

TREATY BODY MONITOR

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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Key facts	1
Opening Remarks by the Delegation	1
Overview of Key Issues	2
Constitutional definition of minorities	2
Caste-based discrimination and bonded labour	3
The Federally Administered Tribal Area (FATA) and the North-West Frontier Province (NWFP)	5
The protection and promotion of minority languages	6
Other issues	6
Conclusions and next steps	7

Key facts¹

Ratification	Reservations	Declaration under Article 14 ²	Other core treaties ratified
1966	None	No	ICESCR, CEDAW, CRC

Opening Remarks by the Delegation

The relatively low-level and small delegation from Pakistan appeared to be constituted, primarily, with diplomats from the Permanent Mission to Geneva and from the Ministry of Foreign Affairs. The delegation was led by Mr Zamir Akram, Permanent Representative of Pakistan to Geneva. As a result, the overwhelming majority of questions were fielded by Mr Akram. Mr Akram was accompanied by Ms Tehmina Janjua, Mr Aftab Khoker, Mr Marghoob Salem Butt, Mr Syed Ali Asad Gillani and Mr Ahmas Ismail..

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² Article 14.1 provides that 'A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention'

In his opening remarks, Mr Akram outlined the social make-up of Pakistan before addressing, in some detail, the legal framework in Pakistan prohibiting any form of discrimination along racial lines. Mr Akram broadly described the establishment of the Commission for Minority Rights and described it, together with the Office of the Federal Ombudsman and the Ministries for Human Rights and Minority Rights, as the bodies responsible for eliminating racial discrimination in Pakistan. As Pakistan defines minorities by virtue of their religion rather than their ethnicity, much of the affirmative action policies – notably including many minimal quotas in areas of governance – were aimed at religious minorities. Further, Mr Akram addressed progress in respect of establishing a National Human Rights Institution (NHRI), explaining to the Committee that a bill had recently been tabled in the National Assembly and that he anticipated a NHRI would be established by July 2009.

Overview of Key Issues

The Pakistani delegation appeared extremely co-operative and was indeed lauded for the spirit with which it engaged with the Committee. Though the fact that the late submission of written replies to the Committee's list of issues (the night before the review) had drawn criticism, the Ambassador responded to all questions during the review and provided thorough, clear answers. Additionally, the review sought to address the historical root to a number of the problems Pakistan faces, placing the discussion of racial discrimination in the context of broader regional issues. The Committee appeared to unanimously support the Committee's country rapporteur, Mr Peter, in his praise of the delegation's willingness to engage in a constructive dialogue.

Constitutional definition of minorities

In its concluding observations, the Committee stated:

'The Committee reiterates its recommendation that the State party broaden its understanding and constitutional definition regarding minorities, so as to take into account all the grounds of discrimination included in Article 1(1) of the Convention'.³

A recurring point of discussion early in the review was the Pakistani characterisation of 'minority'. In his opening remarks, Ambassador Akram explained that the racial milieu of Pakistani society was highly mixed and did not break readily into discernible segments. He used this reason to justify the legal protections afforded to religious minorities. The fact that religious minorities do not strictly fall within the purview of the Committee compelled Committee members Diaconu and Lahiri to query the policy behind drawing distinctions along religious lines. Mr Lahiri noted that the Pakistani definition of minorities along religious lines lent to an understatement of the problem as, in this characterisation, only 3% of the population would be considered a minority while ethnic minorities received no specific legislative protection. In response, Mr Akram pointed to the complexities of characterising Pakistani citizens on the basis of ethnicity given the 'complex social fabric' of the country. He explained that, for example, while a Balochi may be a minority in the context of the country as a whole, a Balochi would be a majority in the province of Balochistan. Mr Akram further underscored the fact that discrimination of any citizen of Pakistan on the basis of race, ethnicity or social origin was expressly outlawed in the Constitution. In this regard, it would appear that the Committee did not fully accept that this general provision sufficiently safeguarded the rights of ethnic minorities, as they state in their concluding observations:

'Notwithstanding the existing legislation aimed at ensuring the principle of non-discrimination in the State party, the Committee reiterates its concern that no comprehensive anti-discrimination law has been adopted.

