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# Pakistan's Failed Commitment: How Pakistan's Institutionalized Persecution of the Ahmadiyya Muslim Community Violates the International Covenant on Civil and Political Rights

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**PAKISTAN’S FAILED COMMITMENT: HOW  
PAKISTAN’S INSTITUTIONALIZED PERSECUTION  
OF THE AHMADIYYA MUSLIM COMMUNITY  
VIOLATES THE INTERNATIONAL COVENANT ON  
CIVIL AND POLITICAL RIGHTS**

*By Qasim Rashid*<sup>1</sup>

*“My guiding principle will be justice and complete impartiality, and I am sure that with your support and cooperation, I can look forward to Pakistan becoming one of the greatest Nations of the world.”*

– Muhammad Ali Jinnah,<sup>2\*</sup> Pakistan’s Founder and First Governor  
General at the Presidential Address to the Constituent  
Assembly of Pakistan on 11th August, 1947.

**ABSTRACT:**

The United Nations (“UN”) adopted the International Covenant on Civil and Political Rights (“ICCPR”) in 1966 and officially implemented it in 1976 to ensure, among other guarantees, that no

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<sup>2</sup> Akbar S. Ahmed, *Jefferson and Jinnah: Humanist Ideals and the Mythology of Nation-Building*, in *THE FUTURE OF LIBERAL DEMOCRACY: THOMAS JEFFERSON AND THE CONTEMPORARY WORLD* 85, 91 (Rouhollah K. Ramazini & Robert Fatton eds., 2004).

\* This paper is dedicated to Pakistan’s visionary Founder and first Governor-General, Muhammad Ali Jinnah (1876-1948), who fought valiantly for a nation founded on the tenets of freedom, equality, and pluralism. Under his revolutionary leadership, millions of individuals of all backgrounds were granted the opportunity to live in a liberated nation, free from the shackles of oppression. Let this paper serve as a reminder that Muhammad Ali Jinnah’s vision of a free nation, though obscured behind the veil of extremism, is still possible, should Pakistanis and the world at large wish it to be.

human is denied his or her right to equal voting, freedom of political association, due process of law, freedom of life, freedom of religion, freedom of speech, and freedom of assembly. The Islamic Republic of Pakistan is among 166 nations that have signed and ratified the ICCPR. Since signing the ICCPR in 2008 and ratifying it in 2010, however, Pakistan has perpetuated state-sanctioned and violent persecution of religious minority groups such as Ahmadi Muslims, Christians, and Hindus, through anti-blasphemy legislation and voting disenfranchisement. This article examines the plight of Pakistan's religious minorities, focusing primarily on the Ahmadiyya Muslim Community, in the context of the ICCPR. It demonstrates that Pakistan's Ahmadi Muslims are robbed of basic human rights in violation of the ICCPR and the imminent threats such violations pose to the international community. It concludes with an analysis of the practical steps the international community should take to remedy these threats, methods to revive religious freedom in Pakistan, and better ensure national and international security.

## PART I: INTRODUCTION

Pakistan's ICCPR violations and state-sanctioned persecution of religious minorities have created a breeding ground for extremism. It should be no surprise, therefore, that Bruce Riedel of the Brookings Institution described Pakistan as "probably the most dangerous country in the world" today.<sup>3</sup> This phenomenon directly impacts the United States and the international community at large because it creates an environment to develop and export extremism. The United States and United Nations must work together to recognize the plight of millions of Pakistani citizens who belong to a religious minority, and work to afford them the basic ICCPR-guaranteed freedoms they deserve. Silence in the face of Pakistan's clear violations of international law will only strengthen extremist ideologies within the country and abroad. Pakistan's current state of affairs pertaining to human rights is dismal. With a proper understanding of the gravity of the situation and a unified international effort, however, Pakistan can be held accountable to full ICCPR compliance.

Part II of this paper provides context into Pakistan's origin as a paragon of religious freedom founded in the Universal Declaration of Human Rights ("UDHR"), as well as a thorough analysis of the ICCPR. Part III describes Pakistan's gradual transition to the quasi-theocracy it has become today. Part IV details Pakistan's current discriminatory laws, the resulting human rights violations, and the consequential na-

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<sup>3</sup> Interview by Scott Simon with Bruce Riedel, Brookings Institute, *Assassination Leaves Pakistan Security Shaken* (Jan. 15, 2011), <http://www.npr.org/2011/01/15/132956628/Assassination-Leaves-Pakistan-Security-Shaken>.

tional and international harms. In particular, this part discusses the systematic state-sanctioned persecution of the Ahmadiyya Muslim Community, a revivalist movement within Islam. Part IV also examines the persecution of Pakistan's Christian and Hindu citizens. Part V analyzes the practical steps necessary to ensure Pakistan's ICCPR compliance. Part VI concludes this paper.

## PART II: PAKISTAN'S ORIGINAL HUMAN RIGHTS PLATFORM AND THE ICCPR

### *a. Background on Pakistan's Religious Freedom and Freedom of Expression Platforms*

Pakistan was created in 1947 upon a partition from India.<sup>4</sup> Indian Muslims, anguished from living in Hindu dominated India, demanded the creation of their own nation.<sup>5</sup> The two-nation State solution, originally conceived in 1933, emerged with increasing popularity.<sup>6</sup> Muhammad Ali Jinnah (1876-1948), a politician and lawyer who commanded wide respect nationally and internationally, was the leader of the Muslim League.<sup>7</sup> Once he began championing the two-state solution, the international community took notice. Often quoted in the American press regarding his goal of establishing a separate nation for Indian Muslims, Jinnah offered:

We are a nation with our own distinctive culture and civilization, language and literature, art and architecture, names and nomenclature, sense of values and proportion, legal laws and moral codes, customs and calendar, history and traditions, aptitudes and ambitions, in short, we have our own distinctive outlook on life and of life. By all canons of international Law we are a nation.<sup>8</sup>

Pakistan was founded in large part because India's minority Muslim community felt oppressed, unable to truly express their own distinctive culture and values.<sup>9</sup> Much like America's Founding Fathers, Pakistan's Founding Fathers envisioned a nation free from tyrannical

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<sup>4</sup> GOVERNMENT OF PAKISTAN, ABOUT PAKISTAN, <http://www.pakistan.gov.pk/> (last visited Oct. 3, 2011).

<sup>5</sup> See *India-Pakistan: Troubled Relations*, BBC NEWS, [http://news.bbc.co.uk/hi/english/static/in\\_depth/south\\_asia/2002/india\\_pakistan/timeline/1947.stm](http://news.bbc.co.uk/hi/english/static/in_depth/south_asia/2002/india_pakistan/timeline/1947.stm) (last visited on Oct. 3, 2011).

<sup>6</sup> *Id.*

<sup>7</sup> *Muhammad Ali Jinnah*, BBC NEWS, [http://www.bbc.co.uk/history/historic\\_figures/jinnah\\_mohammad\\_ali.shtml](http://www.bbc.co.uk/history/historic_figures/jinnah_mohammad_ali.shtml) (last visited Oct. 6, 2011).

<sup>8</sup> HECTOR BOLITHO, *JINNAH: CREATOR OF PAKISTAN 149* (Oxford Univ. Press 2006) (1954).

<sup>9</sup> See *India-Pakistan: Troubled Relations*, *supra* note 5.

rule, free from restrictions of conscience, and equality for all citizens.<sup>10</sup> Pakistan's original Constitution reflected these principles as well.<sup>11</sup> In a policy speech, Jinnah addressed Pakistan's constituent assembly days before the nation was officially born describing his vision and commitment to ensure Pakistan became a nation that championed religious freedom. He declared,

You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State. As you know, history shows that in England, conditions, some time ago, were much worse than those prevailing in India today. The Roman Catholics and the Protestants persecuted each other. Even now there are some States in existence where there are discriminations made and bars imposed against a particular class. Thank God, we are not starting in those days. We are starting in the days where there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State.<sup>12</sup>

After years of deliberation and a near collapse of negotiations, Pakistan was born on August 14th, 1947, and Jinnah was elected as its first Governor-General.<sup>13</sup> Jinnah particularly juxtaposed the dire conditions between Protestants and Catholics in England to the dire situation in India regarding religious discrimination, and made clear that Pakistan would rise above such discrimination.<sup>14</sup> Instead, Pakistan (which literally means land of the pure)<sup>15</sup> was to offer equality to all its citizens.<sup>16</sup> In an address to the United States less than a year after Pakistan's creation, Jinnah re-affirmed Pakistan's commitment of freedom and pluralism to its new ally:

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<sup>10</sup> See, e.g., Muhammad Ali Jinnah, President of Pak., Presidential Address to the Constituent Assembly of Pakistan (Aug. 11, 1947), *transcript available at* [http://www.pakistani.org/pakistan/legislation/constituent\\_address\\_11aug1947.html](http://www.pakistani.org/pakistan/legislation/constituent_address_11aug1947.html) [hereinafter Jinnah's Constituent Assembly Address].

<sup>11</sup> See generally PAK. CONST. (1956).

<sup>12</sup> Jinnah's Constituent Assembly Address, *supra* note 10.

<sup>13</sup> *Muhammed Ali Jinnah*, *supra* note 7.

<sup>14</sup> *Id.*

<sup>15</sup> *India-Pakistan: Troubled Relations*, *supra* note 5.

<sup>16</sup> Jinnah's Constituent Assembly Address, *supra* note 10.

In any case Pakistan is not going to be a theocratic State to be ruled by priests with a divine mission. We have many non-Muslims — Hindus, Christians, and Parsis — but they are all Pakistanis. They will enjoy the same rights and privileges as any other citizens and will play their rightful part in the affairs of Pakistan.<sup>17</sup>

Pakistan's first Constitution, formed in 1956 eight years after Jinnah's death, reflected the aforementioned ideals. For example, the Preamble to Pakistan's Constitution makes the following declarations:

Wherein adequate provision should be made for the minorities freely to profess and practise [sic] their religions and develop their culture. . .Wherein should be guaranteed fundamental rights including equality of status and of opportunity, equality before law, and freedom of thought, expression, belief, faith, worship and association, and social, economic, and political justice, subject to law and public morality; Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;<sup>18</sup>

The Framers of Pakistan's Constitution went on to ensure such freedoms were explicit in the actual Constitution as well. For example, Article 8 of Pakistan's Constitution states, "[e]very citizen shall have the right to freedom of speech and expression."<sup>19</sup> Likewise, Article 13 adds, "no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community and denomination."<sup>20</sup> Later on, Chapter 2, Article 36 added, "[t]he state shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services."<sup>21</sup> Accordingly, Pakistan's inaugural cabinet reflected the true nature of this declaration and gave representation to ministers from all faiths.

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<sup>17</sup> Muhammad Ali Jinnah, President of Pak., Broadcast Talk to the United States of America on Pakistan (Feb. 1948), *transcript available at* <http://www.jinnah.pk/2009/09/pakistan-and-her-people-ii/>.

<sup>18</sup> PAK. CONST. pmb. (1956).

<sup>19</sup> *Id.* art. 8.

<sup>20</sup> *Id.* art. 13.

<sup>21</sup> PAK. CONST. art. 36.

*b. Background to the International Covenant on Civil and Political Rights*

The United Nations adopted the ICCPR on December 16, 1966, officially implementing it a decade later on March 23, 1976.<sup>22</sup> The ICCPR's Preamble declares that, "the inherent dignity and . . . equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."<sup>23</sup> Likewise, the Preamble also recognizes that:

. . . in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights. . .<sup>24</sup>

In total, the ICCPR records fifty-three articles guaranteeing a wide array of social, religious, and political rights.<sup>25</sup> After signing and ratifying the ICCPR in 2010, Pakistan's President Asif Ali Zardari assured that his administration would, "undertake practical steps for the implementation of the [ICCPR]," and that his party, "would continue upholding basic human rights of all individuals regardless of caste, creed or any other consideration."<sup>26</sup> Pakistan's Prime Minister Syed Yousaf Raza Gilani echoed these sentiments,

The government [of Pakistan] is conscious of its international commitments. We have ratified CAT [Covenant Against Torture] and ICCPR. . . We are united in our resolve to uproot terrorism from our midst as it represents negation of human rights and values. We have faced this challenge with courage, bravery and honour [sic] and we are committed to continue to safeguard the rights of our people *at all cost*.<sup>27</sup>

In claiming to "continue" to uphold human rights, both Zardari and Gilani incorrectly and disingenuously present Pakistan as a nation that upheld human rights prior to their respective administrations. Such misleading statements notwithstanding, under Zardari and Gi-

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<sup>22</sup> See International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) A, U.N. Doc A/6316 (Dec. 16, 1966) [hereinafter ICCPR].

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See generally *id.*

<sup>26</sup> *International Human Rights Day*, DAILY TIMES (Dec. 10, 2010), [http://www.dailytimes.com.pk/default.asp?page=2010\12\10\story\\_10-12-2010\\_pg7\\_13](http://www.dailytimes.com.pk/default.asp?page=2010\12\10\story_10-12-2010_pg7_13) (emphasis added).

<sup>27</sup> *Id.*

lani's rule, Pakistan is currently in violation of at least seven Articles of the ICCPR.

For example, Pakistan is in violation of ICCPR Article 18(1), which states,

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.<sup>28</sup>

Likewise, Article 18(2) adds, "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."<sup>29</sup> Article 19(1) continues, "[e]veryone shall have the right to hold opinions without interference."<sup>30</sup> Article 19(2) concludes, "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."<sup>31</sup> Together, Articles 18 and 19 reject religious compulsion and forbid restrictions on imparting religious information. Pakistan's anti-blasphemy legislation, however, directly contravenes the spirit and letter of these ICCPR articles.

