



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: AA/13285/2010  
AA/16364/2010  
AA/01954/2011  
AA/05208/2011  
AA/00228/2010

THE IMMIGRATION ACTS

Heard at Field House  
On 26, 27 and 29 March, 28, 31 May, 19 and  
20 June 2012

Determination Promulgated  
On 13 November 2012

Before

UPPER TRIBUNAL JUDGE STOREY  
UPPER TRIBUNAL JUDGE GLEESON  
UPPER TRIBUNAL JUDGE DAWSON

Between

MN  
NH  
ZN  
SB  
HQ

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: MN – Mr P Jorro succeeded by Mr D Lemer both instructed by  
Roelens Solicitors Wimbledon  
NH – Mr C Yeo instructed by Thompson and Co Solicitors  
ZN – Ms S Jegarajah instructed by Wimbledon Solicitors  
SB – Mr M Gill, QC instructed Thompson and Co Solicitors  
HQ – Mr D Lemer, instructed by Wimbledon Solicitors  
For the Respondent: Mr Z Malik instructed by Treasury Solicitors

**DETERMINATION AND REASONS**

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**INTRODUCTION**

1. The Ahmadiyya<sup>1</sup> sect was established in 19<sup>th</sup> century India by its eponymous founder Hadrat Mirza Ghulam Ahmad (1835-1908). On his death, the institution of Khalifat was established providing for the members of the sect to elect a successor to carry on his work and to be the spiritual and worldly head of the community. The current

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<sup>1</sup> There are two variants of the Ahmadi, the Qadiani and the Lahori. The appellants in these appeals are all Qadiani which has a significantly larger following.

Khalifa is based in the United Kingdom where the headquarters were established in 1984. The Ahmadis have had a presence in this country since 1913. There are Ahmadi centres worldwide including the United States, Mauritius, Germany, Canada, Russia and Japan.

2. A core belief of the Ahmadi is that their founder is the Imam Mahdi and the promised Messiah. His advent was prophesied by Mohammed the prophet. This is a heresy to mainstream Sunni Muslims whose fundamental belief is that God no longer speaks after Mohammed, (Khatamun Nabiyyeen – literally, the last prophet). The Ahmadi claim that although all Muslims are required to propagate their faith, the Ahmadi are required to do so by personal example and by encouragement with no compulsion. They call this *tabligh*. The Ahmadi contend that for mainstream Muslims, the *jihad* (holy war) is an obligation to be pursued with force. Mainstream Muslims regard the Ahmadi as non-believers and non-Muslims.
3. Following independence in 1947 when British India was divided along religious lines, Ahmadis established themselves in West Pakistan later Pakistan. Tensions have grown in Pakistan between the Ahmadi and non-Ahmadi, particularly with the development of Khatme-e-Nubuwwat (the Association for the Safety of the Finality of Prophethood). Their aim is to exclude the Ahmadi sect from the “pale of Islam”. In 1953 the religious right in Pakistan declared Ahmadis as non-Muslims. In 1973 the Pakistan parliament amended the constitution, effectively declaring Ahmadis (together with a number of other minority religions<sup>2</sup>) to be non-Muslims. Legislation passed in 1984 limited the ways in which Ahmadis were able to express and propagate their faith (Ordinance XX of the Pakistan Penal Code (the PPC))<sup>3</sup>. This included making it an offence to hold oneself out as a Muslim when not entitled to do so. Ahmadis are not permitted to refer to their centres of worship as mosques nor are those centres permitted to demonstrate their Islamic heritage by, for example, calling the faithful to prayer or portraying the *Kalma* (proclamation of faith) above the entrance to their mosque. In 1986 an amendment to the PPC (and the Code of Criminal Procedure)<sup>4</sup> made it an offence to make derogatory remarks that defile the Prophet Mohammed (the blasphemy law) punishable by death or life imprisonment and a fine.
4. In the light of the evidence indicating an increase in the nature and extent of the hostility towards Ahmadis in Pakistan and the implications of the Supreme Court decision in *HJ (Iran)* [2010] UKSC 31 as to the ability of Ahmadis to practise their faith freely, these appeals have been identified as suitable for country guidance. This determination is therefore intended to replace existing country guidance on the situation for Ahmadis in Pakistan last considered by the Tribunal in *MJ & ZM*

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<sup>2</sup> Article 260(3) of the Constitution of the Islamic Republic of Pakistan (as amended up to 31 July 2004), 10 April 1973, <http://www.unhcr.org/refworld/docid/47558c422.html>, identifies Christians, Hindus, Sikhs, Buddhists, Parsis, Baha'is and Ahmadis (whether of the Qadiani or Lahori group) as “non-Muslims”. Eligibility for presidency is restricted to Muslims (Article 41(2)).

Some

seats in the National and Provincial Assemblies are reserved for women and non-Muslims (Articles 51 and 106).

<sup>3</sup> For the provisions of the PCC see Appendix B.

<sup>4</sup> *ibid*

(*Ahmadis – risk*) *Pakistan CG* [2008] UKAIT 00033, a case which looked at earlier guidance in *IA & Others (Ahmadis: Rabwah) Pakistan CG* [2007] UKAIT 00088. We are aware the Strasbourg Court has adjourned the Court's proceedings in four cases (applications numbered 17085/12, 16668/12, 6071/12 and 70682/11) pending the outcome in the appeals before us.