³ CERD/C/PAK/20, available at <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.PAK.CO.20.doc>, at para.10.

It also expresses concern about the lack of information on concrete measures taken to implement the existing anti-discrimination laws and special measures, in spite of reports of persisting de facto discrimination against members of certain minority groups.’⁴

In a separate recommendation, the Committee stated:

‘The Committee urges the State party to expedite the measures aimed at introducing a fair distribution of national resources among different provinces, and thereby ethnic groups.’

Mr Akram acknowledged that there was a sense amongst smaller provinces that they had been marginalised in the face of the majority Punjab population, as the gap in development between the Punjab and the other provinces was ‘obvious’. Nonetheless, Mr Akram sought to ensure the Committee that efforts were under way to ‘do away with the current listing in the Constitution’, safeguard provincial autonomy and ensure a more equitable resource distribution for the more disadvantaged provinces of Sindh, Balochistan and the North Western Frontier Province (NWFP). In this regard, Mr Akram drew from the State report to address the role played by the Ministry for Minorities and the Commission for Minority Rights, though did not detail the specific schemes employed. The credibility of the Commission for Minority Rights was however questioned by Committee Member Mr Peter who expressed his concerns with its true independence, given it was currently chaired by the Government Minister for Minority Rights.

Country rapporteur Mr Peter drew particular attention to the situation affecting the Sarikhi and the Balochi people in Pakistan, stating that those groups had been marginalised despite their standing as major ethnic minorities. Mr Peter went on to say that the Sarikhi lacked sufficient representation in Parliament and had been denied their own province despite their status as the nation’s third largest ethnic group. Committee member Mr Lahiri described a particularly dire situation in Balochistan, reporting on instances of summary executions, aerial bombardment and arbitrary detention. Addressing each case separately, Mr Akram explained that the Sarikhi people were asking for a separate province to be carved out of the existing Punjab state and, while he refrained to address the politics of the cause, maintained that there were legal avenues available for them to pursue such a result through the National Assembly. Mr Akram stressed that should all legal processes be followed, the political structure of Pakistan allowed for dialogue on that matter. In respect of Balochistan, the Government established a Senate Committee in August 2008 to address the socio-economic problems in Balochistan. The policy emanating from this Committee has provided debt relief, facilitated water reservoirs and dam projects to address regional drought and initiated large infrastructure projects to create employment and invigorate the economy. Mr Akram added that much of the problem in Balochistan stemmed from the large population of Pashtun refugees ‘upsetting the ethnic balance’ and, through support of foreign elements, attempting secession.

Caste-based discrimination and bonded labour

On this point, the Committee made the following recommendation:

‘The Committee refers the State party to its General Recommendation 29 (2002), on descent-based discrimination, and recommends that the State party adopt legislation aimed at the prohibition of caste-based discrimination and take effective and immediate measures to ensure its effective implementation. The State Party is also invited to provide, in its next periodic report, statistical data on persons belonging to scheduled castes in the territory of the State party, including their enjoyment of all rights protected under Article 5 of the Convention.’⁵

⁴ Ibid. at para 11.

⁵ Ibid. at para. 12.

Each NGO report raised significant concerns about the racial discrimination suffered by members of scheduled castes. It was notable therefore that Mr Akram did not address the issue in his opening address. Committee member Mr Peter summarized these issues in his first remarks to the delegation by referring to the fact that those suffering from descent-based discrimination, particularly Dalits, often lacked access to land and education and were subjected to bonded labour. Mr Peter referred the delegation to the Committee's General Recommendation made in 2002 to urge positive measures to be taken to address it. These concerns were further voiced by Committee members Mr Diaconu and Mr Prosper who both questioned the delegation on measures they had implemented while Mr De Gouttes criticised the Government for failing to take sufficient action to address housing segregation and impediments to realising the economic, social and cultural rights of descent-based communities.

