

**Call for Evidence - 'The Plight of Minority Religious or Belief Groups in Pakistan and as Refugees: Addressing Current UK & UNHCR Policy' (Submission by Jean Lambert, Member of the European Parliament, 03/11/2015)**

I, Jean Lambert, currently chair the European Parliament's South Asia Delegation, and have done so since 2009. I have led three EP missions to Pakistan, in 2010, 2012 and most recently in February 2015.

**Introduction**

Pakistan counts among its religious minorities Hindus, Christians, Shia (including the Hazara), Ahmadiyya, Sikh, Parsi, Buddhist and secular/atheist. Reflecting UK Home Office CIG documents, this submission will therefore focus on Ahmadiyya, Shia and Christian minorities. In the last five years, the European Parliament (EP) has passed 11 resolutions specifically on Pakistan - every one of them mentions concerns around freedom of religion and belief in the country. Pakistan currently benefits under the EU's preferential trading scheme, GSP+, which requires signing up to 27 core international rights conventions. This includes the ICCPR<sup>i</sup> which specifically safeguards the freedom of religion, thought, belief and expression under Articles 18 and 19. The EU will be conducting a review of GSP+ by the end of this year and will be assessing whether the country has adequately implemented the core conventions and, if not, what progress is required.

**Relevant international and EU legal framework.**

The most relevant international legal instrument is obviously the 1951 Geneva Convention which defines a refugee as a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"

The EU Qualifications Directive<sup>ii</sup> is the most relevant EU instrument in the context of this enquiry. The Directive was updated in 2011<sup>iii</sup>, and I was the European Parliament's Rapporteur for the update. The UK opted out of the update, but is still bound by the original Directive of 2004. It takes the same definition as the 1951 Convention for 'refugee' and also covers 'persons eligible for subsidiary protection', who are defined as "a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country";

The UK does not use the term 'subsidiary protection'<sup>iv</sup> but uses 'humanitarian protection' and does apply some differences in rights between those granted refugee status and those granted humanitarian protection.

The Directive also covers actors of persecution or serious harm (article 6), which includes both state and non state actors and includes an article on the internal protection possibility (article 8). The principle of 'non-refoulement' also applies<sup>v</sup>.

The EU's agency, EASO (European Asylum Support Office) which was put in place to assist Member States in their implementation of the Common European Asylum System, has also begun to issue country-of-origin reports to provide common background information and analysis to assist in the determination of individual asylum claims. An assumption of refugee status for a group in general is not the norm under the 1951 Geneva Convention or EU law, except if 'temporary recognition in case of a mass influx' has been recognised.

It should be noted that Thailand and India are not signatories to the 1951 Geneva Convention or its Protocols.

### **Blasphemy laws**

The EP resolution adopted in March 2014 on Pakistan's regional role "Reiterates its deep concern that Pakistan's blasphemy laws – which can carry the death sentence and are often used to justify censorship, criminalisation, persecution and, in certain cases, the murder of members of political and religious minorities – are open to a misuse that affects people of all faiths in Pakistan; underlines that the refusal to reform or repeal the blasphemy laws creates an environment of persistent vulnerability for minority communities; calls on the Pakistani government to implement a moratorium on the use of these laws, as a first step towards revising or revoking them, and to investigate and prosecute, as appropriate, campaigns of intimidation, threats, and violence against Christians, Ahmadis, and other vulnerable groups;"<sup>vi</sup>

Muslims account for the largest number of those accused under these laws, many of which have more to do with settling personal scores than blasphemy. Although convictions under these laws carry the death penalty, Pakistan has yet to execute anyone charged of blasphemy. It is often the local actors who can prove more dangerous here by taking the law into their own hands, rather than a Government policy. The EASO Country of Origin report highlights the increased threat to religious minorities in such cases, as mob violence can be targeted at both the individual in question as well as the whole community.<sup>vii</sup>

We are aware of the personal risk to those in Pakistan who call for reform of the laws. We also note the recent Pakistan Supreme Court judgement of 27<sup>th</sup> October<sup>viii</sup> warning of the seriousness of false allegations, and the Government has prepared a draft bill along those lines<sup>ix</sup>.