While Article 18 and 19 ensure that every person has certain inalienable religious freedoms, Article 20 adds a new dimension, ensuring no person shall be subject to hate campaigns. Article 20(1) of the ICCPR states, "[a]ny propaganda for war shall be prohibited by law."<sup>32</sup> Article 20(2) further adds, "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."<sup>33</sup> Ignoring this article, the Government of Pakistan regularly permits hate campaigns against religious minorities.

Similarly, Article 27 of the ICCPR ensures, "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise [sic] their own religion, or to use their own language."<sup>34</sup>

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<sup>28</sup> ICCPR, *supra* note 22, at art. 18(1).

<sup>29</sup> *Id.* art. 18(2).

<sup>30</sup> *Id.* art. 19(1).

<sup>31</sup> *Id.* art. 19(2).

<sup>32</sup> *Id.* art. 20(1).

<sup>33</sup> *Id.* art. 20(2).

<sup>34</sup> *Id.* art. 27.

Like Pakistan's anti-blasphemy laws, Pakistan's Second Amendment also undermines the protection these ICCPR Articles guarantee.

Next, Article 25 of the ICCPR guarantees equal representation in the electorate for every citizen, regardless of distinctions, stating,

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.<sup>35</sup>

This article is significant because, as explained in more detail below, the Pakistani election process is such that religious minorities have either no representation through systematic disenfranchisement, or are outright forbidden from running for political office.

Next, Pakistan is in violation of Article 26 of the ICCPR, which guarantees equal protection under the law:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>36</sup>

Contrary to Article 26, the Government of Pakistan repeatedly and deliberately ignores its responsibility to protect religious minorities from attack.

Finally, Article 21 of the ICCPR guarantees the right to peacefully assemble:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (or

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<sup>35</sup> *Id.* art. 25.

<sup>36</sup> *Id.* art. 26.

dre public), the protection of public health or morals or the protection of the rights and freedoms of others.<sup>37</sup>

Section IV describes that certain religious minority groups in Pakistan have been forbidden from peaceful assembly for decades. Some historical context of the development of extremism within Pakistan is helpful to better understand the source of Pakistan's various ICCPR violations.

### PART III: PAKISTAN'S EMERGENCE AS A WORLD LEADER IN HUMAN RIGHTS VIOLATIONS

#### *a. The Birth of Religious Extremism in Pakistan by Abul A'la Maududi*

In addition to understanding the source of Pakistan's ICCPR violations, this historical context of Pakistan's human rights devolution is essential to properly frame the basis, justification, and need for international intervention. Soon after Pakistan won its independence in 1947, several religious leaders voiced their opposition to Pakistan's commitments to freedom of religion and freedom of expression.<sup>38</sup> One of the leading opponents was Abul A'la Maududi, an influential cleric in 20th century India/Pakistan and founder of the Jamaat-e-Islami party, a pseudo-religious political organization.<sup>39</sup> Maududi harbored a particular hatred for the Ahmadiyya Muslim Community<sup>40</sup> and wanted the government to legally "expel" its members from Islam.<sup>41</sup> While there are complex dogmatic reasons for Maududi's hatred beyond the scope of this discussion, two particular factors motivated his aggressive behavior. First, the Ahmadiyya Muslim Community firmly rejects violence as a means to spread Islam.<sup>42</sup> Maududi rejected this practice and instead defined Islam's purpose as to destroy all non-Is-

<sup>37</sup> *Id.* art. 21.

<sup>38</sup> *Pakistan Islamic Assembly: Jamaat-e-Islami-e-Pakistan (JIP)*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/pakistan/ji.htm> (last visited July 11, 2011).

<sup>39</sup> *Id.*

<sup>40</sup> "The Ahmadiyya Muslim Community is a dynamic, fast growing international revival movement within Islam. Founded in 1889, it spans over 195 countries with membership exceeding tens of millions." The Ahmadiyya Muslim Community are Muslims who "believe that the long-awaited Messiah has come in the person of Mirza Ghulam Ahmad (1835-1908) of Qadian." *Ahmadiyya Muslim Community: An Overview*, AL ISLAM, <http://www.alislam.org/introduction/index.html> (last visited Oct. 4, 2011); see FRÉDÉRIC GRARE, *POLITICAL ISLAM IN THE INDIAN SUBCONTINENT: THE JAMAAT-I-ISLAMI* 9 (2001).

<sup>41</sup> Kate Zebiri, Book Review, 61 *BULL. SCH. ORIENTAL & AFR. STUD.* 167, 167-68 (1998) (reviewing SEYYED VALI REZA NASR, *MAUDUDI AND THE MAKING OF ISLAMIC FUNDAMENTALISM* (1996)).

<sup>42</sup> *Ahmadiyya Muslim Community*, *supra* note 40.

lamic regimes.<sup>43</sup> Second, Mirza Ghulam Ahmad of Qadian, in 1889, founded the Ahmadiyya Muslim Community.<sup>44</sup> Ahmad proclaimed he was the long-awaited Messiah and Mahdi for all religions.<sup>45</sup> Maududi again opposed the belief that any Messiah or Prophet could appear after Prophet Muhammad, declared anyone who accepted such a belief to be an apostate, and, therefore, demanded Ahmadi Muslims be declared a non-Muslim apostate minority.<sup>46</sup>

Prior to Pakistan's formation, and even in the early years after Pakistan's formation, anti-Ahmadi Muslim sentiments were scattered and random. A transformation took place, however, in 1953 when Maududi's Jamaat-i-Islami party launched nationwide riots against the Ahmadiyya Muslim Community.<sup>47</sup> In these riots, dozens of members of the Ahmadiyya Muslim Community were killed, hundreds more were injured, while countless shops, houses, and mosques belonging to Ahmadi Muslims were set ablaze.<sup>48</sup> Likewise, Ahmadi Muslims faced large-scale boycotts of their businesses while extremists continued to issue threats of violence to the Pakistani Government, unless the Government complied and declared Ahmadi Muslims to be an apostate minority.<sup>49</sup>

In response, A. T. Naqvi, Pakistan's Chief Commissioner, publicly reemphasized his administration's policy that every Pakistani citizen had perfect freedom of religion, and that future attempts to interfere with such freedoms would not be tolerated.<sup>50</sup> Justice Munir, Chief Justice of the Punjab Court of Inquiry, thoroughly investigated the cause of the riots, and ultimately rejected Maududi's desires to de-

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<sup>43</sup> Maududi wrote, "Islam wishes to destroy all states and governments anywhere on the face of the earth which are opposed to the ideology and programme of Islam regardless of the country or the Nation which rules it. . . Islam requires the earth—not just a portion, but the whole planet . . . because the entire mankind should benefit from the ideology and welfare programme [of Islam]. . . Towards this end, Islam wishes to press into service all forces which can bring about a revolution and a composite term for the use of all these forces is 'Jihad.' . . . the objective of the Islamic 'Jihād' is to eliminate the rule of an un-Islamic system and establish in its stead an Islamic system of state rule." S. ABUL A'LA MAUDUDI, *JIHAD IN ISLAM* 6-7, 22 (The Holy Koran Publ'g House 2006) (1939) (emphasis added).

<sup>44</sup> *Ahmadiyya Muslim Community*, *supra* note 40.

<sup>45</sup> *The Promised Messiah: A Prophet to Unite Mankind in the Latter Days*, AL ISLAM, <http://www.alislam.org/topics/messiah/index.php> (last visited Oct. 4, 2011).

<sup>46</sup> *Pakistan Islamic Assembly*, *supra* note 38.

<sup>47</sup> *Id.*

<sup>48</sup> *History of Persecution 1951 to 1960*, THEPERSECUTION.ORG, <http://www.thepersecution.org/facts/h51-60.html> (last visited Oct. 4, 2011).

<sup>49</sup> *Id.*

<sup>50</sup> REPORT OF THE COURT OF INQUIRY CONSTITUTED UNDER PUNJAB ACT II OF 1954 TO ENQUIRE INTO PUNJAB DISTURBANCES OF 1953 76 (Punjab 1954), *available at* [http://www.thepersecution.org/dl/report\\_1953.pdf](http://www.thepersecution.org/dl/report_1953.pdf).

clare Ahmadi Muslims as apostates.<sup>51</sup> He concluded that it would not only be unconstitutional, but also impossible to legally “expel” someone from Islam.<sup>52</sup>

Likewise, then Governor-General of Pakistan, Khwaja Nazim-ud-Din, added that, “[i]t was no part of the duties of the Government to declare a section of the population as a minority . . . [and] that he was not prepared to have the Ahmadi [Muslims] declared a minority.”<sup>53</sup> Governor-General Nazim-ud-Din unfortunately also added, however, that he was, “not prepared to tell the [clerics] [directly that he would not declare Ahmadis as non-Muslims], as that would have resulted in a “head-on clash” with them, which he wished to avoid.”<sup>54</sup> He continued,

. . . it was not in the interest of the country to press the Demands and very difficult to accept them, that even in the Constitutional document it would not be easy to evolve a definition of the term “Muslim” which would debar the Ahmadis and at the same time not debar any other section.<sup>55</sup>

This statement was dangerous because of the precedent it established. That is, it was not a matter of *if* an appropriate definition of a “Muslim” could be found, but *when* such a definition would be found, at which point, members of the Ahmadiyya Muslim Community could be legally discriminated against through expulsion from the larger Muslim community.

Though dozens of members of the Ahmadiyya Muslim Community were murdered in the 1953 riots and throughout the 1960s, these attacks were not state-sanctioned, nor considered legal in any capacity. In fact, Maududi faced material consequences for his violent preaching; in 1948 and again in 1964, Maududi was sent to prison as a direct result of his violent teachings against members of the Ahmadiyya Muslim Community.<sup>56</sup> In 1953, owing to the loss of life his preaching caused, the Government of Pakistan sentenced Maududi to death—only to have his sentence commuted to life in prison, and eventually absolved completely for unknown reasons.<sup>57</sup>

Through this first test of Pakistan’s Constitution, cracks already appeared in the Pakistani Government’s promise of free speech

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<sup>51</sup> See generally *id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 291.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> 10 *Abu-I A’la Mawdudi*, in *ENCYCLOPEDIA OF WORLD BIOGRAPHY* 353, 354 (2d ed. 2004).

<sup>57</sup> *Id.*

for all its citizens. For example, on February 27, 1953, the Government banned the Ahmadiyya Muslim Community from publishing their daily newspaper, *Al Fazl*, for one year.<sup>58</sup> This act violated the Article 1, Chapter 19 freedom of press guarantee of Pakistan's Constitution. When a surrogate publication was published, entitled, *Farooq*, the Government acted to ban it as well.<sup>59</sup> Regardless, this ban lasted only a year, and no state sanctioned restrictions were placed upon religious minorities in Pakistan. Though extremists like Maududi attempted to promote discriminatory legislation through the legal process, Pakistan's promise to protect minorities and their freedoms largely remained true.

*b. Religious Extremism Begins Infiltrating Pakistan's Secular Government*

The first substantive blow to religious freedom in Pakistan emerged in 1962. In that year, the Pakistan Advisory Council for Islamic Ideology added a repugnancy clause to the Constitution. The clause required that, "[a]ll existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah,<sup>60</sup> in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions."<sup>61</sup> This clause effectively gave clerics vast power to repeal any secular law repugnant to their extremist understanding of Islam. Pakistan also eventually created a Federal Shariah Court in 1986,<sup>62</sup> and passed the Enforcement of Shari'ah Act of 1991, to ensure no laws were implemented that could be considered offensive to Islam or Pakistan's Constitution.<sup>63</sup> Democracy Reporting International ("DRI") reports that these provisions have severely diminished human rights in Pakistan. DRI is an international, non-partisan and independent, not-for-profit organization specifically funded to report on Pakistan's level of ICCPR compliance.<sup>64</sup> DRI's report concludes that Pakistan used these repugnancy clauses as legal justification to make several ICCPR reserva-

<sup>58</sup> *History of Persecution 1951 to 1960*, *supra* note 48.

<sup>59</sup> *Id.*

<sup>60</sup> Sunnah are the actions of the Prophet Muhammad. See M. Cherif Bassiouni & Gamal M. Badr, *The Shari'ah: Sources, Interpretation, and Rule-Making*, 1 UCLA J. ISLAMIC & NEAR E.L. 135, 150 (2002).

<sup>61</sup> PAK. CONST. art. 227.

<sup>62</sup> See David F. Forte, *Apostasy and Blasphemy in Pakistan*, 10 CONN. J. INT'L L. 27, 35-37 (1994).

<sup>63</sup> Pakistan Enforcement of Shari'ah Act, No. 10 of 1991, *available at* <http://www.pakistani.org/pakistan/legislation/1991/actXof1991.html>.