In response, Mr Akram explained that Islam forbids any distinction based on caste, creed or colour and, accordingly, no law in Pakistan drew a distinction along the lines of caste. Though Mr Akram stated that he accepted and did not deny the challenges faced by scheduled-caste communities, including bonded labour, he blamed Pakistan's colonial legacy for the inception of this kind of discrimination within the Hindu minority. Mr Akram urged the Committee to recognise the challenges faced by scheduled-caste communities were no different to those faced by all of Pakistan's poor irrespective of their caste and religion and, hence, the solution would be found in a poverty alleviation and affirmative action policy pursued by the Pakistani Government. Committee member Mr De Gouttes rejected this characterisation and stressed that discrimination stemming from social stratification could not merely be equated to poverty as it went further to concern fundamental freedoms including access to places, property and education. Mr De Gouttes argued that lower castes tended to be worse off as a result of racial discrimination and hence, the problem could not be simply grouped along with a poverty alleviation strategy – it required a separate mechanism of redress. Mr Akram did not elaborate as to whether any specific strategy would be adopted.

Additionally, the Committee noted the incidence of bonded labour amongst scheduled-caste groups and made the following recommendation:

*'The Committee urges the State to intensify its efforts to implement the laws and programs adopted to put an end to bonded labour and discrimination against marginalized groups such as the scheduled castes. It further encourages the state to carry out the national survey on this practice without delay and to continue cooperation with the International Labour Organisation in combating this phenomenon.'*⁶

While Ambassador Akram remained perceptibly silent on the matter during his opening remarks, Committee members Mr Peter and Mr Prosper drew attention to the incidence of bonded labour, particularly affecting scheduled-caste communities, questioning the delegation on measures to address it. Mr Akram explained that in 1992 the State had outlawed the practice of bonded labour in all its forms and that efforts were being made to support scheduled castes. In this regard, he drew attention to a relaxed working age restriction to facilitate socio-economic development and 'minimal allocations in governance', though he did not elaborate on what the latter entailed. Mr Akram further stated that the Government was encouraging civil society to highlight the plight of any who had suffered racial discrimination in this regard and to seek redress through official channels – a policy welcomed by Committee member Mr Sicilianos.

Mr Akram outlined the function of the Tardib Rural Support Program, an example of a Government policy to alleviate the illegal practice of bonded labour and make a difference to the lives of scheduled caste communities. The Ambassador went on to explain that the Government had adopted a national action plan to deal with the issue including awareness raising efforts, organising vocational programs and creating self-employment opportunities.

⁶ Ibid. at para. 12.

The Federally Administered Tribal Area (FATA) and the North-West Frontier Province (NWFP)

The Committee expressed strong concern with the governance situation in FATA and the NWFP, notably drawing on the recently concluded agreement between the Government of Pakistan and the Taliban in the SWAT valley to question the Government's real authority in the region. In the concluding observations, the Committee stated:

*'The Committee urges the State party to ensure that its national laws, including in particular legislation relevant to the implementation of the Convention and other human rights instruments ratified by the State party, are applicable in its entire territory, including the FATA and NWFP. It also reiterates its request that the State party provide more specific information regarding the socio-economic situation in FATA and NWFP, as well as data on the ethnic and linguistic groups living therein.'*⁷

In his opening remarks, Ambassador Akram outlined the history of the FATA, stating that it was a legacy of British Colonialism. He explained that, following the 'great game wars' of Central Asia, the British came to an agreement with the Pashtun tribes in the region whereby the British would recognise the autonomy of the tribes to pursue their traditional code of conduct in exchange for assurances that the tribes would be collectively responsible for maintaining public order in the region. Mr Akram expressed that the Government recognised the central justice system must apply to these areas but reconciling these laws with existing, often fragmented, customary law practices was proving a complex task. He drew attention to the fact that adult franchise had been introduced into the area and that FATA was represented by 12 members in the National Assembly and 8 members in the Senate to evidence his claim that the Government was making gradual progress in this area.