### **Ahmadiyya**

Pakistan's Constitution and Penal Code prohibit the Ahmadiyya community from calling themselves Muslim. This extends to being unable to call their places of worship 'mosques', conduct public Islamic services, and being unable to recite from the Qu'ran. Doing any of these could result in imprisonment and a fine, or possible charges under the blasphemy laws. According to the EASO

Country of Origin report for Pakistan, the 'anti-Ahmadiyya laws' are used by both militants and citizens to harass and threaten Ahmadis, sometimes to settle personal scores.<sup>x</sup> The US State Department further finds that "the government [of Pakistan] did not take measures to prevent them", when referring to abuses under the blasphemy and 'anti-Ahmadiyya' laws.<sup>xi</sup>

As the Ahmadiyya community refuse to be classified as non-Muslim, they have no political representation under the affirmative regulations for religious minorities. In addition, according to the EU Election Observation Mission Final Report on the 2013 elections in Pakistan, Ahmadi's are registered on a separate electoral roll (unlike other minority groups) which in essence forces them to identify as non-Muslim if they want to vote. Hence, a number of Ahmadi representatives announced that they would not participate in the 2013 elections.<sup>xii</sup>

Regarding current UK guidelines<sup>xiii</sup>, I agree with points 2.2.3 and 2.2.5. However, I disagree with 2.2.7, 2.2.8 and 2.2.11 where the burden of proof is placed on the person to demonstrate their 'intention' or 'wish' to openly practice their faith due to difficulties associated with proving this.

It should be noted that there is a Judgement of the European Court of Justice concerning Ahmadiyya and the Qualification of Directive 2004; Joined Cases C-71/11 and C-99/11.<sup>xiv</sup>

### **Christians**

The EASO Country of Origin report highlights the vulnerability of the Christian community to societal violence<sup>xv</sup> as seen by a number of targeted killings and mob violence, the deadliest attack taking place two years ago in a suicide bomb attack on the All Saints Church in Peshawar. At the time, the European Parliament passed a resolution on persecution against Christians, in particular referencing Peshawar, where it said "the majority of Pakistani Christians lead a precarious existence, often fearful of allegations of blasphemy"<sup>xvi</sup> According to EASO, about 10,000 Christians have migrated to Bangkok to seek refugee status in recent years.<sup>xvii</sup> Unlike the Ahmadiyya community, Christians are politically represented in Pakistan under the affirmative regulations. Furthermore, the EASO Country of Origin report finds that Christian girls (who often work as domestic servants) are at risk of becoming victims of violence, forced conversion, forced marriage, sexual assault and kidnappings.<sup>xviii</sup>

### **Shia (including Hazara)**

According to a Human Rights Watch (HRW) report, the Shia community in Pakistan (which constitutes 20% of the Muslim population) has increasingly become the target of sectarian attacks in recent years, with 850 killings recorded between 2012-2013.<sup>xix</sup> The mostly Shia Hazara community has particularly faced the brunt of these attacks. The deadliest attack took place in early 2013 with bomb attacks in Quetta, killing about 180 Shia Muslims. HRW says this environment of fear has created economic hardship and limited access to education, prompting a number of Hazara to seek refuge in other countries.<sup>xx</sup> The European Parliament Resolution of April 2014 notes that "members of the Shia Hazara community in particular are now victims of killings and forced migration on a daily basis due to the upsurge in sectarian violence in Pakistan."<sup>xxi</sup>

### **Hindu, Parsi, Sikh, Buddhist, Atheist**

The EASO Country of Origin report references a Hindu member of Pakistan's National Assembly as saying that about 5000 Hindus are leaving Pakistan every year. It goes on to highlight some of the

more concerning developments, notably the increasing reports of kidnapping and forceful conversion to Islam of Hindu women and girls.<sup>xxii</sup>

## **Conclusions**

1. All asylum applicants are entitled to an individual examination of their case: late application should not prejudice this examination. The individual examination is a safeguard, so that claims cannot be simply dismissed. It is essential that there is consistent, professional support for all asylum seekers, free to those who have insufficient means so that a case is decided on its merits.
2. An effective appeals process is also essential.
3. The so-called 'culture of disbelief' in the UK asylum process has been well documented.
4. Any consideration of an asylum claim should not result in individual's being asked to mask their faith or belief in order to enable their return
5. The publication of the UK's advice is welcome as up-to-date information is important as the political and security situation of a country changes over time.