5. The format of our determination is as follows. We set out the case histories of each appellant and thereafter extracts from the Pakistan Penal Code to assist in understanding the evidence. This is followed by an analysis of reports by the Ahmadiyya Association on incidents in Pakistan. Thereafter, we introduce the expert and other witnesses whose evidence is detailed in Schedule I. Because of its importance in these appeals we reproduce relevant parts of the UNHCR Eligibility Guidelines for religious minorities in Pakistan of 14 May 2012 and the US Department of State International Religious Freedom report for 2011. This is only two of a number of background documents we have taken into account, a full list of which is in Annex C. There follows a brief summary of the submissions, full details of which are in Schedules II and III. The supplementary submissions are on the decisions in *RT (Zimbabwe)* [2012] UKSC 38 and *Federal Republic of Germany v Y (C-71/11) & Z (C-99/11)*. After that we set out our conclusions on the expert and other evidence before turning to previous country guidance and the case law and set out our general conclusions. This is followed by new guidance. A summary of the evidence of the four appellants who gave evidence at the hearing precedes our determination on each appeal. In addition, Annex A comprises a glossary defining a number of the terms used in this determination. Annex B sets the constitutional changes as well as the blasphemy and anti-Ahmadi legislation which are important matters in these appeals. Annex C lists the documentation before us.
6. The hearing took place on dates in March, May and June 2012. Matters of procedural note were few. Against the background of our observation that we were not proposing to hear evidence about the facts as found by the First-tier Tribunal in each of the appeals before us, we heard up-dating evidence from appellants MN, NH, JB, and HQ. Ms Jegarajah confirmed that ZN would not be called.
7. The parties were aware of our approach as indicated in the directions previously issued. These were based on the error of law decisions by the Upper Tribunal not to disturb the primary findings of fact by the First-tier Tribunal. This was of evident disappointment to Mr Malik who, particularly in respect of MN, wanted to cross-examine him about matters in his witness statements. After referring him to the error of law decision (referred to below), and upon reflection, Mr Malik accepted the position.
8. A complaint made early on was that the Secretary of State's position was not apparent from a brief skeleton provided by Mr Malik and he himself complained that he had had only limited time to consider material provided by the appellants. We took account of these matters and no party indicated any residual difficulties in the

way the cases developed over the several days they were heard. We reiterate our thanks to all the parties for the contributions made in these appeals.

## *THE APPELLANTS' CASE HISTORIES*

9. Each appellant arrived in the United Kingdom with entry clearance for varying purposes, the earliest being *HQ* in 2007 and the most recent *SB* in 2011. Each was unsuccessful in their appeals to the First-tier Tribunal against the refusal of asylum. We set out below a summary of each appellant's circumstances.

### *MN*

10. MN was born on 10 October 1966 and is from Lahore. He and his family (a wife and four children) last arrived as visitors on 15 July 2010 and claimed asylum on 25 August. The basis of his claim is the level of harm encountered by Ahmadi and in particular the risks that he would face as the result of being a prominent Ahmadi businessman and in the light of the publicity he received as a result of being one of the victims in the Lahore mosque attacks in 2010. There was a televised interview of him by the Interior Minister whilst MN was recovering from his injuries in hospital. While accepting his religion, the Secretary of State did not believe that he had been injured in the mosque attack. Although he may have spent some time in hospital, it was not accepted it had been for injuries sustained in such an attack and/or that he had not been personally targeted as claimed.
11. In reaching his findings, First-tier Tribunal Judge I F Macdonald took into account concessions made by the Presenting Officer which included not only that the appellant had been present in the mosque when attacked on 28 May 2010 in Modeltown, Lahore but also that he was one of the wounded and was taken to Jinnah Hospital for treatment. The Presenting Officer further accepted that whilst receiving that treatment he was visited on 29 May 2010 by Mr Rehman Malik, the Interior Minister, which was recorded in a TV broadcast. It was also accepted that two days later the hospital itself was attacked by extremists during which a number of people were killed.
12. The judge did not accept the claim that the attack on the hospital had been carried out at the behest of the authorities because the appellant had dared to confront the Interior Minister. He saw nothing in the brief two second video clip, which showed the appellant to be in a hospital bed, to support his claim to have been identified as someone who should be "done away with". He found it significant that none of the Ahmadi patients in the hospital was attacked or harmed and were clearly not therefore the targets. He concluded that the terrorists were prepared to attack and kill any member of the community in Pakistan including the authorities themselves who disagree with their fundamentalist views. Whilst finding that the appellant had been an active member of his Ahmadi community, to whom he had donated

significant sums of money over the years, the judge assessed that his activities had been carried out within the community itself. There was no evidence he had a profile outside that community or that his Ahmadi background or activities were otherwise known.

13. The judge observed that there was no evidence the appellant had personally suffered any significant discrimination since the anti-Ahmadi Ordinance in 1984; the appellant had been able to complete his education and find employment before setting up his own business without any problem. The extent of those problems had been confined to one incident in 1984, when he was threatened at college, and another had occurred in 1997, when a complaint was made by one of his subordinates to his boss when he was preaching to others in the department. The appellant denied the charge and the judge understood from the evidence that this had been accepted. He further found that at no time had the appellant openly "proselytised" his faith to people generally in Pakistan but accepted that he had discreetly proselytised, only discussing his faith with people he believed he could trust and according to his wife he would do so within the confines of his own house. The judge concluded that the ill-treatment by individuals feared by the appellant was not of sufficient severity to cross the threshold of persecution and furthermore there was a sufficiency of protection available from the state.
14. Following a grant of permission to appeal, First-tier Tribunal Judge Dawson sitting as a deputy judge of the Upper Tribunal concluded that the FtT judge had erred in failing to make a finding as to how the appellant would conduct himself so far as his faith was concerned on return and had failed to apply the principles in *HJ (Iran)* to this exercise. Judge Dawson was however satisfied that the FtT judge had given sustainable reasons for his conclusion that the appellant would not be at risk if returned (based on his findings on events in the past) and his findings on this aspect were to stand. Judge Dawson indicated that the focus of the adjourned hearing would be how the first appellant would conduct himself in practising his faith as an Ahmadi if returned and whether any modification to his behaviour engaged the Refugee Convention.

