

⁵ Sir Nicholas Blake, Luxembourg, Strasbourg and the National Court: the Emergence of a Country Guidance System for Refugee and Human Rights Protection, International Journal of Refugee Law Vol. 25 No. 2 pp. 349–372

⁶ Although the UNHCR has been involved in a long term programme of monitoring, training and developing decision making capacity within the Home Office.

minorities in Pakistan was published in 2012.⁷ As was noted above by Mr Justice Blake, UNHCR's views on eligibility are accorded significant weight in Country Guidance determinations, and indeed in any other asylum appeals. However, they are essentially dealt with as one (significant) source of evidence amongst many and are not necessarily treated as determinative.⁸

Amnesty International is concerned that the current Home Office CIGs on minority religious groups in Pakistan contain a number of serious flaws. These flaws are important as, while a CG case is the source of legal authority on country conditions in asylum cases, there may be issues on which there is no current CG case applicable. Moreover, in the context of an under-resourced and target-driven department, reliance by UKVI decision makers on CIG reports can lead to a lack of proper consideration of longer and more complex CG cases.

i) CIG on Shi'a Muslims

Amnesty International is concerned that the 'Policy Summary' section, which is intended to give a succinct series of bullet points to summarise the already summary guidance in the 'Consideration of Issues' section, makes statements which are sweeping in nature, not representative of the summary guidance and which are not supported by either the background evidence contained in the CIG or in the wider range of independent sources that report on conditions in Pakistan. In particular, the statement 'those in fear of ill-treatment by extremists will in general be able to seek effective protection from the authorities, or internally relocate within Pakistan' contradicts the guidance provided above it. Moreover, given the situation discussed in our answer to Question 1 above, Amnesty International is concerned that the UKVI are placing excessive faith in both the willingness and ability of the Pakistani security forces to provide a sufficiency of protection against sectarian violence.

More concerningly still, the summary guidance states that 'where a claim falls to be refused, it is likely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002. Such a certification has the effect of removing from the asylum seeker the right of in-country appeal, meaning that to appeal a refusal a person must return to the location of their potential persecution. Amnesty International is opposed to the use of Section 94 powers in asylum cases in general, as they are a dilution of the principle that each asylum application must be considered in a fair and equal process. That said, it is particularly inappropriate to designate Pakistani Shi'a cases as likely to be 'clearly unfounded', given the level and nature of the sectarian and targeted violence that they face and the faulty nature of the guidance on internal relocation and the sufficiency of state protection.

Amnesty International also regrets that the guidance on Shi'a Muslims in Pakistan does not include any commentary on the intersectional risks faced by Pakistan's overwhelmingly Shi'a Hazara ethnic minority, particularly those resident in Balochistan province. Such people face significant risks from both state and non-state actors.

ii) CIG on Ahmadis

⁷ UNHCR, Eligibility Guidelines For Assessing The International Protection Needs Of Members Of Religious Minorities From Pakistan, 14th May 2012, <http://www.refworld.org/pdfid/4fb0ec662.pdf>

⁸ See e.g. para 155 of the recent country guidance determination on Iraq, AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)

While it generally represents a faithful transposition of the guidance provided by the Upper Tribunal in *MN & Ors (Ahmadis – Country conditions – risk) Pakistan CG [2012] UKUT 00389(IAC)*, Amnesty International is concerned by the emphasis it places on it being ‘of particular importance’ to an Ahmadi’s religious identity for them to manifest their faith openly in order for them to be entitled to international protection. This may lead to decisions that conflict with Supreme Court jurisprudence.

The leading cases of *HJ Iran*, and particularly *RT Zimbabwe* found that a person of minority faith, political opinion or sexuality must be able to ‘live freely and openly... without fearing that they may suffer harm of the requisite intensity or duration [to amount to persecution]’ and that where a home state fails to protect this right ‘the receiving country should’. In *RT Zimbabwe*, a case which revolved around individuals who had no committed political allegiance but who were facing circumstances where having no political allegiance would be construed as opposition to the Zimbabwean regime, the Supreme Court further clarified that ‘nothing that was said ... by us in *HJ (Iran)* supports the idea that it is relevant to determine how important the right is to the individual.’

This being the case, in a context where the criminal law disproportionately criminalises everyday human conversation (by preventing Ahmadis from, *inter alia*, self-identifying as Muslims, referring to their places of worship as Mosques or their religious leaders as Imams) the insistence on it being ‘of particular importance’ to the claimant that they be able to manifest their faith openly by doing these things institutes an unjustifiable additional test for claimants to pass before being recognised as entitled to international protection.

iii) CIG on Christians and Christian Converts

Once again, the UKVI places too great a reliance on the capacity and willingness of the Pakistani authorities to provide a sufficiency of protection to those targeted by violent sectarian groups. This is particularly pronounced in the ‘Policy Summary’ section which makes unwarranted claims that ‘in general, the government is willing and able to provide protection against such attacks and internal relocation is a viable option.’ Amnesty International is, also once again, concerned about guidance which states that where claims based on Christianity fall to be refused they are likely to be certifiable as ‘clearly unfounded’. Notwithstanding our wider concerns about Section 94 powers, given the strength and reach of sectarian groups and the levels of violence that they are currently perpetrating in Pakistan, such blanket guidance is inappropriate.

Recommendations

- **The suspension of the Detained Fast Track asylum system should be made permanent.**
- **Any reintroduction of a DFT process should be closely monitored by Parliamentarians.**
- **All asylum seekers should have their asylum claims fully and fairly determined, with full appeal rights. Certification of asylum claims as ‘clearly unfounded’ should cease.**
- **Guidance given to UKVI asylum decision makers should accurately reflect both the relevant case-law and wider country information. Excessive reliance on state protection and internal-relocation alternatives should be avoided.**
- **‘Policy summaries’ should not be used.**