Committee member Mr Peter highlighted the fact that FATA and NWFP were substantially inhabited by Pashtun tribes who suffered discrimination in all spheres. In this regard, he drew the delegation's attention to the fact that constitutional guarantees did not extend to people of these areas, the President of the Republic retained authority to rule directly over the regions, the judiciary have limited jurisdiction in the area and both FATA and the NWFP had been grossly neglected in terms of development and, as supported by socio-economic indicators, were far behind other parts of Pakistan. Mr Akram conceded the significant development gap but stressed there were external obstacles hindering progress. In this regard, Mr Akram addressed its locality at the porous frontier with Afghanistan amidst a free flow of arms, drugs and militant extremists. Nonetheless, Mr Akram assured the Committee that developing these regions remained a priority to the central Government, describing a three-pronged development approach adopted by the Government consisting of human development projects, the fostering of economic partnerships between the public and private sectors of FATA and NWFP and rural support programs. Mr Akram explained that a FATA secretariat had been established under the auspices of the Governor of the NWFP which received funding from the Pakistani Government as well as the United States Government to support health and education initiatives.

Committee member Mr Prosper noted the numerous references made by Ambassador Akram to the colonial history of the region and enquired simply whether the Government accepted there was a problem of discrimination in Pakistani society. Mr Akram honestly replied that Pakistan, like any other society, suffered from discrimination, underscoring the Government's opposition to it in all its forms. Committee member Mr Diaconu asked whether ICERD actually applied to these areas given the significant legal autonomy they were afforded. Though this question was not explicitly addressed by Mr Akram, it may be surmised from earlier remarks that the area remained, at present, under the dictates of tribal law and hence outside the jurisdiction of the central Government. It would appear that the future applicability of ICERD to the region would turn on

⁷ Ibid. at para. 9.

the success of the Government's attempts to systematise or codify tribal law and reconcile it with national laws.

The protection and promotion of minority languages

Though this issue was addressed in the broader context of preserving the cultural rights of minorities, it attracted significant discussion during the review, particularly in respect of minority groups interacting with State institutions. In this regard, the Committee observed:

*'The Committee recommends that the State party provide information on the law permitting Provincial Assemblies to authorize the use and promotion of languages other than Urdu and English, including examples of Provinces where linguistic minorities can use their language before State authorities and courts. The State party should also aim to preserve minorities' languages and culture by, inter alia, encouraging and promoting the use of mother tongues in the fields of education and in the media. It invites the State party to include detailed information in its next periodic report regarding the use of ethnic minority languages.'*⁸

Committee members Mr Peter and Mr Thornberry both drew from the submission by Minority Rights Group International stating that the majority of Pakistani school children are deprived of their cultural right to language stemming from the absence of a mechanism for teaching in linguistic minority languages and questioned the Government on the use of different languages before State authorities. In response, Mr Akram explained that, though Urdu is the national language, provincial governments may prescribe laws to preserve their own languages within their provinces. Mr Akram stressed that the Constitution was sensitive to linguistic minorities and that court procedures were amenable to these differences across the country. Mr Akram further stated that procedural rules permitted the use of languages other than Urdu and interpretation facilities during court proceedings. He affirmed that there was a proactive effort on the part of Government at the Federal and Provincial level to disseminate newspapers and radio and television programs in minority languages. In his closing remarks, Mr Peter expressed his satisfaction with the amenability of State institution's to minority languages but implored the Government seek to introduce such sensitivity into school curricula.

Other issues

In his opening remarks, Mr Akram explained that **Madrassas** across Pakistan play an important role in educating the poor, equipping them with business skills to support themselves. Committee members Mr Amir and Mr Lindgren Alves queried the difference between Madrassas and Islamic public schools, questioning the curriculum of these schools and whether the government supported them. In response, Mr Akram explained that a Madrassa literally translates to 'a place where teaching or learning is conducted' and that they were all privately owned by NGOs or religious trusts to impart the teachings of the Qu'ran to Muslims, likened to Christian Seminaries by the Ambassador. He explained that in order to receive Government support, Madrassas must register with the Government, which allows them to assess funding sources before approval. The State then tries to help these schools by providing them with computer labs, English lessons, maths and basic sciences. Mr Akram said there were thousands of Madrassas across Pakistan with extremely few used by extremists. On this point, Mr Akram stressed that the overwhelming majority were legitimate religious institutions and that those responsible for the September 11 attacks were not educated in Pakistani Madrassas.