NH

15. This appellant, who was born on 28 February 1969, is unmarried. She is from Lahore and has been a regular visitor to the United Kingdom. She last entered on 21 October 2010 and made her claim for asylum four days later based on an account of harm attributable to her Ahmadi faith which she feared would recur were she to return. Although the Secretary of State accepted the appellant's faith, her account of what happened to her was rejected and her claim refused on 25 November 2010. On 4 November 2011, First-tier Tribunal Judge W Grant dismissed her appeal because he did not believe her account of difficulties. On a hypothetical basis, he considered that even if he were to find she was in fear for her safety, protection was available.

16. Following a grant of permission to appeal, the Upper Tribunal (Upper Tribunal Judge Jarvis and First-tier Tribunal Judge Dawson) took the view that the judge erred in his decision dated 4 November 2011 in failing to examine whether the appellant, as an acknowledged Ahmadi, notwithstanding the rejection of the core account of her claim, would modify her behaviour on return to Pakistan. Furthermore, were she to do so, it was necessary to ask the reason why in the light of the evidence which, it was argued, showed an increased risk for Ahmadis since promulgation of the Tribunal's decision in *MJ & ZM*.
17. The appeal was then adjourned for the decision to be re-made on the basis of the appellant being an undisputed Ahmadi who would be living in Lahore in a property owned by her family and who had previously proselytised by having handed out books to friends whom she thought might be interested and who she had invited to watch an Ahmadi channel on her television at home, such activities in the past not having resulted in any adverse attention. It was observed that there had been no evidence before the judge of any particular threats directed to the appellant personally in the context of her claim that she had not been threatened prior to 28 May 2010 "other than as a victim of the sort of abuse directed at Ahmadis".

ZN

18. This appellant was born on 12 January 1982 and arrived in the United Kingdom with entry clearance as a Tier 4 Migrant under the points-based system on 29 December 2010 accompanied by her husband and daughter. She claimed asylum on 4 January 2011 with her family members as dependants. She is from Lahore where she qualified as a doctor of homeopathy in 2002. She owned a private clinic where her husband worked as a receptionist. The Secretary of State accepted that she is an Ahmadi by birth but rejected the truthfulness of her account of having been targeted by Khatme-e-Nabuwat and in the alternative asserted that internal flight was available to either Rabwah or Karachi. A decision was made to remove her as an illegal entrant on 1 February 2011.
19. First-tier Tribunal Judge Bagral disbelieved the account of the appellant and her husband, which had included a claim that they had preached to patients and that he had been injured during the attack on the mosque in Lahore on 28 May 2010. The judge concluded that this appellant did not have a well-founded fear of persecution in her home area of Lahore. Following the grant of permission to appeal, the Upper Tribunal (Upper Tribunal Judges Storey and Kebede) although satisfied that the judge's adverse credibility findings were sound, decided the First-tier Tribunal judge had materially erred in law on the basis by failing in her reasoning to refer to current country information when concluding that she should continue to apply the existing country guidance in *MJ & ZM*, although she had noted the further evidence when summarising the parties' submissions. As with the other appeals before us, the hearing was adjourned for the decision to be re-made.

SB

20. This appellant was born on 7 January 1971 and was widowed in 1991. She is from Sialkot and had previously lived in Daska. She has a son in the United Kingdom who is a student and also has a brother living in this country. On her arrival in the United Kingdom on 20 March 2011, with entry clearance to undertake an ACCA course, she explained that she had no intention of following the course and claimed asylum. The Secretary of State accepted that she is an Ahmadi and that she had been employed by the Pakistani government as a senior female health technician. In essence, the basis of the appellant's claim was that she had been targeted by Khatme-e-Nubuwwat because of positions she had held in the Ahmadi community and because she had been a preacher of the faith. The Secretary of State did not accept the appellant had held the position she claimed, nor was it accepted that she had been preaching at gatherings. It was not accepted that she had received threatening telephone calls or that the police had visited her home in December 2010 informing her that a complaint had been made against preaching the faith to wives of two men and so she was refused a variation of leave to remain on 12 April 2011.
21. First-tier Tribunal Judge Widdup accepted the appellant had preached over the preceding twelve years, but not to the extent she had claimed. He too did not accept that she had held posts with the Ahmadi Association as claimed which would have made her high profile. Her preaching had been confined to Ahmadis and those who were trusted by her. He dismissed the appeal.
22. After permission to appeal was granted, the Upper Tribunal (Upper Tribunal Judges Goldstein and Perkins), found that the First-tier Tribunal had erred in law for reasons given in their decision dated 18 November 2011. Whilst upholding the judge's findings of fact, the panel nevertheless found the judge had erred in law by failing to apply the principles of *HJ (Iran)* in accordance with the guidance given in *NT (Ahmadi - HJ (Iran)) Pakistan* [2011] UKUT 277 (IAC).

HQ

23. This appellant was born on 1 March 1968. Although originally from Pakistan, between January 2005 and May 2007 he had been living and working in the United Arab Emirates. Whilst he was in the United Arab Emirates, the appellant's wife and children had remained in Pakistan. The appellant's account included a claim that on his final return from the United Arab Emirates in May 2007 he had started a garment business in Rabwah and had rented a place six miles away. He left Pakistan on 2 October 2007 and arrived in the United Kingdom the following day. He claimed asylum two days later. The Secretary of State accepted the appellant is an Ahmadi. It was not accepted that the appellant was a nurse, or that he had worked in a hospital, and furthermore it was not accepted that he had been threatened by a mullah from the Khatme-e-Nabuwwat or that he had left Pakistan for the Emirates due to a fear of persecution. It appears the respondent did not accept the threats it is said they had received. As to events in 2007, it was not accepted that the appellant had preached to an individual who later converted to the Ahmadi faith, nor that this individual had subsequently informed the mullahs he had become an Ahmadi and



that the appellant had preached to him. Additionally, it was not accepted that the appellant had preached to another individual which had resulted in similar adverse attention. The rejection of the claim led to a decision by the respondent dated 23 December 2009 to remove him as an illegal entrant.