<sup>64</sup> See *Pakistan*, DEMOCRACY REPORTING INT'L, <http://www.democracy-reporting.org/programmes/pakistan.html> (last visited Oct. 11, 2011) [hereinafter DEMOCRACY REPORTING INT'L].

tions.<sup>65</sup> Relevant to this discussion, Pakistan specifically declared that the provisions of the ICCPR Article 12 (liberty of movement), Article 18 (freedom of thought, conscience, and religion), Article 19 (freedom of opinion), and Article 25 (participation in public affairs, right to vote) shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Shariah Laws.<sup>66</sup> The authority this repugnancy clause gives clerics has been devastating to efforts to strengthen democracy in Pakistan because the final decision-making authority rests not with the people of Pakistan, nor Pakistan's legislature, but with the extremist clerics managing the Islamic Council (i.e. Shariah Court).<sup>67</sup>

Pakistan further regressed when it nationalized all educational institutions in 1972.<sup>68</sup> This act violated Chapter 1, Article 22(3)(a) of Pakistan's Constitution.<sup>69</sup> On July 28, 1996, the Government of the Punjab Province issued a gazette notification to enable owners of nationalized educational institutions to regain ownership over their institutions, provided the original owners fulfill certain terms and

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<sup>65</sup> See generally *Pakistan's Reservations to the International Covenant on Civil and Political Rights* (Democracy Reporting Int'l, Briefing Paper No. 4), [http://www.democracyreporting.org/files/dri\\_briefing\\_paper\\_4\\_gop\\_reservations\\_on\\_icpr.pdf](http://www.democracyreporting.org/files/dri_briefing_paper_4_gop_reservations_on_icpr.pdf).

<sup>66</sup> UNITED NATIONS, STATUS PAGE FOR ICCPR, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec) (last visited Oct. 24, 2011).

<sup>67</sup> PAK. CONST. art. 230(1) ("Functions of Islamic Council.

(1) The functions of the Islamic Council shall be,

(a) to make recommendations to [Majlis-e-Shoora (Parliament)] and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah;

(b) to advise a House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the Injunctions of Islam;

(c) to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect; and

(d) to compile in a suitable form, for the guidance of [Majlis-e-Shoora (Parliament)] and the Provincial Assemblies, such Injunctions of Islam as can be given legislative effect.").

<sup>68</sup> *Education in Pakistan*, PAKISTANEDUCATION.INFO, <http://www.pakistaneducation.info/edusystem/> (last visited Oct. 7, 2011).

<sup>69</sup> PAK. CONST. art. 22(3)(a) ("no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community and denomination.").

conditions.<sup>70</sup> The Ahmadiyya Muslim Community fulfilled the required obligations, including a Rs. 11,012,483 deposit into the government treasury.<sup>71</sup> Similar steps were taken under a revised July 2002 notification plan to denationalize educational institutions.<sup>72</sup> To date, however, and despite numerous reminders to the Government of Pakistan from the Ahmadiyya Muslim Community, the Government has refused to return the illegally nationalized institutions.<sup>73</sup> This nationalization exists even though the Ahmadiyya Muslim Community has fulfilled all obligations to retrieve their property, it exists despite the seizures' unconstitutionality, and it exists though other organizations have regained ownership over their respective institutions.<sup>74</sup> In fact, other organizations received their institutions back as early as the mid-1980's.<sup>75</sup> By maintaining control over schools belonging to the Ahmadiyya Muslim Community, Pakistan is restricting their freedom to "seek, receive, and impart information," in violation of Article 19(2) of the ICCPR.<sup>76</sup> Once the Government of Pakistan nationalized all education systems in 1972, it subsequently introduced the Second Amendment to Pakistan's Constitution in 1974.<sup>77</sup> This Amendment signaled a new era of state-sponsored human rights abuses. Going forward, the Government of Pakistan defined what a Pakistani citizen was, and was not, *allowed* to believe.

*c. The Second Amendment and the End of Religious Freedom in Pakistan*

By passing the Second Amendment to Pakistan's Constitution in 1974, officially declaring members of the Ahmadiyya Muslim Community to be a non-Muslim minority, President and Prime Minister Zulfikar Ali Bhutto opened the doors of extremism unabated to infiltrate Pakistan's once secular leadership.<sup>78</sup> The Constitution's Second Amendment declares:

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<sup>70</sup> THEPERSECUTION.ORG, PERSECUTION OF AHMADIS IN PAKISTAN DURING THE YEAR 2007: A SUMMARY 9-10 (2008), *available at* <http://www.scribd.com/doc/27105450/Persecution-of-Ahmadis-in-Pakistan-during-the-Year-2007>.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Education in Pakistan*, *supra* note 68.

<sup>76</sup> "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." ICCPR, *supra* note 22, at art. 19(2).

<sup>77</sup> PAK. CONST. amend. II.

<sup>78</sup> *See, e.g., GRARE*, *supra* note 40, at 37.

A person who does not believe in the absolute and unqualified finality of The Prophethood of MUHAMMAD (Peace be upon him), the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after MUHAMMAD (Peace be upon him), or recognizes such a claimant as a Prophet or religious reformer, is not a Muslim for the purposes of the Constitution or law.<sup>79</sup>

Maududi and Jamaat-e-Islami achieved what they could not two decades prior, and their impact was more influential than many realize. For example, these extremists ultimately hastened the creation of modern day terrorist groups such as Hizbul Mujahideen.<sup>80</sup> A 1993 United States Congressional report states that, "Islamist indoctrination and other assistance is provided [to Hizbul Mujahideen] [by] the Jamaat-i-Islami of Pakistan."<sup>81</sup> Likewise, historian Philip Jenkins reports that Maududian teachings directly and heavily influenced Qutb, the founder of the terrorist organization known as the Muslim Brotherhood.<sup>82</sup> Expectedly, once Maududian ideologies helped change Pakistan's Constitution, human rights rapidly degenerated.

Pakistan's 1974 constitutional amendment is in complete contradiction to Jinnah, who said, "You may belong to any religion or caste or creed that has nothing to do with the business of the State."<sup>83</sup> More significantly, it contradicts Pakistan's Preamble and Chapter 1, Article 19 of Pakistan's Constitution, which guarantees freedom of speech and freedom of expression.<sup>84</sup> Likewise, Pakistan's Second Amendment violates Articles 18 and 19 of the UDHR, which also guarantee freedom of conscience and freedom of religion.<sup>85</sup> Relevant to this discussion, Pakistan has not repealed the Second Amendment to its Constitution despite signing and ratifying the ICCPR. Article 18(1) requires ICCPR member nations to ensure its citizens have the right to "freedom of thought, conscience and religion."<sup>86</sup> Therefore, Pakistan's

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<sup>79</sup> PAK. CONST. amend. II(3).

<sup>80</sup> HOUSE REPUBLICAN RESEARCH COMMITTEE, 103RD CONG., TASK FORCE ON TERRORISM AND UNCONVENTIONAL WARFARE, THE NEW ISLAMIST INTERNATIONAL 37-51 (1993), available at [http://www.fas.org/irp/congress/1993\\_rpt/house\\_repub\\_report.html](http://www.fas.org/irp/congress/1993_rpt/house_repub_report.html).

<sup>81</sup> *Id.*

<sup>82</sup> PHILIP JENKINS, GOD'S CONTINENT: CHRISTIANITY, ISLAM, AND EUROPE'S RELIGIOUS CRISIS 129 (2007).

<sup>83</sup> Jinnah's Constituent Assembly Address, *supra* note 10.

<sup>84</sup> PAK. CONST. art. 19.

<sup>85</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, at art. 18, U.N. Doc. A/RES/217(III) A (Dec. 10, 1948) [hereinafter UDHR].

<sup>86</sup> ICCPR, *supra* note 22, at art. 18(1) ("Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to

decision to uphold President Bhutto's Second Amendment directly undermines Article 18(1) of the ICCPR.

Though Pakistan had violated its own Constitution and the UDHR, one basic hope was that despite the Second Amendment, members of the Ahmadiyya Muslim Community would be afforded protection as a religious minority. This was the purpose of Chapter 2, Article 36 of Pakistan's Constitution.<sup>87</sup> Unfortunately, the exact opposite occurred. The Government of Pakistan took no active measures to protect members of the Ahmadiyya Muslim Community from attack, nor pursued instigators to prevent future attacks.<sup>88</sup> Instead, the Government tacitly approved the persecution through its silence. In fact, violence against Ahmadi Muslims in the 1970s surpassed the brutality suffered in the previous two decades combined. During the 1950s and 1960s, prior to the passage of Pakistan's Second Amendment, twenty-four total members of the Ahmadiyya Muslim Community were killed at the hands of extremists for their faith.<sup>89</sup> But, in the 1970s alone, extremists murdered thirty-nine Ahmadi Muslims.<sup>90</sup> In addition, Ahmadi Muslims suffered a dramatic increase in boycotts, arsons, desecrated graves, and vandalism to their homes and mosques.<sup>91</sup> Rather than placate the violent desires of extremists like Maududi, the Second Amendment further motivated extremists to infuse a dictatorial form of Islam into Pakistan in place of secular laws. The dictatorial form of Islam that extremists desired literally manifested itself only a few years later. Once General Zia ul Haq assumed control of Pakistan via a 1977 military coup,<sup>92</sup> he actively targeted religious minorities, and Ahmadi Muslims in particular, with anti-blasphemy legislation. Ali Dayan Hasan, a senior researcher for Human Rights Watch Asia reports, "[a]s a consequence [of anti-blasphemy laws], Ahmadi

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adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.").

<sup>87</sup> PAK. CONST. art. 36 ("The state shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services.").

<sup>88</sup> Amnesty Int'l, *Pakistan: Killing of Ahmadis Continues Amid Impunity*, AI Index ASA 33/028/2005 (Oct. 11, 2005), available at <http://www.amnesty.org/en/library/asset/ASA33/028/2005/en/89ea605d-d49f-11dd-8a23-d58a49c0d652/asa330282005en.html>.

<sup>89</sup> *History of Persecution 1961 to 1970*, THEPERSECUTION.ORG (Mar. 10, 2004), <http://www.thepersecution.org/facts/h61-70.html>.

<sup>90</sup> *History of Persecution 1971 to 1980*, THEPERSECUTION.ORG (Mar. 10, 2004), <http://www.thepersecution.org/facts/h71-80.html>.

<sup>91</sup> *Id.*

<sup>92</sup> *Timeline: Pakistan*, BBC NEWS, [http://news.bbc.co.uk/2/hi/south\\_asia/country\\_profiles/1156716.stm](http://news.bbc.co.uk/2/hi/south_asia/country_profiles/1156716.stm) (last updated Oct. 5, 2011).

mosques have been burned, their graves desecrated and their very existence criminalized.”<sup>93</sup> These anti-blasphemy laws have exerted such a powerful influence over Pakistan that despite Pakistan’s signing and ratifying the ICCPR in 2008 and 2010, respectively,<sup>94</sup> the laws yet remain in full force, unrestricted.

#### PART IV: PAKISTAN’S ICCPR VIOLATIONS AND THE DELETERIOUS CONSEQUENCES

##### *a. Pakistan Signs and Ratifies the ICCPR with Reservations*

Pakistan initially signed and ratified the ICCPR with several reservations.<sup>95</sup> On June 23, 2010 Pakistan made reservations to Articles 3, 6, 7, 18, and 19, stating, “[the] Islamic Republic of Pakistan declares that the provisions of Articles 3, 6, 7, 18 and 19 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Shariah laws.”<sup>96</sup> These reservations subjected the ICCPR to the Pakistani Constitution’s approval, rather than the other way around, in effect voiding the purpose of the ICCPR as an internationally binding treaty. Likewise, Pakistan made a reservation to Article 25 of the ICCPR, stating, “[the] Islamic Republic of Pakistan declares that the provisions of Article 25 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan.”<sup>97</sup> Thus, Pakistan ratified the ICCPR while creating a loophole for itself to avoid responsibility for the relevant human rights requirements set forth in these Articles.

On the question of whether the ICCPR may exercise valid jurisdiction over Pakistan, ICCPR Article 2(1) *requires* each State Party under the ICCPR to “respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>98</sup> Likewise, ICCPR Article 2(3) ensures those whose rights have been violated shall have an effective and enforceable remedy, as provided by a competent authority.<sup>99</sup> Therefore,

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<sup>93</sup> *Ali Dayan Hasan*, HUM. RTS. WATCH, <http://www.hrw.org/bios/ali-dayan-hasan> (last visited Oct. 23, 2011); *Ali Dayan Hasan, Indonesia Risks Taking Pakistan’s Path to Intolerance*, JAKARTA GLOBE (Apr. 18, 2011), <http://www.thejakartaglobe.com/opinion/indonesia-risks-taking-pakistans-path-to-intolerance/435924>.

<sup>94</sup> See ICCPR, *supra* note 22; STATUS PAGE FOR ICCPR, *supra* note 66.

<sup>95</sup> STATUS PAGE FOR ICCPR, *supra* note 66.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> ICCPR, *supra* note 22, at art. 2(1).

<sup>99</sup> *Id.* art. 2(3) (“Each State Party to the present Covenant undertakes:

despite her reservations, Pakistan is fundamentally required to protect the rights of all its citizens “without distinction of any kind.”<sup>100</sup>

In addition to making numerous reservations, Pakistan abstained from signing the First Optional Protocol to the ICCPR.<sup>101</sup> The First Optional Protocol to the ICCPR “allows individuals, whose countries are party to the ICCPR and the protocol, who claim their rights under the ICCPR have been violated, and who have exhausted all domestic remedies, to submit written communications to the UN Human Rights Committee.”<sup>102</sup> Because Pakistan has not signed the First Optional Protocol, Pakistani citizens who face human rights violations and have exhausted the domestic legal process without relief, are left without any recourse to alleviate their suffering under Pakistan’s illegal apparatus of state-sanctioned persecution.