Though not included in ICERD, much discussion turned on the recent submission of the **SWAT valley to Shariah courts and the blasphemy law**, and the impacts of both developments on religious minorities in Pakistan. In respect of the SWAT valley, Mr Akram explained that conferring legitimacy on the Sharia courts responded to a reality on the ground – the need to avoid more bloodshed at the hands of the Taliban. He stressed that the courts were in fact popularly demanded as they were more efficient than courts dealing with

⁸ Ibid. at para. 22.

the common law. Responding to concerns of Mr Diaconu and Mr De Gouttes that Sharia would be applied to non-Muslims, Mr Akram explained that the agreement in the SWAT valley merely provided an alternative avenue and that those seeking to pursue matters in the common law courts were free to do so. Mr Akram added that while the Sharia courts had appellate jurisdiction, the Supreme Court of Pakistan remained the ultimate appeals court in the country. In respect of the blasphemy law, Mr Akram stressed it protected all religions from defamation equally and explained that the Government believed such a measure was necessary for religious harmony. Nonetheless, he conceded the laws were hotly debated in Pakistani Parliament and used the fact that no one had ever been convicted under the law to support the argument that it had been implemented with a number of safety nets to prevent abuse.

On the question of governance, Mr Lahiri drew from the SAHDO NGO report to make the claim that roughly 50% of the territory of Pakistan was beyond the control of the central Government. Additionally, drawing from the same report, Mr Lahiri stated there had been instances of Government forces using **chemical weapons in Balochistan**. Mr Akram angrily dismissed this as a false depiction of reality on the ground. Mr Akram stated that this was the first instance where such serious allegations had been put forward and that, if there was a semblance of truth in the claim, the independent media of Pakistan would have brought it to the world stage.

Conclusions and next steps

At the end of the session, the Ambassador took the floor to make some final remarks. He admitted that there is discrimination and argued that ‘no State is free of discrimination’. However, he underscored that the Government is ‘totally opposed to these discriminations’. He explained that the State had a heavy agenda and that it was ‘hard to focus their attention on one issue or another’.

Regarding the issue of **defamation of religion**, he informed that Pakistan is the coordinator of the Organisation of the Islamic Conference (OIC). The Ambassador explained that defamation of religion has led to instances of violence against followers of certain religions. He indicated that ‘in countries close to here, people belonging to the Muslim religion have been targeted’. He added that there is a kind of perception that ‘all terrorists are Muslims and all Muslims are terrorists’ and this perception cannot be accepted.

The Ambassador also drew attention to **freedom of expression** and explained that draft resolutions on defamation of religion are not against freedom of expression but indicate a limit or a level ‘in which we have to recognize that some documents may lead to incitement to hatred.’

The country rapporteur, Mr Peter, welcomed Pakistan’s reestablishment of contact with the Committee. He highlighted that the Committee understands the determination and efforts taken in good faith by the new Government of Pakistan to address human rights and other issues including discrimination. He highlighted areas where the Committee expected that the State would act, including official recognition of minorities, development of the FATA and NWFP regions and equal access to resources and natural wealth, updated information on what is being taught in Madrassas, ratification of international and regional instruments, and the legislation of a 5% quota in all Government jobs for minorities.

He concluded by saying that this dialogue with Pakistan was very open and honest and he assured the delegation that comments were made in good faith with the aim of developing a dialogue with Pakistan.

The Committee recommended that Pakistan submit its twenty-first and twenty-second periodic reports for the 4 January 2012, taking into account the guidelines for the CERD-specific documents and that the delegation of Pakistan address all points raised in the present concluding observations.

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