24. First-tier Tribunal Judge S Taylor disbelieved the appellant's account of harm in Pakistan and also his account of harm in the United Arab Emirates, another limb to his claim. She accepted the appellant was currently involved in the UK Ahmadi community and would wish to be fully involved in the practice of his religion. But she did not consider it credible that he would continue to risk his life and that of his family and be separated from his family by openly proselytising. After permission to appeal was granted, the Upper Tribunal (Upper Tribunal Judges P Lane and Kopiczek) found an error of law on *HJ (Iran)* grounds. The appellant's family remains in Pakistan.
25. The evidence we heard from four of the above appellants and our conclusions on it are set out in paragraphs 129 to 159 of this determination.

### *THE PAKISTAN PENAL CODE*

26. Certain provisions of the penal code are relevant to the issues in these appeals since they relate to the way in which Ahmadis are able to practise their faith. We set them out<sup>5</sup>:

**"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;

(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', 'Khalifatul-Muslimeen', 'Sahaabi' or 'Razi Allah Anho'

(b) refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (peace be upon him) as 'Ummul-Mumineen'

(c) refers to, or addresses, any person, other than a member of the family (*Ahl-e-Bait*) of the Holy Prophet Muhammad (peace be upon him), as '*Ahl-e-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.

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<sup>5</sup> The full version including the formal text which we have been provided with is at Appendix B

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

Any person of the Quadiani 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."

**295-C. 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."

27. Consistent with much of the evidence, where we refer to the anti-Ahmadi laws, it is with reference to sections 298B and 298C. The blasphemy law is a reference to section 295C. The provisions at 298B and 298C are also referred to as Ordinance XX which appears in places in this determination.

*REPORTS BY THE AHMADIYYA COMMUNITY OF INCIDENTS OF HARM*

28. We have been provided by the appellants with a spreadsheet recording reports of incidents and problems encountered by Ahmadi individuals between 25 June 2006 and 1 March 2012. The sources include extracts from [www.thepersecution.org](http://www.thepersecution.org) and [www.persecutionofahmadis.org](http://www.persecutionofahmadis.org), which are websites maintained by the Ahmadiyya Association, and in addition from newspaper reports and from the Asia Human Rights Commission. Focussing on 2012 and 2011 (and in summary):
- (i) In March 2012 an 80 year old lawyer is reported to have been shot dead and his grandson injured. Complying with demands from locals, the police barred Ahmadis from entering their "worship centre" in Satellite Town Rawalpindi. On 7 March, an Ahmadi individual was stopped by unknown assailants who fired on him. He died.
  - (ii) On 25 February hundreds of locals assembled outside the Ahmadi place of worship in Rawalpindi demanding the removal of barricades and closed circuit television. In the same month, the Lahore Bar Association banned (Ahmadi-owned) Shezan drinks from subordinate court complexes. The source of all these incidents is the press, largely the Express Tribune.
  - (ii) Seven incidents are reported to have occurred in January 2012 ranging from a killing of an individual by unknown persons riding a motorcycles, the kidnapping of an individual going to work, the firing of an Ahmadi schoolteacher as well as expulsion of his children, a refusal to allow Ahmadis to

undertake the burial formalities of a convert, a provocative pamphlet against an Ahmadi academy and the removal by a crowd of 50 men accompanied by a policeman of Islamic titles fixed to an individual's house in Lahore.

- (iii) December 2011 includes reports of a killing of a mother of three by a group in the context of individuals wanting to take over the Ahmadi residential area. At a Khatme-e-Nabuwat conference, offensive language was used against the founder of the Ahmadiyya community. 20 Ahmadi graves were desecrated. The reports are otherwise of low level harassment and discrimination.
- (iv) In November 2011 nine incidents are reported variously in the press and on the websites, including the registration of a case against the father of a student for describing his son as a Muslim. That son had been beaten up for allegedly making derogatory remarks about the Prophet. An individual was hospitalised after being shot at on return from prayers and a student was beaten up for preaching in his hostel. The report is otherwise of low level incidents of discrimination.
- (v) Twenty incidents are reported to have occurred in October 2011, including the abduction of a senior surgeon and his 11 year old son, and a number of expulsions of medical students from Punjab Medical College attributed to extremist religious leaders spreading anti-Ahmadiyya awareness in the area. There was also a fatal shooting of a schoolteacher following the registration of an FIR against him due to his faith. Dr M, ex-President of the Ahmadi community in Kotli, with his son, were kidnapped when returning home from a family dinner. A mullah demanded that minarets be removed from the Ahmadi mosque and that Ahmadis be banned from burial in the common graveyard.
- (vi) There was an attempted kidnap of a married couple, a doctor and his wife in September 2011 amongst the ten incidents reported. These include the murder of a technician in Faisalabad. Another individual in Rachna Town was fired on and hospitalised, remaining in a critical condition. Following protests staged by clerics, the municipal administration in Jannat Wala razed to the ground a new Ahmadi place of worship which was under construction.
- (vii) In August 2011, five incidents were reported, including death threats to the proprietor of a hairdressing shop during a visit by the banned group Lashkre Taiba and a doctor's name appearing on an Ahmadi hit-list produced by extremists in Faisalabad. Otherwise the incidents were of low level harassment and discrimination.
- (viii) In July 2011, a lawyer was shot by an unidentified assailant in Nawabshah and in Sialkot, an individual was kidnapped by militants and held captive. On release, he is reported to have fled to Thailand where he was arrested and sent

to a detention cell for seven months. A judge was transferred to Bahawalpur, after which he received threats from Tahrir-e-Taliban.