*b. Pakistan Retracts Several of Its ICCPR Reservations*

Under pressure from the European Union (“EU”), however, Pakistan announced in late June 2011 that it is retracting several of its ICCPR reservations.<sup>103</sup> Pakistan recanted these reservations after the EU objected that the reservations were illegal according to Article 19 of the Vienna Convention.<sup>104</sup> Article 19(c) of the Vienna Convention holds that a State may not make a reservation if it is incompatible

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- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.”).

<sup>100</sup> UDHR, *supra* note 85, at art. 2.

<sup>101</sup> UNITED NATIONS, STATUS PAGE FOR OPTIONAL PROTOCOL OF THE ICCPR (Oct. 24, 2011), [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-5&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en).

<sup>102</sup> UNITED NATIONS, WHY AN OPTIONAL PROTOCOL?, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, <http://www.un.org/womenwatch/daw/cedaw/protocol/why.htm> (last visited Oct. 2, 2011).

<sup>103</sup> *Pakistan Decides to Withdraw Most of Reservations on ICCPR, UNCAT*, THE NATION (June 23, 2010), <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Regional/Islamabad/23-Jun-2011/Pakistan-decides-to-withdraw-most-of-reservations-on-ICCPR-UNCAT> [hereinafter *Pakistan Withdraws Reservations*].

<sup>104</sup> Vienna Convention on the Law of Treaties art. 19, May 23, 1969, 1155 U.N.T.S. 331 (“A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

- (a) the reservation is prohibited by the treaty;

with the international treaty's purpose.<sup>105</sup> In their report on Pakistan's ICCPR reservations, DRI concluded:

[b]y indicating that the mentioned ICCPR articles only apply as far as they are in line with Pakistan's Constitution, the reservation introduces a *de facto* hierarchy of norms by which national law supersedes international obligations. *No real international rights or obligations have thus been accepted.*<sup>106</sup>

Considering UN Human Rights Committee General Comment 24, DRI further concluded that Pakistan's reservations are illegal because they are unspecific, not transparent, and apply an unlawful hierarchy of norms (i.e. domestic laws supersede the ICCPR).<sup>107</sup>

In sum, Pakistan withdrew its reservations on Articles 6, 7, 12, 13, 18, 19 and 40 of the ICCPR, while the Article 3 reservation was narrowed to Personal Law and Law of Evidence, and the Article 25 reservation was restricted to the election of Pakistan's President.<sup>108</sup> These retractions, though a step in the right direction, have not changed Pakistan's discriminatory public policy towards its religious minorities, nor decreased the violence to which religious minorities in Pakistan are subject. A litany of tragic instances of popular persecution of religious minorities in Pakistan persists. For example, in July 2011, religious extremists murdered an Ahmadi Muslim in Pakistan on account of his faith.<sup>109</sup> More recently, in September 2011, an Ahmadi Muslim mosque under construction was razed without due process.<sup>110</sup> Also in September 2011, an Ahmadi Muslim was murdered as he slept, after police repeatedly ignored his requests for protection, despite the constant death threats he received on account of his faith.<sup>111</sup> Another Ahmadi Muslim was shot three times on September

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(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.”).

<sup>105</sup> *Id.*

<sup>106</sup> DEMOCRACY REPORTING INT'L, *supra* note 64, at 3 (emphasis added).

<sup>107</sup> *Id.* at 2-3.

<sup>108</sup> *See id.*

<sup>109</sup> *List of Martyres*, THEPERSECUTION.ORG, <http://www.thepersecution.org/facts/martyred.html> (last visited Oct. 9, 2011).

<sup>110</sup> Owais Raza, *Caving in to Pressure: Ahmadi Place of Worship Demolished*, THE EXPRESS TRIBUNE (Sept. 4, 2011), <http://tribune.com.pk/story/244500/caving-in-to-pressure-ahmadi-place-of-worship-demolished/>.

<sup>111</sup> Shamsul Islam, *Suspected Hate Crime: Ahmadi Man Shot Dead in Faisalabad*, THE EXPRESS TRIBUNE (Sept. 5, 2011), <http://tribune.com.pk/story/245094/suspected-hate-crime-ahmadi-man-shot-dead-in-faisalabad/>.

8th, 2011 after a *Khatam-e-Nabuwat* rally.<sup>112</sup> This rally, significant for several reasons, is held annually to celebrate the anniversary of Pakistan's 1974 declaration that Ahmadi Muslims are apostates,<sup>113</sup> consistently calling for violence against them.<sup>114</sup>

Critics may argue that Pakistan only recently retracted its ICCPR reservations, and therefore needs time to substantively begin protecting religious minorities per ICCPR requirements. But if Pakistan's retractions held any clout, why permit a conference in celebration of a constitutional amendment in direct opposition to ICCPR obligations?<sup>115</sup> Moreover, that the attacker attempted to murder an Ahmadi Muslim after the rally demonstrates the influence of these hate-mongering rallies. Likewise, neither Asia Bibi, a Pakistani Christian woman accused of blasphemy, nor any other of the countless Pakistanis currently imprisoned for blasphemy should still be behind bars.<sup>116</sup> Instead, Asia Bibi is still imprisoned and on death row for her alleged blasphemy, as are numerous other Christians and Ahmadi Muslims.<sup>117</sup> While repealing discriminatory legislation may reasonably take longer than just a few months, taking simple actions to release prisoners of conscience should not. In maintaining the illegal detention of people like Asia Bibi, despite retracting its ICCPR reservations, Pakistan demonstrates that it has not changed its discriminatory public policy against religious minorities.

*c. Pakistan's ICCPR Violations Through Anti-Blasphemy Legislation*

Prime Minister Zulfiqar Ali Bhutto reasoned that passage of the Second Amendment would appease clerics enough to stop the violence perpetrated against members of the Ahmadiyya Muslim Community.<sup>118</sup> Unfortunately for all parties involved, Bhutto's decision only acted as an accelerant for extremism to strengthen its grip on

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<sup>112</sup> Rana Tanveer, *Ahmadi Shot, Injured on 'Khatam-e-Nabuwat Day*, THE EXPRESS TRIBUNE (Sept. 8, 2011), <http://tribune.com.pk/story/247482/ahmedi-shot-injured-on-khatam-e-nabuwat-day/>.

<sup>113</sup> *Id.*

<sup>114</sup> See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT OF THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM 114 (2011) [hereinafter U.S. COMM'N ON INT'L RELIGIOUS FREEDOM].

<sup>115</sup> ICCPR, *supra* note 22, at art. 20(2) ("Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.").

<sup>116</sup> *Asia Bibi: A Call for Mercy Campaign*, PERSECUTION.COM, [http://www.persecution.com/public/newsroom.aspx?story\\_ID=NDA2](http://www.persecution.com/public/newsroom.aspx?story_ID=NDA2) (last visited Aug. 16, 2011).

<sup>117</sup> *Id.*

<sup>118</sup> *Interview with Pakistani Colonel Rafiuddin*, YOUTUBE (Aug. 24, 2010), <http://www.youtube.com/watch?v=i5qk-65MDC4>.

Pakistani politics and legislature. Once the Second Amendment became law, clerics pressed Bhutto to do more to restrict the Ahmadiyya Muslim Community and other religious minorities from propagating their faith, though Bhutto resisted.<sup>119</sup> General Zia gained dramatic popularity due to his mutual support of, and by, top clerics of Pakistan. Bhutto's diminishing influence combined with Zia's increasing popularity, enabled Zia to seize control of Pakistan via a 1977 military coup.<sup>120</sup> Zia claimed the coup was necessary, accusing Bhutto of widespread voter fraud and questionable murder allegations.<sup>121</sup>

In 1980, President Zia furthered the extremist cause when he created a special Federal Shariat Court designed to evaluate Pakistan's current legislation to ensure they were not repugnant to Islamic teachings.<sup>122</sup> By 1986, the Federal Shariat Court had invalidated 55 federal laws and 212 provincial laws as being contrary to the extremist clerics understanding of Islam, essentially exercising the repugnancy clause Pakistan had introduced in 1962.<sup>123</sup> The stage now set, anti-blasphemy legislation was officially passed in Pakistan on April 26th, 1984 under the now infamous Ordinance XX<sup>124</sup> (currently known as the Pakistan Penal Code ("PPC")). Subsections 298-B and 298-C of then Ordinance XX made it a criminal offense for members of the Ahmadiyya Muslim Community to call themselves Muslim, pose as a Muslim, refer to their places of worship as Masjids [mosques], state the customary Islamic greeting of *Asalaamo Alaikum*, practice or propagate their faith in any public or private capacity, use Islamic terminology in general, or engage in any behavior so as to injure the feelings of the Constitutionally approved Muslims.<sup>125</sup> Any member of the Ahmadiyya Muslim Community caught engaging in any of these now

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<sup>119</sup> *Ouster of Zulfiqar Ali Bhutto*, STORY OF PAKISTAN (JUNE 1, 2003), <http://www.storyofpakistan.com/articletext.asp?artid=A143>.

<sup>120</sup> *Timeline: Pakistan*, *supra* note 93.

<sup>121</sup> Craig Baxter, *Historical Settings*, in PAKISTAN: A COUNTRY STUDY 3, 64 (Peter Blood ed., 6th ed. 1995).

<sup>122</sup> See Forte, *supra* note 62, at 37 ("Shariat benches within the superior courts were displaced, and a separate and stronger Federal Shariat Court was created . . . If the Shariat Court found a law to be in conflict with the injunctions of Islam, the invalid portion of the law was voided, and the President directed to take steps to assure that the law was brought into conformity with the injunctions of Islam.")

<sup>123</sup> *Id.*

<sup>124</sup> PAK. PENAL CODE §§ 298B, 298C (made part of Penal Code by Presidential Ordinance No. 20 (1984), THE GAZETTE OF PAKISTAN EXTRAORDINARY, Apr. 26, 1984).

<sup>125</sup> *Id.* ("298B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.

(1) Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation;

illegal activities was punishable with “imprisonment of either description for a term which may extend up to three years and shall also be liable to a fine.”<sup>126</sup> Though Pakistan has signed and ratified the ICCPR, these laws are still in effect today in violation of Article’s 18, 19, and 27.<sup>127</sup> Article 27 ensures all minorities “shall not be denied the right. . .to enjoy their own culture, to profess and practice their

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(a) refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as ‘*Ameerul Mumineen*’, ‘*Khalifa-tui-Mumineen*’, ‘*Khalifa-tul-Muslimeen*’, ‘*Sahaabi*’ or ‘*Razi Allah Anho*’

(b) refers to, or addresses any person other than a wife of the Holy Prophet Muhammad (peace on him) as ‘*Ummul-Mumineen*’

(c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him), as ‘*Ahle-bait*’; or

(d) refers to, or names, or calls, his place of worship as ‘*Masjid*’;

shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

(2) Any person of the Qadiani group or Lahori group (who call themselves Ahmadis or by any other name) who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as ‘*Azan*’ or recites *Azan* as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(3) 298-C. Person of Qadiani group etc., calling himself a Muslim or preaching or propagating his faith.

Any person of the Qadiani group or the Lahori group (who call themselves ‘*Ahmadis*’ or by any other name), who, directly or indirectly, poses himself as Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”).

<sup>126</sup> *Id.* § 298C.

<sup>127</sup> ICCPR, *supra* note 22, at art. 18(1) (“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”); *id.* art. 18(2) (“No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”); *id.* art. 19(1) (“Everyone shall have the right to hold opinions without interference.”); *id.* art. 19(2) (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”); *id.* art. 27 (“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”).

own religion.”<sup>128</sup> Under Ordinance XX Section 298-B and 298-C, however, a member of the Ahmadiyya Muslim Community caught “behaving as a Muslim” is liable to arrest and fine.<sup>129</sup>

General Zia then added Section 295-C to Ordinance XX in 1986.<sup>130</sup> While punishments to prior offenses were limited to fine and imprisonment, Zia now introduced the death penalty for anyone convicted of insulting the Prophet Muhammad.<sup>131</sup> Under Subsection 295-C, General Zia extended the application of anti-blasphemy legislation from the Ahmadiyya Muslim Community to all religious minorities.<sup>132</sup> Ordinance XX Section 295-C also violates the ICCPR Articles 18, 19, and 27.<sup>133</sup> A recent demonstration of this intolerant law that has swept worldwide headlines is the case of Asia Bibi, a Pakistani Christian woman accused and convicted of violating 295-C.<sup>134</sup> Bibi is currently on death row in Pakistan only for allegedly insulting Prophet Muhammad.<sup>135</sup> In December 2010, Yousef Qureshi, an influential cleric, offered a \$6,000 reward for killing Asia Bibi; the Government of Pakistan remained silent and took no action against Qureshi for his incitement to violence.<sup>136</sup> Likewise, Amir Liaquat Hussain, Pakistan’s former federal minister for religious affairs, declared on his popular television show that it was both necessary and Islamic to kill Ahmadi Muslims.<sup>137</sup> As a result, within two days, two Ahmadi Muslims were murdered—police made no arrests.<sup>138</sup> Both the Qureshi and Hussain

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<sup>128</sup> *Id.* art. 27.

<sup>129</sup> PAK. PENAL CODE §§ 295B, 295C (made part of Penal Code by Presidential Ordinance No. 20 (1984), THE GAZETTE OF PAKISTAN EXTRAORDINARY, Apr. 26, 1984).