## Endnotes

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- <sup>i</sup> International Covenant on Civil and Political Rights  
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- <sup>ii</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML>
- <sup>iii</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>
- <sup>iv</sup> The UK has opted into the Qualification Directive (2004/83/EC) but does not (legally) use the term Subsidiary Protection. It is believed that the inclusion of Humanitarian Protection within the UK Immigration rules fully transposes the Subsidiary Protection provisions of the Qualification Directive into UK law.  
<http://www.asylumlawdatabase.eu/en/keywords/subsidiary-protection>
- <sup>v</sup> <http://www.asylumlawdatabase.eu/en/keywords/non-refoulement>
- <sup>vi</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0208&language=GA&ring=A7-2014-0117>
- <sup>vii</sup> [https://easo.europa.eu/wp-content/uploads/EASO\\_COI\\_Report\\_Pakistan-Country-Overview\\_final.pdf](https://easo.europa.eu/wp-content/uploads/EASO_COI_Report_Pakistan-Country-Overview_final.pdf)
- <sup>viii</sup> <http://www.theguardian.com/world/2015/oct/28/pakistan-supreme-court-blasphemy-mumtaz-qadri>
- <sup>ix</sup> <http://tribune.com.pk/story/892895/blasphemy-law-penalties-proposed-for-false-accusers/>
- <sup>x</sup> [https://easo.europa.eu/wp-content/uploads/EASO\\_COI\\_Report\\_Pakistan-Country-Overview\\_final.pdf](https://easo.europa.eu/wp-content/uploads/EASO_COI_Report_Pakistan-Country-Overview_final.pdf)
- <sup>xi</sup> <http://www.state.gov/documents/organization/222551.pdf>
- <sup>xii</sup> [http://www.eueom.eu/files/dmfile/eu-eom-pakistan-2013-final-report\\_en.pdf](http://www.eueom.eu/files/dmfile/eu-eom-pakistan-2013-final-report_en.pdf)
- <sup>xiii</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/406527/CIG - Pakistan - Ahmadis - v1 0 - 2015-02 23.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406527/CIG_-_Pakistan_-_Ahmadis_-_v1_0_-_2015-02_23.pdf)
- <sup>xiv</sup>  
<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d55010fed671e340c6a7bcd388e6a62f3a.e34KaxiLc3eQc40LaxqMbN4Oa3qLe0?text=&docid=126364&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3728395>
- <sup>xv</sup> [https://easo.europa.eu/wp-content/uploads/EASO\\_COI\\_Report\\_Pakistan-Country-Overview\\_final.pdf](https://easo.europa.eu/wp-content/uploads/EASO_COI_Report_Pakistan-Country-Overview_final.pdf)
- <sup>xvi</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0422&language=EN&ring=B7-2013-0454>
- <sup>xvii</sup> [https://easo.europa.eu/wp-content/uploads/EASO\\_COI\\_Report\\_Pakistan-Country-Overview\\_final.pdf](https://easo.europa.eu/wp-content/uploads/EASO_COI_Report_Pakistan-Country-Overview_final.pdf)
- <sup>xviii</sup> *ibid*
- <sup>xix</sup> <https://www.hrw.org/report/2014/06/29/we-are-walking-dead/killings-shia-hazara-balochistan-pakistan>
- <sup>xx</sup> *ibid*

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<sup>xxi</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0460&language=EN&ring=B7-2014-0410>

<sup>xxii</sup> [https://easo.europa.eu/wp-content/uploads/EASO\\_COI\\_Report\\_Pakistan-Country-Overview\\_final.pdf](https://easo.europa.eu/wp-content/uploads/EASO_COI_Report_Pakistan-Country-Overview_final.pdf)

### **Annex I - A UK constituency case**

I was contacted back in 2010 by a Pakistani person who was formerly Muslim, but had since leaving Pakistan denounced Islam and all religion, choosing to identify as atheist. While studying in the UK, a blasphemy case was brought against him in Pakistan by members of his own family, who also allegedly published articles and fatwas calling for his death. The asylum claim was rejected on the grounds of:

- the claimant could not provide direct evidence of the blasphemy case (which he claims was impossible given the family was the only one who could send this, yet they were the ones instigating the case)
- the asylum application had not been submitted on time (claimant says delay was because he did not initially enter the UK to make an asylum request, it was to study. Subsequent family grievances and advice from university immigration staff who said the chances of a successful asylum application were relatively low compared with extending the student visa meant he applied later)

Eventually, the claimant did manage to get the relevant documents, including the newspaper articles and fatwas, and the First Information Report (F.I.R) related to the blasphemy charges. At the time, the claimant also suffered from severe depression, and had undergone a psychiatric assessment to attest to this.

I wrote a letter in support of this person's asylum claim based on the fact that notwithstanding the punishment of prison and death sentence for persons found guilty of blasphemy, just the accusation can lead to local violence and the State cannot adequately protect an individual in such cases, a fact I had been told personally by the late Minister for Minorities Mr. Bhatti. Eventually the asylum application was successful, but under what circumstances, I am not aware.

There seems to be a lack of UK Home Office information to treat claims for refugee status from members of other religious minorities (and furthermore ethnic minorities) in Pakistan.