- (viii) June 2011 saw twelve incidents, some involving violence, including the firing of shots at a clinic in Mardan: the doctor and his brother who were affected escaped unharmed and are reported to have fired back. Other incidents are largely of discrimination and abuse as well as harassment.
- (ix) In April 2011, there were two reports of serious threats against Ahmadis and also an individual was arrested in Mugalpura when he was found to be wandering outside an Ahmadi mosque with a fully loaded pistol. Demands were made for the removal of the principal of a law college who had recited the *Kalma* during his speech.
- (x) March 2011 saw the murder in Sanghar of an individual, Mr Z, by two unknown assailants, on his return home after Friday prayers. A Mr L, a farmer, was also returning home in Rabwah when he was intercepted by the son of a mullah. That son's father arrived and attacked the farmer with an axe. A contingent of nine policemen are reported to have gone to a village in Faisalabad and sprayed black paint on Quranic verses written on tombstones. Otherwise the remaining incidents of the six reported were of harassment and discrimination.
- (xi) Nine incidents were reported in February 2011. These are largely reports of threats, harassment and discrimination but include a farmer in Badin encountering troubles when his crops were set on fire and two truckloads of his cotton seized with the demand of half a million rupees in ransom. The police were reported to have arrested someone but further detail is not provided in the spreadsheet.
- (xii) In January 2011, six incidents were reported including the arrest in Karachi of a student who was charged under Pakistan's blasphemy law. There is a report of mullahs in District Sahiwal routinely demanding the removal of the *Kalma* from Ahmadi mosques and Ahmadis in Sialkot being stopped from reconstructing their mosque by the police at the request of a local mullah.

29. A similar range of incidents is reported in earlier years although we observe nothing in December or October 2010.

30. The 'objective bundle' provided by the appellants contains varying reports from newspaper and other sources as well as NGO and country reports. This includes the Ahmadiyya community's own report entitled "Persecution of Ahmadis in Pakistan during the year 2011". It is a lengthy document containing observations on a number of incidents that have occurred<sup>6</sup>. At Appendix C of this determination we

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<sup>6</sup> According to the report "Persecution of Ahmadis in Pakistan during the year 2011", in summary, eight "police cases" were registered on religious grounds against Ahmadis during 2011. Between April 1984 and

have set out a summary of police cases registered on religious grounds against Ahmadis during 2011 as appears in the report.

31. The report also provides an analysis of a number of murders, assaults and “attempts” in 2011 that are said to have been religiously motivated, fleshing out the more serious incidents reported in the spreadsheet from the websites described above in [28]. Six killings are analysed and a similar detailed analysis of some eighteen other incidents, largely serious. There is reference to police taking enforcement action, including a “prompt and fruitful” response to the attack on Dr Rafiq Ahmed and his brother in Mardan on June 15 2011, which resulted in their attackers being arrested from the residence of a mullah who had provided them with protection. On 29 June, a judge is said to have released the assailants on bail. They were re-arrested in another case, in which a policeman had been killed a few months earlier, but it was later learned the two were again released by the court. The police registered a criminal case following the assault on an Ahmadi farmer and his son who was intercepted by a mullah in Rabwah on 12 March 2011 with violence.
32. With reference to the murder of the Ahmadi woman on 5 December 2011 in District Layyah Chobara, a police sub-inspector is reported to have helped attackers flee. Reference is made to an incident in Baghbanpura District, Lahore on 31 August 2011 when a Mr Rehman, an Ahmadi, went to a restaurant with eight non-Ahmadi friends. A religious zealot, Tuti, created disorder in the restaurant and then in the street and managed to assemble a large number of anti-Ahmadi sympathisers. When Mr Rehman and his friends decided to leave the three of them were held and beaten up until the police arrived and rescued them. The mullahs insisted that Mr Rehman should be charged with blasphemy. His friends did not agree to accuse him of proselytising. Efforts for reconciliation are reported to have gone on until morning when the police obtained a peace deal from the two parties.
33. As to the student who was beaten up by a gang of students on 23 November 2011, the dispute that arose led to a charge of blasphemy against him and his father and brother were also booked under section 298C of the Penal Code to placate the extremist mullahs.

## INTRODUCTION TO THE EXPERT AND OTHER WITNESSES

34. We heard evidence from four expert witnesses, two members of the Ahmadi faith and in addition a witness who has been granted asylum as follows:
  - i. Dr W who is a Doctor of Philosophy from the University of Punjab and a historian. He holds a post at the Centre of South Asian Studies and he is also a

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31 December 2011, among the figures given 764 Ahmadis were “booked” for displaying *kalma*, 435 for posing as Muslims and 724 for preaching. 299 Ahmadis were charged under the Blasphemy laws and there were 1008 other various cases against Ahmadis on religious grounds. The same report refers to 207 Ahmadis having been killed in the same period and 234 attempted murders.

fellow at a College at the University of Cambridge. He was anonymised with the consent of the respondent.

- ii. Imam Rashed was born in Qadian, India. Since 1983 he has been stationed in London as Imam of the London Ahmadi Mosque and missionary in charge, planning and supervising missionary activities in England, Wales, Scotland and Northern Ireland.
- iii. Dr Sarah Ansari, who is a Reader in the history of South Asia at the Department of History, Royal Holloway, University of London.
- iv. Dr Zahida Hamid, a national of Pakistan who is a medical doctor and who has been granted asylum.
- v. Dr Iftikhar Ayaz who is a senior member of the UK Ahmadiyya Muslim Association and was National President of the UK Chapter.
- vi. Dr Martin Lau, a barrister and a Reader in Law at the law department of the School of Oriental and African Studies, University of London where he teaches courses on South Asian law at postgraduate and undergraduate level.
- vii. Ms Asma Jahangir, President of the Supreme Court Bar Association of Pakistan. In 2004, she was appointed United Nations Special Rapporteur on Freedom of Religion or Belief of the Council of Human Rights.