<sup>130</sup> See § 295C (“Use of derogatory remarks, etc. in respect of the Holy Prophet: Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.”); *Religious Freedom in India and Pakistan*, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM (2000), <http://www.uscirf.gov/countries/1023.html?task=view> (offering a chronology of anti-Ahmaddiya legislation in Pakistan).

<sup>131</sup> § 295C.

<sup>132</sup> *Id.*

<sup>133</sup> Compare *id.*, with ICCPR, *supra* note 22, at arts. 18, 19, 27.

<sup>134</sup> Carol Grisanti & Fakhar ur Rehman, *Christian Woman Faces Death for Blasphemy*, MSNBC WORLD BLOG (Nov. 29, 2010, 2:35 PM), [http://worldblog.msnbc.msn.com/\\_news/2010/11/29/5543912-christian-woman-faces-death-for-blasphemy](http://worldblog.msnbc.msn.com/_news/2010/11/29/5543912-christian-woman-faces-death-for-blasphemy).

<sup>135</sup> *Id.*

<sup>136</sup> U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANN. REPORT 115 (2011), available at <http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf>.

<sup>137</sup> *Pakistan: Two Persons Murdered After an Anchor Person Proposed the Widespread Lynching of Ahmadi Sect Followers*, ASIAN HUM. RTS. COMM’N (Sept. 10, 2008), <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-203-2008>.

<sup>138</sup> *Id.*

incitements to violence are clear ICCPR Article 20(2) violations that the Government of Pakistan has wholly ignored.<sup>139</sup>

Ordinance XX directly undermines Pakistan's Constitution and the ICCPR, and gives extremists in Pakistan even more power to influence legal and civil matters.<sup>140</sup> Since 1984, the level of persecution of religious minorities in Pakistan has steadily increased. Not surprisingly, Ahmadi Muslims residing in Pakistan have been called "the most persecuted Muslim religious group today."<sup>141</sup> For example, since anti-blasphemy legislation was enacted in 1984, seven hundred and sixty-four members of the Ahmadiyya Muslim Community have been charged with blasphemy simply for displaying the Kalima.<sup>142</sup> In addition, thirty-eight Ahmadi Muslims have faced blasphemy charges for calling the Adhaan,<sup>143</sup> four hundred and thirty-four Ahmadi Muslims have been charged for posing as Muslims, one hundred and sixty-one Ahmadi Muslims have been charged for using Islamic terminology in public, ninety-three Ahmadi Muslims have been charged with offering prayers, seven hundred and nineteen Ahmadi Muslims have been charged for preaching, and the list yet continues.<sup>144</sup> In one instance, roughly sixty thousand members of the Ahmadiyya Muslim Community residing in Rabwah, Pakistan were charged for blasphemy under the 1984 Ordinance XX penal provisions.<sup>145</sup> Since 1974 alone, when Pakistan declared the Ahmadiyya Muslim Community to be a non-Muslim minority, extremists have murdered nearly three hundred Ahmadi Muslims on account of their faith.<sup>146</sup> Amnesty International reports that assailants have rarely, if ever, been brought to justice and that the persecution has only intensified.<sup>147</sup> In fact, 2010 proved to be the bloodiest year in the history of the Ahmadiyya Muslim Community in Pakistan as ninety-nine Ahmadi Muslims were murdered that

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<sup>139</sup> ICCPR, *supra* note 22, at art. 20(2) ("Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.")

<sup>140</sup> See sources cited *supra* notes 9-21.

<sup>141</sup> Donna E. Arzt, *Heroes or Heretics: Religious Dissidents Under Islamic Law*, 14 WIS. INT'L L.J. 349, 408 (1996).

<sup>142</sup> *Summary of the Cases Instituted Against Ahmadis in Pakistan*, THEPERSECUTION.ORG, <http://www.thepersecution.org/facts/summary.html> (last visited Feb. 14, 2011) [hereinafter *Summary of Cases*].

<sup>143</sup> *Id.*; see Paul V. M. Flesher, *Official Islam Glossary for Introduction to Religion*, UNIV. OF WYO. (1996), <http://uwacadweb.uwyo.edu/religionet/er/islam/iglossry.htm> (describing how the Adhaan is the Muslim call to prayer, announced publicly five times daily).

<sup>144</sup> *Summary of Cases*, *supra* note 142.

<sup>145</sup> *Id.*

<sup>146</sup> *List of Martyres*, *supra* note 109.

<sup>147</sup> Amnesty Int'l, *supra* note 88.

year.<sup>148</sup> On May 28, 2010, during Friday prayer, Tehreek-e-Taliban<sup>149</sup> terrorists attacked two Ahmadi Muslim mosques in Lahore, Pakistan, with semi-automatic weapons, suicide vests, and ball bearings, leaving 86 dead and over 125 injured.<sup>150</sup> Though police were warned of the attacks weeks in advance, they failed to provide any protection to the attacked members of the Ahmadiyya Muslim Community.<sup>151</sup> Instead, police only arrived several hours after the attack began when the majority of lives were already lost.<sup>152</sup> This incident is also a glaring example of Pakistan's complete disregard for Article 26 of the ICCPR, which requires governments to offer equal protection under the law to all of its citizens.<sup>153</sup>

*d. Pakistan's ICCPR Violations Through the Disenfranchisement of Religious Minorities*

In addition to the aforementioned human rights violations in Pakistan, the Government of Pakistan has also disenfranchised millions of its citizens who belong to religious minorities from equal voting rights. Pakistan insists it follows a democratic process and allows free voting for all its citizens, but this claim is simply not true. While Pakistan's Constitution and the ICCPR guarantee equal representation in public affairs and equal voting rights,<sup>154</sup> religious minorities in

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<sup>148</sup> *List of Martyres*, *supra* note 109.

<sup>149</sup> See generally Liam Stack, *Pakistani Taliban Helped Faisal Shadad, It's Not on US List of Terrorists?*, THE CHRISTIAN SCI. MONITOR (June 23, 2010), <http://www.csmonitor.com/World/terrorism-security/2010/0623/Pakistani-Taliban-helped-Faisal-Shahzad-it-s-not-on-US-list-of-terrorists> (describing how the Tehreek-e-Taliban (TTP) trained Faisal Shahzad, the convicted attempted Times Square Bomber, to carry out his attacks and demonstrating how anti-blasphemy legislation in Pakistan has led to a direct threat to American safety).

<sup>150</sup> Press Release, ThePersecution.org, *Death Toll Rises to 94 Following Lahore Terrorist Attacks* (May 30, 2010), <http://www.thepersecution.org/press/10/pk100530.html>.

<sup>151</sup> *Pakistan: Massacre of Minority Ahmadis*, HUM. RTS. WATCH (June 1, 2010), <http://www.hrw.org/news/2010/06/01/pakistan-massacre-minority-ahmadis>.

<sup>152</sup> *Id.*

<sup>153</sup> ICCPR, *supra* note 22, at art. 26 ("All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.").

<sup>154</sup> See PAK. CONST. art. 36; ICCPR, *supra* note 22, at art. 25; UDHR, *supra* note 85, at art. 21(3).

Pakistan have neither equal representation nor equal voting rights.<sup>155</sup> For example, non-Muslims have no representation in the Pakistani senate and federal cabinet.<sup>156</sup> This provision violates Article 25 of the ICCPR.<sup>157</sup> Similarly, no member of a religious minority in Pakistan can ever rise to the office of President or Prime Minister, as the President and Prime Minister of Pakistan must be a “Muslim” as defined by the Constitution.<sup>158</sup> This discriminatory restriction on minorities from becoming President or Prime Minister violates Article 25(c) of the ICCPR, which guarantees equal access to public office.<sup>159</sup> Pakistan has maintained this policy even after its June 2011 ICCPR reservation retractions.<sup>160</sup>

Moreover, members of the Ahmadiyya Muslim Community are further isolated when trying to vote. Ahmadi Muslims are forced to make a decision if they choose to vote—either register as a non-Muslim or sign a document declaring the founder of their community, Mirza Ghulam Ahmad, to be an apostate and a liar.<sup>161</sup> In other words, members of the Ahmadiyya Muslim Community must either denounce their faith, denounce their Community’s Founder, or be forbidden from voting. The July-December 2010 UN International Religious Freedom Report on Pakistan explains:

The government [of Pakistan] designated religious affiliation on passports and requested religious information in national identity card applications. A citizen must have a national identity card to vote. Those wishing to be listed as Muslims must swear their belief that the Prophet Muhammad is the final prophet and denounce the Ahmadiyya movement’s founder [Mirza Ghulam Ahmad] as a false prophet and his followers as non-Muslims, a provision designed to discriminate against

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<sup>155</sup> Amjad Mahmood Khan, *Persecution of the Ahmadiyya Community in Pakistan: An Analysis Under International Law and International Relations*, 16 HARV. HUM. RTS. J. 217, 226 n.33 (2003).

<sup>156</sup> *Id.*

<sup>157</sup> ICCPR, *supra* note 22, at art. 25 (guaranteeing equal participation in public affairs and the right to vote).

<sup>158</sup> PAK. CONST. art. 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 and is qualified to be elected as member of the National Assembly.”).

<sup>159</sup> ICCPR, *supra* note 22, art. 25(c) (“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(c) To have access, on general terms of equality, to public service in his country.”).

<sup>160</sup> *See Pakistan Withdraws Reservations*, *supra* note 103.

<sup>161</sup> Khan, *supra* note 155, at 226 n.33.

Ahmadis. As a result Ahmadis continued to boycott elections.<sup>162</sup>

This unconstitutional requirement has disenfranchised Pakistan's roughly 4 million Ahmadi Muslims from the voting process.<sup>163</sup> For religious minorities in general, a separate voting electorate functioned from 1978 until President Pervez Musharraf issued an executive order calling for its elimination in 2002.<sup>164</sup> Under pressure from clerics, however, President Musharraf issued Executive Order 15 just a few months later, partially undoing his previous order.<sup>165</sup> Executive Order 15 exclusively targeted Ahmadi Muslims on account of their faith and placed them into the same discriminatory predicament as during the separate electorate.<sup>166</sup> Thus, since 2002, members of the Ahmadiyya Muslim Community in Pakistan are the only demographic disenfranchised from voting in Pakistan. Once again, this policy directly violates the ICCPR Article 25(a), which guarantees every citizen the right to take part in public affairs.<sup>167</sup> This policy also violates the ICCPR Article 25(b), which guarantees equal suffrage and secret balloting.<sup>168</sup> If Ahmadi Muslims must reveal their affiliation when voting, then they can vote neither equally nor in secret—and thus, have no representation on matters of public importance. Until Pakistan is held accountable under the ICCPR, this human rights violation will continue to become more destructive.

*e. Pakistan's ICCPR Violations Perpetuate National Extremism*

Pakistan's current President Asif Ali Zardari has made international promises to champion peace and human rights.<sup>169</sup> Pakistan

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<sup>162</sup> U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RTS., AND LABOR, INT'L RELIGIOUS FREEDOM REP.: PAKISTAN 6 (Sep. 13, 2011), available at <http://www.state.gov/documents/organization/171759.pdf> [hereinafter RELIGIOUS FREEDOM REPORT: PAKISTAN].

<sup>163</sup> See Khan, *supra* note 155, at 218.

<sup>164</sup> N. Mahmood Ahmad & Amjad Mahmood Khan, 'Apartheid' in Pakistan, WASH. POST (Jan. 19, 2011), [http://newsweek.washingtonpost.com/onfaith/guestvoices/2011/01/apartheid\\_in\\_pakistan.html](http://newsweek.washingtonpost.com/onfaith/guestvoices/2011/01/apartheid_in_pakistan.html).

<sup>165</sup> PAK. PENAL CODE §§ 7B, 7C (made part of Penal Code by Chief Executive's Order No. 15 (1984), THE GAZETTE OF PAKISTAN EXTRAORDINARY, June 17, 2002).

<sup>166</sup> Ahmad & Khan, *supra* note 164.

<sup>167</sup> ICCPR, *supra* note 22, at art. 25(a).

<sup>168</sup> *Id.* art. 25(b).

<sup>169</sup> "High ideals of the United Nations have inspired our vision of the global society. A global society that is based on: Peace and justice; Freedom and human rights; Equality and equal opportunity; Freedom from want and hunger; Tolerance and harmony; A global society; that celebrates its unity in diversity; That believes in sovereign equality of nations, large or small; That promotes, truth and reconciliation. . . On behalf of the people of Pakistan I assure you of our cooperation to

in the Zardari era, however, has only upheld the discriminatory 1974 amendment and 1984 anti-blasphemy legislation. Under Zardari's regime in 2009, Pakistan charged at least 74 members of the Ahmadiyya Muslim Community under section 295 of the penal code, and to this day has still detained many of these individuals behind bars.<sup>170</sup> Moreover, according to the watchdog organization South Asia Terrorism Portal ("SATP"), sectarian violence continues to increase in Pakistan. SATP reports that terrorists in Pakistan killed over 1500 civilians in 2007.<sup>171</sup> In 2008, 2155 civilians were murdered.<sup>172</sup> The year 2009 recorded another increase as over 2300 civilians were killed in sectarian violence.<sup>173</sup> In 2010, civilian deaths decreased to 1796.<sup>174</sup> This decrease seems to be an anomaly, unfortunately, because SATP reports that as of December 25, 2011, 2545 civilians have been killed in Pakistan because of terrorist violence.<sup>175</sup> These numbers do not account the thousands killed as youths recruited to militancy, terrorists in suicide bombings, and military personnel in terrorist attacks.<sup>176</sup>

As a direct result of Pakistan's anti-blasphemy laws, Pakistan's minority Christian population continues to suffer intense persecution as well. The US State Department reports, "[d]uring the 2009 violence in the village of Gojra, eight Christians were killed and 18 injured, and two churches and about 75 houses burned, following an accusation that Christians had desecrated the Koran."<sup>177</sup> Likewise, in response to a Florida pastor's March 2011 Qur'an burning, several churches in Pakistan were attacked.<sup>178</sup> Numerous Christians accused of blasphemy have been murdered, even under police protection. For example, Qamar David, a Christian who was sentenced to 25 years in 2006 for allegedly blasphemous text messages, was found dead in his Karachi jail in March 2011.<sup>179</sup> In July 2010, two Christian brothers

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fashion a safer and better world; A world in which all children, - yours and mine-live in peace and harmony." Asif Ali Zardari, President, Pak., Speech to United Nation General Assembly (Sep. 25, 2009), *available at* [http://www.ihro.org.pk/zardari\\_speech\\_un.html](http://www.ihro.org.pk/zardari_speech_un.html).

<sup>170</sup> PERSECUTION OF AHMADIS IN PAKISTAN DURING THE YEAR 2009: A SUMMARY, THEPERSECUTION.ORG 98, [http://www.thepersecution.org/dl/2009/annual\\_report\\_2009.pdf](http://www.thepersecution.org/dl/2009/annual_report_2009.pdf) (last visited Oct. 4, 2011) [hereinafter PERSECUTION OF AHMADIS].

<sup>171</sup> *Fatalities in Terrorist Violence in Pakistan 2003-2011*, <http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm> (last visited Dec. 30, 2011).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, *supra* note 114, at 114.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 116.

were shot dead on the footsteps of a Faisalabad courthouse; each originally summoned on the charge of alleged blasphemy.<sup>180</sup> Even those acquitted of blasphemy are subject to vigilante justice. Muhammad Imran was released from an April 2009 blasphemy charge—for a lack of evidence no less—but was still gunned down in March 2011.<sup>181</sup> Note that, with the exception of the 2009 Gojra violence, which took place after Pakistan only signed the ICCPR, each of the aforementioned murders occurred after Pakistan signed *and ratified* the ICCPR.

Pakistan's Hindu population has not faced much better than Pakistan's Christian population. The US State Department reports that 23 Hindu children were kidnapped between January 2008 and December 2010.<sup>182</sup> Hindu and Christian women, including minors, are particularly vulnerable to rape and forced conversion to Islam.<sup>183</sup> Some estimates record that up to 25 Hindu women in Pakistan are forcibly converted to Islam every month.<sup>184</sup> Such behavior violates any number of ICCPR Articles.

Still, in February 2010, Pakistan's Minister of Minority Affairs, the late Shahbaz Bhatti, claimed he expected changes to the current anti-blasphemy legislation by the end of 2010.<sup>185</sup> The potential changes would obligate judges to investigate blasphemy cases before they are registered, and mete out similar punishments to those who concoct false accusations.<sup>186</sup> While such an amendment may theoretically work to help decrease abuse of anti-blasphemy legislation, it fails to recognize the principle that anti-blasphemy legislation itself is in violation of Pakistan's own Constitution and the ICCPR. That fact notwithstanding, however, such a change is nowhere to be found in Pakistan's legislative process even two years later. On the contrary, Babar Awan, Pakistan's then Law Minister and close aide of President Zardari, categorically rejected any efforts to repeal anti-blasphemy legislation, declaring, "in my presence as the Law Minister, no one should think of finishing this [anti-blasphemy] law."<sup>187</sup> To properly contextualize, Awan's comment was in response to appeals to grant

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<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 114.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 114-15.

<sup>185</sup> Shaun Tandon, *Pakistan Minister Sees Blasphemy Law Revision This Year*, AGENCE FRANCE-PRESSE (Feb. 7, 2010), [http://www.google.com/hostednews/afp/article/ALeqM5gN\\_fU6rinxd4J-egRTpxlQrY5sdA](http://www.google.com/hostednews/afp/article/ALeqM5gN_fU6rinxd4J-egRTpxlQrY5sdA).

<sup>186</sup> *Id.*

<sup>187</sup> "No One Should Think of Finishing Blasphemy Law in My Presence": *Pak Law Minister*, ONEINDIA NEWS (Nov. 26, 2010), <http://news.oneindia.in/2010/11/26/no-one-should-think-of-finishing-blasphemy-law-in-mypresen.html>.

Christian Pakistani Asia Bibi amnesty for her conviction of alleged blasphemy.<sup>188</sup> Likewise, Pakistan's Prime Minister Gilani, stated on January 8, 2011, "I have already clarified and our religious affairs minister has also said that we have no intentions to amend this law."<sup>189</sup> Most depressing, however, is that Shabazz Bhatti, Pakistan's only Christian federal minister, was murdered at the hands of extremists on March 2, 2011, specifically because he sought to repeal Pakistan's anti-blasphemy laws.<sup>190</sup>

Furthermore, Bhatti was not the first politician to be assassinated due to attempts to repeal Pakistan's anti-blasphemy laws. On January 3, 2011, Punjab Province Governor Salman Taseer was also assassinated at the hands of one of his bodyguards, Mumtaz Qadri, who did so because Governor Taseer wanted to repeal Pakistan's anti-blasphemy laws.<sup>191</sup> In a tweet hours before his murder, Taseer stated, "I was under huge pressure sure 2 cow down b4 rightest [sic] pressure on blasphemy. Refused. Even if I'm the last man standing."<sup>192</sup> In celebration of Taseer's assassination, 500 clerics in Pakistan declared his death a victory for the country, lawyers threw rose petals on the assassin, and countless refused to offer Taseer's funeral prayers.<sup>193</sup> On January 9th, 2011, over 50,000 people rallied in support of anti-blasphemy legislation—demonstrating how these discriminatory laws have gained dramatic strength since their implementation.<sup>194</sup> In fact, Judge Pervez Ali Shah, who presided over Mumtaz Qadri's criminal case and delivered a death penalty verdict, has gone into hiding after receiving multiple death threats.<sup>195</sup>

Furthermore, the Government of Pakistan is often in complete denial that any discrimination, much less persecution, exists. For ex-

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<sup>188</sup> *Id.*

<sup>189</sup> *Massive Karachi Rally in Support of Blasphemy Law*, BBC NEWS (Jan. 10, 2011), <http://www.bbc.co.uk/news/world-south-asia-12149011> [hereinafter *Massive Karachi Rally*].

<sup>190</sup> Karin Brulliard & Shaiq Hussain, *Shahbaz Bhatti, Pakistan's Sole Christian Minister, Is Assassinated in Islamabad*, WASH. POST (Mar. 2, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/01/AR2011030101394.html>.

<sup>191</sup> *Punjab Governor Salman Taseer Assassinated in Islamabad*, BBC NEWS (Jan. 4, 2011), <http://www.bbc.co.uk/news/world-south-asia-12111831>.

<sup>192</sup> Saba Imtiaz, *Salmaan Taseer, Last Man Standing*, FOREIGN POL. (Jan. 5, 2011), [http://afpak.foreignpolicy.com/posts/2011/01/05/salmaan\\_taseer\\_last\\_man\\_standing](http://afpak.foreignpolicy.com/posts/2011/01/05/salmaan_taseer_last_man_standing).

<sup>193</sup> U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, *supra* note 114, at 112.

<sup>194</sup> *Massive Karachi Rally*, *supra* note 189.

<sup>195</sup> Farooq Naem, *Sympathy for an Assassin: The Worrisome Protests in Pakistan*, TIME (Oct. 9, 2011), <http://www.time.com/time/world/article/0,8599,2096500,00.html>.

ample, Nadeem Kiani, spokesman for the Embassy of Pakistan in Washington D.C. stated to the *Los Angeles Times* on October 12, 2009,

[t]he Ahmadi beliefs are in absolute contravention to Muslim beliefs, but everyone has equal rights of worship in Pakistan. . . There are some people who try to incite sectarian violence from time to time to carry out their own agendas but as far as the government and 99% of the general public are concerned, there are no problems with Ahmadis.<sup>196</sup>

On the contrary, a November 23, 2010 Human Rights Watch report categorically rejects Kiani's statement, and particularly mentions the denial tactic in which Kiani engages:

The Punjab [Pakistan] provincial government is either in denial about threats to minorities or is following a policy of willful discrimination. . . Provincial law enforcement authorities need to put aside their prejudices and protect religious minorities who are clearly in serious danger from both the Taliban and sectarian militant groups *historically supported by the state*.<sup>197</sup>

Likewise, an October 11, 2005 Amnesty International report demonstrates that persecution of religious minorities in Pakistan is not a rogue phenomenon, but is in fact a state sanctioned norm.

Police investigations of previous targeted killings of Ahmadi [Muslims] in Pakistan have been slow or have not taken place at all. In many cases the perpetrators have not been brought to justice. Amnesty International believes that the government's consistent failure to investigate attacks and killings of members of religious minorities fails to discourage further human rights abuses against such groups.<sup>198</sup>

The 2010 UN International Religious Freedom Report on Pakistan adds that, "[s]acred books for religious minorities, except Ahmadis, were freely imported,"<sup>199</sup> further demonstrating the Government's targeted discrimination against Ahmadi Muslims. The report also adds,

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<sup>196</sup> David Kelly, *In a Chino Mosque, Ahmadis Can Worship Freely*, L.A. TIMES (Oct. 12, 2009), <http://articles.latimes.com/2009/oct/12/local/me-beliefs12/2>.

<sup>197</sup> *Pakistan: Repeal Blasphemy Law*, HUM. RTS. WATCH (Nov. 23, 2010), <http://www.hrw.org/en/news/2010/11/22/pakistan-repeal-blasphemy-law> (emphasis added).

<sup>198</sup> Amnesty Int'l, *supra* note 88.

<sup>199</sup> *Religious Freedom Report: Pakistan*, *supra* note 162, at 13.

[t]he constitution provides for the right to establish places of worship and train clergy, but in practice these rights were restricted for Ahmadis. Authorities continued to conduct surveillance on Ahmadis, and several Ahmadiyya mosques reportedly were closed or confiscated; others reportedly were desecrated or their construction stopped.<sup>200</sup>

While the ICCPR Article 27 ensures minorities are protected from such discrimination,<sup>201</sup> Pakistan has only promoted state sanctioned persecution, empowering extremists to treat minorities in Pakistan as less than equal citizens.

The ICCPR Article 21 specifically reserves the right to peaceably assemble.<sup>202</sup> Members of the Ahmadiyya Muslim Community in Pakistan, however, are forbidden from the right to peaceful assembly, as assembly would mean propagation, and thus in violation of Ordinance XX.<sup>203</sup> Pakistan has denied Ahmadi Muslims this right since 1983.<sup>204</sup> Article 21 only restricts the right to assembly for reasons of national security,<sup>205</sup> but that restriction cannot fairly apply to Ahmadi Muslims.<sup>206</sup> The Ahmadiyya Muslim Community in Pakistan held national conferences annually from 1948<sup>207</sup> to 1984 when General Zia forbade them,<sup>208</sup> all without a single act of violence or disturbance of the peace. In fact, since the Ahmadiyya Muslim Community began holding conferences in 1891 in India, it has held literally thousands of conferences worldwide, with attendance exceeding 200,000 members at times, all without a single act of violence on record.<sup>209</sup> The Ahmadiyya Muslim Community uses these public conferences to champion peace, enhance spirituality, and engage in humanitarian

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<sup>200</sup> *Id.* at 12.

<sup>201</sup> See ICCPR, *supra* note 22, at art. 27.

<sup>202</sup> See *id.* art. 21.

<sup>203</sup> PAK. PENAL CODE § 298C (made part of Penal Code by Presidential Ordinance No. 20 (1984), THE GAZETTE OF PAKISTAN EXTRAORDINARY, Apr. 26, 1984).

<sup>204</sup> See U.S. DEP'T STATE, INT'L RELIGIOUS FREEDOM REP. 2010 (Nov. 17, 2010), <http://www.state.gov/g/drl/rls/irf/2010/148800.htm>.

<sup>205</sup> See ICCPR, *supra* note 22, at art. 21.

<sup>206</sup> Khan, *supra* note 155, at 234.

<sup>207</sup> See *Human Right Violations Suffered by Ahmadis in Pakistan: A Brief*, THEPERSECUTION.ORG, <http://www.thepersecution.org/brief.html> (last visited Sept. 30, 2011).

<sup>208</sup> See *Newsreport November, 2006: Vicious Application of the Blasphemy Law*, THEPERSECUTION.ORG, <http://www.thepersecution.org/nr/2006/november.html> (last visited Sept. 30, 2011).

<sup>209</sup> See *Annual Conference*, AL ISLAM, <http://www.alislam.org/library/history/ahmadiyya/69.html> (last visited Sept. 30, 2011).

services.<sup>210</sup> Pakistan's state policy to restrict Ahmadi Muslims from the right to freedom of assembly is in clear violation of ICCPR Article 21.