35. Their evidence is set out in Schedule I: "The Expert and other Evidence." Our conclusions on their evidence are set out below at [46].

*UNHCR ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF MEMBERS OF RELIGIOUS MINORITIES FROM PAKISTAN DATED 14 MAY 2012*

36. These guidelines provide helpful background material. They are current and as will become clear later, they have had an important role in shaping our thinking. To summarise, key points include (using in part the actual text from the document) :
- a. The population of Pakistan is stated to be over 187 million of which 95% profess to be Muslim. 75% are Sunni and 20% are Shia. The remaining 5 % includes 1.85% Hindus, 1.59% Christians and 0.22% Ahmadis, with 0.7% belonging to other religious minorities<sup>7</sup>.
  - b. Since September 2008 under the lead of the late Minister for Minorities Affairs, Shahbaz Bhatti, the government has taken positive steps towards ensuring religious freedom and tolerance including the official celebration of the festivals

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<sup>7</sup> These figures are according to the 1998 census. There is no identification of the make-up the remaining small percentage.

of ten religious minorities, the introduction of a 5% quota in federal employment for members of religious minorities and the establishment of a 24 hour hotline to report acts of violence against religious groups. There is also reference to a National Commission for Minorities which will review laws and policies concerning minorities as well as investigate allegations of discrimination and abuse. No indication is given, however, when this will be established and there is nothing to suggest that the positive steps apply to Ahmadis

- c. The Pakistan legal system is based on English law and Islamic law. The Federal Sharia't Court has the power to examine and determine whether a law is repugnant to the injunction of Islam as well as a power to review decisions by criminal courts and decide on *Hudood* cases.<sup>8</sup> Decisions of the Federal Sharia't Court are binding on the lower courts but are subject to review of the Supreme Court. Sharia't law was imposed in designated parts of the provincially administered tribal areas where judges are assisted by Islamic scholars. There is reference to lower courts remaining plagued by endemic corruption and to judges being said to be prone to intimidation by local officials, powerful individuals and Islamic extremists. A heavy backlog of cases can result in lengthy pre-trial detention. According to a footnote, that backlog is estimated to be some 1.5 million cases.
- d. A First Information Report (FIR), the legal basis for all arrests, can be issued by the police at the request of a complainant upon a reasonable proof that a crime has been committed and allows detention of a suspect for 24 hours. The report observes that in principle, only a magistrate can extend such a detention for an additional fourteen days although it is reported that the police routinely hold suspects without charge until a detention is challenged before the courts. Trials are reported to routinely start six months after the filing of charges despite the fact that by law someone must appear before a court within 30 days of arrest. Prisons are reported to be overcrowded and conditions were generally poor.
- e. Criminalisation of blasphemy (and in particular section 295C under the Criminal Law (Amendment) Act 1986 which provides that 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 Mohammed") is liable on conviction to the death penalty, life imprisonment or a fine. Since 1991, such offences carry a mandatory capital punishment, however we have seen no reports of any death sentence being carried out.
- f. Attempts by successive governments to reform or repeal the blasphemy laws have failed under the pressure of hard-line religious groups. The Constitution of

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<sup>8</sup> *Hudood* Ordinances impose punishments according to orthodox interpretations of Islamic law.

Pakistan guarantees the rights of religious minorities but it effectively segregates the country's citizens on the basis of religion.

- g. Bail is not generally granted in blasphemy cases on the grounds that persons facing the death penalty are likely to abscond. Such prosecutions are reported to be notoriously slow and suspects often ultimately spend lengthy periods in prison.
- h. The effect of anti-Ahmadi laws (Ordinance number XX) is described in these terms:

“The overall effect of sections 298B and 298C is to render it illegal for Ahmadis to

- (i) refer to themselves as Muslims or refer to their founder as a Prophet;
- (ii) refer to their places of worship as mosques;
- (iii) use the traditional Muslim form of greeting;
- (iv) use the Muslim call to prayer, known as the *azhan*;
- (v) use the Qur'an or observe Islamic rites; and
- (vi) preach or 'propagate' the Ahmadi faith.”

37. As is further observed in the Guidelines:

“Alongside the blasphemy provisions, section 298B and 298C of the Penal Code impose severe limitations on the exercise of the Ahmadi faith. These restrictions, which encompass a prohibition to proselytise, were found to be incompatible with international human rights law (by the UN Sub Commission on Prevention of Discrimination and Protection of Minorities) in 1985 (including the right to freedom of thought, expression, conscience and religion and the right of religious minorities to profess and practise their own religion). This has led many human rights observers to question whether sections 298B and 298C can be justified on the ground of public order or safety. Furthermore, the vagueness of language reportedly opens 298B and 298C to the same type of abuse as the blasphemy laws.”

38. Specifically in respect of Ahmadis, the Guidelines state that there is a well-documented history of violence and discrimination against them. A conservatively estimated population of 600,000 live in Pakistan and they represent over 97% of the population in Rabwah. There is reference to a finding by the National Commission of Justice and Peace Human Rights Organisation sponsored by the Catholic Church of Pakistan that at least 1,060 people, including 456 Ahmadis were charged under blasphemy laws between 1986 and 2010. The Guidelines refer to 67 Ahmadis reportedly charged with blasphemy in 2010 and 57 in 2009. Only two new cases of blasphemy offences have been reported against Ahmadis in 2011 but there is also reference to an upsurge in blasphemy allegations, including those against Ahmadis reported following the high profile assassination of Governor Taseer and Minister



Bhatti earlier in 2011. There is reference also to reports of members of the Ahmadi community often being charged with religious offences on spurious grounds or to settle personal disputes, the source being the UK Parliament, House of Commons All Party Group.