On the other hand, Pakistan unrestrictedly allows groups like the *Khatame Nabuwat* Party to hold regular conferences, with the specific aim to disparage and incite hatred against the Ahmadiyya Muslim Community.<sup>211</sup> These conferences promote the extremist ideology that Ahmadi Muslims are *wajibul qatl*, i.e. liable to death, and that "the streets need to be cleansed of Ahmadi Muslims [sic]."<sup>212</sup> Chaudri Muhammad Iqbal, former President of the *Khatme Nabuwat* movement declared in 2009, "[t]o dispatch [i.e. kill and send] a Qadiani to hell is the religious duty of every Muslim."<sup>213</sup> While the ICCPR Article 20(2) expressly forbids advocacy for the aforementioned violent purposes,<sup>214</sup> the Government of Pakistan has done nothing to prevent these conferences from taking place, or to hold those who incite violence accountable. The results have been devastating. For example, surrounding the May 28th, 2010 Lahore attack that killed 86 members of the Ahmadiyya Muslim Community, Human Rights Watch reported that "[t]he anti-Ahmadiyya campaign has intensified in the past year, exemplified by the government allowing groups to place banners seeking the death of "Qadianis" (a derogatory term for Ahmadi [Muslims]) on the main thoroughfares of Lahore."<sup>215</sup> Likewise, the Human Rights Commission of Pakistan, an independent NGO, reported that it "repeatedly brought [the Taliban's] threats [of attack] to the notice of Punjab Chief Minister Shahbaz Sharif, the provincial government, and the police controlled by the provincial authorities, asking for enhanced security for Ahmadiyya mosques."<sup>216</sup> Not only did the Government completely fail to provide any protection, Zaeem Qadri, an advisor to Punjab Chief Minister Shahbaz Sharif, admitted, "the provincial Government had failed to remove threatening banners from the city's thoroughfares in order to prevent 'adverse reaction against the government' by the groups responsible."<sup>217</sup> In short,

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<sup>210</sup> See generally *Objectives, Purposes & Blessings of Jalsa Salana in the Words of the Promised Messiah (Peace Be On Him!)*, AL ISLAM, <http://www.jalsasalana.org/objectives.html> (last visited Oct. 22, 2011).

<sup>211</sup> See generally Press Release, Al Islam, Anti-Ahmadiyya Conferences on the Increase in Pakistan: Hate Filled Conferences Being Held Throughout Pakistan (Apr. 30, 2010), <https://www.alislam.org/egazette/press-release/anti-ahmadiyya-conferences-on-the-increase-in-pakistan/>.

<sup>212</sup> *Id.*

<sup>213</sup> PERSECUTION OF AHMADIS, *supra* note 170, at 1.

<sup>214</sup> See ICCPR, *supra* note 22, at art. 20.

<sup>215</sup> See *Pakistan: Massacre of Minority Ahmadis*, *supra* note 151.

<sup>216</sup> See *id.*

<sup>217</sup> See *id.*

the Government of Pakistan and the Pakistani Court system permitted public banners in Lahore, calling for the murder of all Ahmadi Muslims, specifically to avoid a Taliban attack on the government. That the Government of Pakistan allowed such banners to be raised in the first place is a direct contravention of ICCPR Article 20(2), which forbids religious hatred and incitement to violence and discrimination.<sup>218</sup>

*f. Pakistan's ICCPR Violations Perpetuate International Extremism*

In addition to causing increasingly violent internal problems, Pakistan's anti-blasphemy laws have helped extremists amplify their influence on an international scale. For example, the Christian Science Monitor reports that the May 2010 failed Times Square bomber, Faisal Shahzad, received his training from the Pakistani Tehreek-e-Taliban.<sup>219</sup> This is the same Taliban group that killed 86 members of the Ahmadiyya Muslim Community on May 28th, 2010.<sup>220</sup> Likewise, in November 2010, Mohamed Osman Mohamud was arrested in Portland, Oregon, for an attempted bombing.<sup>221</sup> He admits his training came from Internet websites teaching destruction of the west and all 'un-Islamic' regimes, exactly reflecting the teachings Maududi promoted to help pass anti-blasphemy legislation in Pakistan.<sup>222</sup> Moreover, the five Virginian youth arrested in Pakistan in 2009 traveled to Pakistan from America to receive terrorism training from the Taliban.<sup>223</sup> The BBC reports on December 8, 2010 that in the United Kingdom, the *Khatam un Nabuwat* Movement handed out leaflets calling for the murder of all members of the Ahmadiyya Muslim Community on account of their blasphemous faith.<sup>224</sup> This is the same political movement calling for the death of the Christian Pakistani

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<sup>218</sup> See ICCPR, *supra* note 22, at art. 20(2) ("Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.").

<sup>219</sup> See Stack, *supra* note 149.

<sup>220</sup> *Pakistan: Massacre of Minority Ahmadis*, *supra* note 151.

<sup>221</sup> See Brad Knickerbocker, *Mohamed Osman Mohamud: The Somali Teen Who Wanted to Bomb Portland*, THE CHRISTIAN SCI. MONITOR (Nov. 28, 2010), <http://www.csmonitor.com/USA/2010/1128/Mohamed-Osman-Mohamud-The-Somali-teen-who-wanted-to-bomb-Portland>; see also GRARE, *supra* note 40.

<sup>222</sup> See ABC Interview Regarding Extremist Websites, YOUTUBE (Dec. 1, 2010), <http://www.youtube.com/watch?v=hYMEs6GSUIM>.

<sup>223</sup> See Frank Liao, *Five US Students Arrested in Pakistan on Terrorism Charges*, NOWPUBLIC (Dec. 11, 2009), <http://www.nowpublic.com/world/five-us-students-arrested-pakistan-terrorism-charges>.

<sup>224</sup> See Ahmadiyya 'Targeted by Hate Campaign', BBC NEWS (Dec. 8, 2010), <http://www.bbc.co.uk/news/uk-11947734>.

woman, Asia Bibi, for her alleged blasphemy.<sup>225</sup> Pakistan's support of anti-blasphemy legislation has created a society that is increasingly influencing people around the world with extremist ideologies.

This influence of extremist ideologies does not extend merely to fringe groups, but also to numerous governments. In 1999 Pakistan and the Organization of the Islamic Conference ("OIC") introduced an anti-blasphemy measure ("the resolution") to the United Nations that "stresses the need to effectively combat defamation of all religions and incitement to religious hatred, against Islam and Muslims in particular."<sup>226</sup> This resolution passed every year for over a decade before it was finally defeated in 2011.<sup>227</sup> Before the resolution was ultimately rejected, Pakistan touted it as a means to champion diversity and promote harmony.<sup>228</sup> This is, however, the exact type of law used to persecute Pakistan's religious minorities. For example, Section 295-C of Pakistan's Ordinance XX issues the death penalty for anyone who, "by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad."<sup>229</sup> The resolution's proposed purpose is "combat defamation. . . against Islam and Muslims in particular."<sup>230</sup> More than just a similarity, Pakistani Christian Asia Bibi is on death row, and countless more are incarcerated, for the precise allegation that they defamed Islam and Muslims.<sup>231</sup>

Indonesia, a nation President Obama complimented as one that has the "spirit of religious tolerance. . . enshrined in [its] Constitution, and that [spirit] remains one of [Indonesia's] defining and inspiring characteristics,"<sup>232</sup> has recently enforced anti-blasphemy laws to

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<sup>225</sup> Grisanti & ur Rehman, *supra* note 134.

<sup>226</sup> Betsy Pisik, *U.S. Fights Islamic Anti-Defamation Push*, THE WASH. TIMES (Sept. 2, 2008), <http://www.washingtontimes.com/news/2008/sep/02/us-fights-islamic-anti-defamation-push/>.

<sup>227</sup> See News Release, Assyrian Int'l News Agency, *An Anti-Blasphemy Measure Laid to Rest – AINA* (Apr. 1, 2011), <http://www.uscirf.gov/news-room/uscirf-in-the-news/3585.html>.

<sup>228</sup> See *id.* ("Speaking for the OIC, Pakistan typically introduced these resolutions, arguing in words calculated to appeal to Western liberals: "Unrestricted and disrespectful freedom of opinion creates hatred and is contrary to the spirit of peaceful dialogue and promotion of multiculturalism.").

<sup>229</sup> PAK. PENAL CODE § 295C (made part of Penal Code by Presidential Ordinance No. 20 (1984), THE GAZETTE OF PAKISTAN EXTRAORDINARY, Apr. 26, 1984).

<sup>230</sup> See Pisik, *supra* note 226.

<sup>231</sup> See Grisanti & ur Rehman, *supra* note 134.

<sup>232</sup> Barack Obama, President, U.S., Remarks in Indon. (Nov. 9, 2010), <http://blogs.wsj.com/washwire/2010/11/09/full-text-obamas-prepared-remarks-in-indonesia/>.

restrict religious freedom for Indonesian Ahmadi Muslims.<sup>233</sup> As a result, restrictions on religious freedom have increasingly allowed violence against Ahmadi Muslims, because of their faith.<sup>234</sup> In addition, the US State Department reports that Indonesian government officials are calling to ban Ahmadi Muslims from Indonesia, and turning a blind eye to dozens of Ahmadi Muslims mosques that have been illegally closed and destroyed.<sup>235</sup> Like Pakistan, Indonesia has signed and ratified the ICCPR, demonstrating the powerfully destructive abilities of anti-blasphemy legislation.<sup>236</sup>

Likewise, the international community cannot ignore the dangerous precedent that will be set if Pakistan is allowed to uphold its current discriminatory legislation yet remain an ICCPR ratified member. Nations may then point to a discriminatory Pakistan as an ICCPR member nation, and justify committing similar atrocities without fear of reprisal. Even now, what is to prevent Indonesia from proposing this argument to justify its discriminatory laws? The domino

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<sup>233</sup> U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RTS., AND LABOR, INT'L RELIGIOUS FREEDOM REP.: INDONESIA, <http://www.state.gov/g/drl/rls/irf/2008/108407.htm> (last visited Sept. 28, 2011) [hereinafter RELIGIOUS FREEDOM REP.: INDONESIA] ("On June 9, 2008, the Government announced a joint ministerial decree freezing the activities of the Ahmadiyya Qadiyani (Ahmadiyya) and prohibiting vigilantism against the group. The decree was short of an outright ban for which hardline groups and a government-appointed body, the Coordinating Board for Monitoring Mystical Beliefs in Society (Bakor Pakem), were strongly advocating. The decree was signed by the Attorney General's Office, the Ministry of Religion, and the Ministry of Home Affairs. The Minister of Religious Affairs stated that violations of the ban on proselytizing would result in a maximum 5-year jail sentence under charges of blasphemy. . . . Prior to the government decree, Bakor Pakem issued a recommendation to the Government to dissolve the Ahmadiyya. The April 16, 2008, recommendation declared the group heretical and deviant, citing a 1965 presidential instruction on the 'prevention of misuse and disgrace of religion.'").

<sup>234</sup> Phillip Shishkin, *Intolerant Indonesia: In Java, Muslim Hardliners Target 'Apostates'*, WORLD NEWS (Feb. 13, 2011), <http://www.thedailybeast.com/newsweek/2011/02/13/intolerant-indonesia.html>.

<sup>235</sup> RELIGIOUS FREEDOM REP.: INDONESIA, *supra* note 233 ("There were a number of reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Some groups used violence and intimidation to force at least 12 churches and 21 Ahmadiyya mosques to close. Several churches and Ahmadiyya mosques remained closed after mobs forcibly shut them down in previous years. Some Muslim organizations and government officials called for the dissolution of the Ahmadiyya, resulting in some violence and discrimination against its followers. Some perpetrators of violence were undergoing trials during the reporting period. However, many perpetrators of past abuse against religious minorities were not brought to justice.").

<sup>236</sup> STATUS PAGE FOR ICCPR, *supra* note 66. Indonesia ratified the ICCPR on 23 February 2006.

effect has the potential to compromise the very purpose of the ICCPR, and expose minorities worldwide to discriminatory legislation. Therefore, these human rights violations and apathetic ICCPR compliance must be dealt with immediately.

#### PART IV: SOLUTIONS TO ENCOURAGE PAKISTAN TO COMPLY WITH THE ICCPR

##### *a. A Strong Platform Exists to Ignite Reformation*

Since Pakistan's anti-Ahmadi and anti-blasphemy legislation was enacted in 1984 and 1986, respectively,<sup>237</sup> an entire generation of Pakistanis have been raised with the belief that the 'might is right' approach to public policy is constitutional. Obviously, no simple solution exists to return Pakistan to its noble founding principles of equality and freedom. Pakistan has signed and ratified the ICCPR, however, and this is a significant platform upon which Pakistan can advance towards restoring human rights. Likewise, that Pakistan has recently recanted the majority of its reservations also indicates at least a peripheral willingness to comply with its international obligations. This process must continue.

The first step to ensure this process continues is through international accountability. Herein, however, lies the problem. That Pakistan is in blatant violation of the ICCPR should be an international outrage—but no such mass outrage exists. Unfortunately, this international apathetic approach is nothing new. The world has largely remained historically silent, even though Pakistan has violated minority rights for at least the past 36 years (since it passed the Second Amendment to its Constitution).<sup>238</sup> To date, the US House of Representatives has passed only two resolutions, one in 1986 and the other 2002, condemning Pakistan's anti-blasphemy legislation.<sup>239</sup> In similar fashion, the United Nations passed Resolution 1985/21 in 1986, also to specifically condemn Ordinance XX.<sup>240</sup> Three resolutions in the span of nearly four decades, the most recent of which was a decade ago, cannot be expected to effectuate substantive change. For Pakistan to be held accountable under the ICCPR, the international community must take active measures to address Pakistan's systematic human rights violations and ICCPR noncompliance. These appropriate measures include enforcement of Article 41 of the ICCPR.

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<sup>237</sup> Khan, *supra* note 155, at 226-27.

<sup>238</sup> PAK. CONST. amend. II.

<sup>239</sup> H.R. Res. 348, 107th Cong. (2002); H.R. Res. 379, 96th Cong. (1986).

<sup>240</sup> See Khan, *supra* note 155, at 235.

*b. Prime Time for ICCPR Article 41 Action Against Pakistan*

Article 41 of the ICCPR permits ICCPR member nations to file complaints against other member nations for human rights violations.<sup>241</sup> The nation against whom the complaint is filed then has three months to provide an “explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.”<sup>242</sup> Failure to comply with this procedural requirement results in the matter being referred to a UN Commission, which conducts an even more thorough investigation.<sup>243</sup> ICCPR Article 41 provisions are only applicable, however, when the offending nation recognizes Article 40—i.e. accepts the competency of the United Nations Human Rights Committee to receive complaints<sup>244</sup>—and ten ICCPR ratified member states who also recognize Article 40 file declarations under Article 41, paragraph 1.<sup>245</sup> To date, no nation has filed Article 41 complaints against Pakistan, even though 166<sup>246</sup> nations have signed and ratified the ICCPR, and recognize Article 40. It stands to reason, therefore, that at least ten nations can join together to address Pakistan’s ICCPR violations. Through international EU pressure, Pakistan retracted its ICCPR reservations.<sup>247</sup> Likewise, through joint international pressure via Article 41 activation, Pakistan can be made to retract both anti-blasphemy legislation and voting restrictions on its religious minorities.

*c. The United States and Pakistan Must Unite Against Extremism*

When Former President George W. Bush was in office, he made clear that Pakistan is a close American ally in the war on extremism.<sup>248</sup> In fact, this alliance first developed under President Reagan’s administration during the proxy war in Afghanistan, even before Pakistan’s anti-blasphemy laws were enacted.<sup>249</sup> While the war against ex-

<sup>241</sup> ICCPR, *supra* note 22, at art. 41.

<sup>242</sup> *Id.* art. 41(a).

<sup>243</sup> *Id.* art. 41(b).

<sup>244</sup> *Pakistan Withdraws Reservations*, *supra* note 103.

<sup>245</sup> *Id.* art. 41(2).

<sup>246</sup> *The Right to Information*, FONDATION HIRONDELLE, <http://www.hirondelle.org/the-right-to-information/?lang=en> (last visited Sept. 30, 2011).

<sup>247</sup> *Pakistan Withdraws Reservations*, *supra* note 103.

<sup>248</sup> *Bush Names Pakistan ‘Major Ally’*, BBC NEWS (June 17, 2004), <http://news.bbc.co.uk/2/hi/3814013.stm>.

<sup>249</sup> Adrian Levy & Cathy Scott-Clark, *The Man Who Knew Too Much*, THE GUARDIAN (Oct. 13, 2007), <http://www.guardian.co.uk/world/2007/oct/13/usa.pakistan> (quoting Richard Barlow, a CIA expert on Pakistan’s nuclear secrets, who served under the Reagan administration. He observes, “. . . Pakistan had, within days of Reagan’s inauguration in 1981, gone from being an outcast nation that had out-

tremism is admittedly a different phenomenon, the success of the proxy war demonstrates the power of a unified front against a common enemy. The common enemy in this case is extremism, supported and promoted by anti-blasphemy legislation. As Pakistan's strongest ally in the west and a fellow ICCPR ratified member, the United States must invest in Pakistan's public policy by assertively encouraging Pakistan to repeal its anti-blasphemy legislation in favor of the ICCPR. This process can appropriate itself through numerous forms, including diplomacy, conditional aid, educational grants, and federal resolutions. In November 2010, Secretary of State Hillary Clinton mentioned Pakistan's numerous human rights violations during a lecture on religious persecution.<sup>250</sup> Likewise, the State Department's 2011 annual report on Pakistan mentions Ahmadi Muslims by name at least 101 times.<sup>251</sup> Both examples demonstrate our government's keen awareness of these issues, and the need to act quickly to rectify them.

On July 29, 2011, the U.S. House of Representatives passed the South Central Asia Religious Freedom Act, H.R. 440, to promote religious freedom in South Asia, including Pakistan.<sup>252</sup> In addition to promoting religious freedom and combating religious violence, H.R. 440 authorizes the U.S. Government to work with foreign governments to address inherently discriminatory laws.<sup>253</sup> This awareness and proactive legislation must be consistent to protect the rights of Pakistan's religious minorities, and is a positive step forward in doing so.

*d. Encourage Pakistan to Sign The First Optional Protocol of the ICCPR*

Pakistan has, to date, abstained from signing the First Optional Protocol of the ICCPR.<sup>254</sup> As a result, individuals in Pakistan who have exhausted all domestic legal relief mechanisms but still face human rights violations are left without recourse to combat Pakistan's illegal apparatus of state sanctioned persecution. In fact, Ahmadi Muslims appealed Pakistan's anti-blasphemy laws up to Pakistan's Supreme Court in 1993, without success.<sup>255</sup> Likewise, President

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raged the west by hanging Bhutto to a major US ally in the proxy war in Afghanistan.)" (emphasis added).

<sup>250</sup> Hillary Clinton, *Hillary Clinton About Anti Ahmadiyya Laws Persecution in Pakistan Islam Ahmadiyya*, YOUTUBE (Nov. 21, 2010), [http://www.youtube.com/watch?v=\\_knTT6BTYqA&p=4C3F11DC3301061C](http://www.youtube.com/watch?v=_knTT6BTYqA&p=4C3F11DC3301061C).

<sup>251</sup> Ahmad & Khan, *supra* note 164.

<sup>252</sup> South Central Asia Religious Freedom Act, H.R. 440, 112th Cong. (2011).

<sup>253</sup> *See id.* § 3.

<sup>254</sup> STATUS PAGE FOR OPTIONAL PROTOCOL, *supra* note 101.

<sup>255</sup> *Zaheeruddin v. State*, 26 S.C.M.R. (S.Ct.) 1718 (1993) (Pak.) (holding that Ahmadi Muslims do not qualify for religious freedom protection because they are outside the fold of Islam, and as apostates, do not have the right to engage in

Musharraf's Executive Order 15 in 2002 further cemented Pakistan's targeted persecution of the Ahmadiyya Muslim Community.<sup>256</sup> Since 1974, Ahmadi Muslims have been completely disenfranchised from voting, and since 2002, are Pakistan's only disenfranchised community. Pakistan recanted its reservations under pressure from the European Union.<sup>257</sup> A similar strategy may be applied to oblige Pakistan to sign the First Optional Protocol of the ICCPR. By obliging Pakistan to sign the First Optional Protocol of the ICCPR, the international community will afford persecuted religious minorities in Pakistan (for the first time in nearly two decades) an affirmative venue to challenge Pakistan's illegal apparatus of state sanctioned persecution. As of now, no such option exists to mitigate this persecution.

*e. International Proactive Support of Moderation*

Finally, moderation is the ultimate antidote to extremism. A moderate voice within the worldwide Muslim community that can lead by example will offer those prone to extremist ideology a clear alternative to extremism. In this battle of ideologies, international public support of anti-extremist platforms, along with active protection of such platforms and its adherents is crucial to promote moderation. This process has already begun in several nations. For example, Canada's Prime Minister Stephen Harper stated in a July 2008 address,

Ahmadi [Muslims] are renowned for their devotion to peace, universal brotherhood and submission to the will of God—the core principles of true Islam. . . They are also renowned for working together to serve the greater good through social, health and education initiatives, as well as mosque projects like this one. And wherever they live in the world, Ahmadi [Muslims] are renowned for participating in the larger community and peacefully co-ex-

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Islamic behavior. Just as Coca Cola has the right to protect their product trademark, Pakistan has the right to protect the usage of Islamic terms and behaviors, and reserve them exclusively for Muslims. Therefore, Ordinance XX anti-blasphemy laws were not only Constitutional, but necessary to protect Islam and preserve the peace by not offending Pakistan's Sunni Muslim majority population; see also Amjad Mahmood Khan, *Misuse and Abuse of Legal Argument by Analogy in Transjudicial Communication: The Case of Zaheeruddin v. State*, 10 RICH. J. GLOBAL L. & BUS. 497 (2011). See generally Tayyab Mahmud, *Freedom of Religion and Religious Minorities in Pakistan: a Study of Judicial Practice*, 19 FORDHAM INT'L L.J. 40 (1995) (providing a detailed scholarly analysis of *Zaheeruddin*).

<sup>256</sup> PAK. PENAL CODE §§ 7B, 7C (made part of Penal Code by Presidential Ordinance No. 15 (1984), THE GAZETTE OF PAKISTAN EXTRAORDINARY, June 17, 2002).

<sup>257</sup> *Pakistan Withdraws Reservations*, *supra* note 103.

isting with people of all faiths, languages and cultures.<sup>258</sup>

Similarly, Jack Straw, UK Member of Parliament stated while speaking on behalf of UK Prime Minister Gordon Brown, “[a]ll of us hugely admire the work of the Ahmadiyya [Muslim] Community here in the United Kingdom as we do across the world.”<sup>259</sup> US Congresswoman Jackie Speier (D-CA), Congressman Keith Ellison (D-MN), Congresswoman Sheila Jackson (D-TX), and Congressman Tom Petri (R-WI) have each expressed similar sentiments about the Ahmadiyya Muslim Community’s moderate and pluralistic platform.<sup>260</sup>

The next step, beyond simple public endorsement however, is that nations must proactively protect moderate religious minorities from violence and harm. This should not be difficult as the ICCPR member nations are already committed to promoting equality and moderation in a unified manner. In the current Pakistan model, moderate positions are marginalized and disenfranchised while extremist ideologies continue to flourish unchecked. For change to occur, the international ICCPR member community must jointly protect Pakistan’s moderate minorities from harm, thereby promoting exactly the opposite scenario. Such efforts, performed consistently, will send a clear message to Pakistan, the extremists within Pakistan, and extremists around the world, that the world is united against extremism.

## PART V: CONCLUSION

Amnesty International describes Pakistan’s anti-blasphemy laws best as “a handy tool to silence debate and dissent.”<sup>261</sup> How ironic when the Nations founder, Muhammad Ali Jinnah, envisioned “a State in which we could live and breathe as free men.”<sup>262</sup> Pakistan has signed and ratified the ICCPR and even retracted its reservations. Yet, violence against innocent civilians and religious minorities in Pakistan continues to increase exponentially. Members of the

<sup>258</sup> *Prime Minister Harper Attends Opening of Baitun Nur Ahmadiyya Mosque*, PRIME MINISTER OF CANADA (July 5, 2008), <http://pm.gc.ca/eng/media.asp?id=2191>.

<sup>259</sup> *Khilafat Centenary Reception at the Queen Elizabeth II Center – Part 3*, YOUTUBE (Jan. 7, 2009), [http://www.youtube.com/watch?v=ZGRkKdK037Q&feature=player\\_embedded](http://www.youtube.com/watch?v=ZGRkKdK037Q&feature=player_embedded).

<sup>260</sup> Press Release, Cision Wire, Ahmadiyya Muslim Community USA (Sept. 13, 2011), <http://www.cisionwire.com/ahmadiyya-muslim-community-usa/r/members-of-congress-and-muslims-unite,c9161465>.

<sup>261</sup> Amnesty Int’l, *Pakistan: Blasphemy Laws Should be Abolished*, AI Index ASA 33/023/2001 (Aug. 21, 2001), available at <http://www.amnesty.org/en/library/asset/ASA33/023/2001/en/6bd5700e-d8f5-11dd-ad8c-f3d4445c118e/asa330232001en.html>.

<sup>262</sup> Muhammad Ali Jinnah, President, Pak., Address to Civil, Naval, Military and Air Force Officers of Pakistan Government, Karachi (Oct. 11, 1947).

Ahmadiyya Muslim Community are completely disenfranchised from voting. Anti-blasphemy legislation has only strengthened extremists and paralyzed moderation, leading to ongoing persecution of Pakistan's minority Christian, Hindu, and Ahmadi Muslim populations. The longer Pakistan is allowed to dysfunction through violation of international human rights regulations, the more detrimental the consequences, and the more difficult it will be to reform Pakistan in the future.

Therefore, the international ICCPR community must reassert its focus to recognize Pakistan's blatant ICCPR violations and hold Pakistan accountable through Article 41 enforcement. Likewise, the United States must now again invest in Pakistan to defeat extremism, just as it invested in Pakistan before to defeat Communism. In addition, Pakistan should be assertively encouraged to sign the First Optional Protocol of the ICCPR to afford persecuted minorities their first opportunity in nearly two decades to be heard, and Ahmadi Muslims their first opportunity in nearly four decades to exercise their right to vote. Finally, the United States and the United Nations must publicly support and actively protect the adherents of Pakistan's moderate religious organizations, thereby promoting national and international security. Only with a multi-faceted push to oblige Pakistan's full and transparent ICCPR compliance can Jinnah's Pakistan that, "start[ed] with this fundamental principle that we are all citizens and equal citizens of one State," finally become a reality once again.<sup>263</sup>

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<sup>263</sup> Jinnah's Constituent Assembly Address, *supra* note 10.