39. Violence against Ahmadis has reportedly increased with specific reference to the mosque attacks in May 2010. There are difficulties for Ahmadis who marry outside their faith and the Guidelines observe there is little or no protection reportedly afforded by the state authorities with crimes and acts of violence against them not consistently investigated due to intimidation tactics and pressure from Islamic fundamentalist groups. Perpetrators of such crimes are reportedly rarely brought to justice.
40. The concluding paragraphs from page 23 are in these terms:

“Anti-Ahmadi sentiment is reportedly tolerated by the authorities. For example, the Punjab Government allowed Muslim religious leaders to hold an anti-Ahmadi conference in Rabwah on 7 September 2008, on the anniversary of the constitutional amendment which declared Ahmadis to be non-Muslim. Rallies and campaigns promoting intolerance and discrimination against Ahmadis, whether through traditional media, or distribution of pamphlets, use of stickers and wall graffiti, are reported across the country. It is also reported that hate speech and incitement to violence against Ahmadis, including by Islamic scholars, remain largely unchecked and/or unpunished by the authorities.

Areas where discrimination against the Ahmadi community is institutionalized reportedly include issuance of passports and national identity cards, voting, property rights, access to education and freedom of expression and press.

The Government designates religious affiliation on national identity cards and passports, and requests religious information in national identity card applications. Designation as ‘Muslim’ requires a written denunciation of the founder of the Ahmadi faith as a false prophet. This requirement has a particularly negative impact on Ahmadis and effectively prevents them from participating in the *hajj* or other Islamic pilgrimages. It also affects the distribution of cash assistance for internally displaced Ahmadis. A Government initiative to abolish the religious identification column in Pakistani passports was abandoned in March 2005, allegedly in response to pressure from Islamist religious parties. Pakistani citizens are also required to take an oath denouncing the founder of the Ahmadi movement in order to be listed as ‘Muslim’ on the electoral roll. Ahmadis, who refuse to disavow their claim to being Muslim, are thus effectively disenfranchised from participating in elections. It is further reported that, pursuant to a scheme to be introduced by the Punjab provincial authorities, Ahmadis may be required to identify themselves as ‘Qadiani’ on the national identification cards, which, if implemented, may put them at greater risk of being targeted.

The Constitution prohibits discrimination on religious grounds with regard to admission to State-funded educational institutions. Prospective students must, however, declare their religious affiliation on the application form. Those who identify

themselves as Muslim must declare in writing that they believe in the finality of the Prophethood, a requirement that singles out Ahmadis. Furthermore, it is reported that Ahmadis, alongside other religious minorities, continue to face discrimination in access to higher education. Ahmadis also appear to face discriminatory practices in public sector employment. It is reported that some Government departments refuse to hire or retain Ahmadis, who are also unlikely to be promoted in senior positions within the civil service.

Although pursuant to section 298B(1) of the Penal Code Ahmadis are forbidden from calling their places of worship mosques, no formal restrictions on establishing places of worship exist. In practice, however, local authorities often refuse Ahmadis permission to build places of worship, and existing ones are at times closed, destroyed, desecrated or illegally expropriated. In addition, Ahmadis have been barred from holding public conferences since 1983. Their publications are banned from public sale, and the publishing houses are sometimes closed down and their staff harassed.

Denial of shelter and/or relief aid to forcibly displaced members of the Ahmadi community from Dera Ghazi Khan, Muzaffargarh and Rajanpur districts in the context of massive floods in South Punjab in August 2010 was also reported.

The existence of laws which are discriminatory and/or otherwise in breach of international human rights standards does not, of itself, amount to persecution within the meaning of the 1951 Convention and its 1967 Protocol. An assessment of the implementation of the blasphemy, anti-Ahmadi and other discriminatory provisions and their effect is critical to establishing persecution. In determining whether restrictions on the right to freedom of belief and religion rise to the level of persecution, the breadth of the restrictions and the severity of the punishments incurred must be considered. The importance or centrality of the practice within the religion and/or to the individual concerned is equally relevant.

In light of the foregoing, UNHCR considers that members of the Ahmadi community, including those targeted by Islamic extremist elements or charged with criminal offences under the blasphemy or anti-Ahmadi provisions, are likely to be in need of international refugee protection on account of their religion, depending on the individual circumstances of the case."

## *THE US DEPARTMENT OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2011*

41. On 30 July 2011 the United States Department of State, Bureau of Democracy, Human Rights and Labor released its annual International Religious Freedom Report for 2011.
42. The following key points emerge in the report ( using the actual text in large part ) :
  - (i) Religious parties oppose any amendments to the constitution affecting its Islamic clauses, especially the ones relating to Ahmadis.

### *Section II, Status of Government Respect for Religious Freedom*

*Legal/Policy Framework*

- (ii) In cases in which a minority group claimed its religious feelings were insulted, the blasphemy laws are rarely enforced, and cases are rarely brought to the legal system. A 2005 law requires that a senior police officer investigate any blasphemy charge before a complaint is filed.
- (iii) 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 as a false prophet and his followers as non-Muslims. This provision prevents Ahmadis from obtaining legal documents and puts pressure on members of the community to deny their beliefs in order to enjoy citizenship rights, including the right to vote. Many Ahmadis are thus effectively excluded from taking part in elections.
- (iv) There is no official restriction on the construction of Ahmadiyya places of worship; however Ahmadis are forbidden to call them mosques. The government also has shut down Ahmadi gatherings if neighbours report hearing the citation of Quranic verses.
- (v) The previous Federal Ministry for Minorities which was established in 2008 was dissolved in June 2011. In August, the government created the Ministry of National Harmony, a stand alone, cabinet level body responsible for the oversight of policy and legislation regarding interfaith harmony, international agreements relating to religious freedom and interfaith harmony, and commitments with respect to all religious communities.
- (vi) The Constitution specifically prohibits discriminatory admission to any governmental educational institution solely based on religious affiliation, however students must declare their religious affiliation on application forms, a requirement also for private educational institutions including universities. Students who identify themselves as Muslim must declare in writing that they believe the Prophet Muhammad is the final prophet, another measure that singles out Ahmadis.
- (vii) The government does not restrict religious publishing in general; however, the sale of Ahmadi religious literature is banned.
- (viii) Missionaries (except Ahmadis) are permitted to proselytise as long as there is no preaching against Islam and the missionaries acknowledge that they are not Muslim.
- (ix) There are reserve seats for religious minority members in both the National and Provincial Assemblies.

*Government Practices*

- (x) The government generally enforced existing legal and policy restrictions on religious freedom particularly on Ahmadis. Abuses under the blasphemy and other discriminatory laws, such as “the anti-Ahmadi laws”, continued. The government did not take adequate measures to prevent these incidents or undertake reform measures to prevent the abuse of the laws. The killing of those accused of blasphemy or those publicly criticising the blasphemy laws and calling for their reform continue throughout the year.
- (xi) The killing of Ahmadis for their religious beliefs continued throughout the year. Non-governmental organisations have alleged that the anti-Ahmadi sections of the penal code and other government policies fostered intolerance against this community and, together with a lack of police action, created a culture of impunity. According to a spokesman for the Ahmadiyya community, since the promulgation of anti-Ahmadi laws in 1984, 207 Ahmadis have been killed on religious grounds. During the year, according to Ahmadiyya leaders, five Ahmadis were murdered in targeted killings because of their faith. Authorities did not arrest anyone for the murders by the year’s end.
- (xii) Punjab Chief Minister, the President and the Prime Minister criticised the terrorist attacks on the two separate Ahmadi congregations on 28 May 2010 and ordered an immediate enquiry. The Punjab Government established an enquiry commission but the Ahmadi community had not been contacted by any commission representatives by the year’s end, nor had they provided any updates regarding the status of the investigation.
- (xiii) Religious minorities generally faced serious difficulties in getting police assistance, especially in rural areas, and police reportedly tortured and mistreated persons in custody on religious charges and were accused of at least one extrajudicial killing in a blasphemy case during the year (a Christian who died in police custody in Karachi).
- (xiv) Laws prohibiting blasphemy continue to be used against Christians, Ahmadis, and members of other religious groups, including Muslims. Some individuals brought charges under these laws to settle personal scores or to intimidate vulnerable individuals including Muslims, members of religious minorities and sectarian opponents. Lower courts often did not require adequate evidence in blasphemy cases, which led to some accused and convicted persons spending years in jail before higher courts eventually overturned their convictions and ordered them freed. The regional trial courts usually denied bail in blasphemy cases claiming that because defendants could face the death penalty they were likely to flee; however, the state has never executed anyone under the blasphemy laws. Judges and magistrates, seeking to avoid confrontation with or violence from extremists, often continued trials indefinitely. Lower courts

conducted proceedings in an atmosphere of intimidation by extremists and refused bail due to fear of reprisal from extremist elements.

- (xv) Of the 49 cases registered under blasphemy laws in 2011, according to data provided by the National Commission for Justice and Peace, eight were against Christians, two were against Ahmadis and 39 were against Muslims.
- (xvi) Non-Muslim prisoners generally were accorded poorer facilities than Muslim inmates.
- (xvii) Ahmadiyya leaders stated that for religious reasons the government used sections of the Penal Code against their members. They alleged that the government used anti-Ahmadi laws to target and harass Ahmadis, frequently accusing converts to the Ahmadiyya community of blasphemy, violations of anti-Ahmadi laws, or other crimes. The vague wording of the provision that forbids Ahmadis directly or indirectly identifying themselves as Muslims enabled officials to bring charges against Ahmadis for using the standard Muslim greeting and for naming their children Muhammad. According to Ahmadiyya leaders, during the year 36 Ahmadis were implicated in eight different cases. By year's end, two Ahmadis were in prison, one for allegedly defiling the Quran, and the other for alleged murder. The Ahmadiyya community claimed that most of the arrests were groundless and based on the detainees' religious beliefs.
- (xviii) The Constitution provides the right to establish places of worship and trained clergy but in practice religious minorities, especially Ahmadis, suffered from restrictions of this right. Ahmadis also reported incidents in which authorities tried to block construction or renovation of their places of worship. As Ahmadis were not allowed to recite or relate to the Kalima<sup>9</sup> (Islamic testimony of faith), authorities forcibly removed the Kalima from Ahmadi places of worship in some instances. District governments often refuse to grant Ahmadis permission to hold events publicly; they instead hold meetings in members' homes.
- (xix) Although the Constitution provides for freedom of assembly, Ahmadis have been prohibited from holding conferences or gatherings since 1983. They are also banned from preaching. The government has banned Ahmadiyya publications from public sale but the umbrella Ahmadiyya organisation published religious literature that circulated only within Ahmadi communities. Generally, sacred books for religious minorities, except Ahmadis were imported freely.

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<sup>9</sup> *Kalma* is referred to in the report as Kalima

- (xx) Due to the passport requirements to list religious affiliation and denounce the Ahmadi prophet, Ahmadis were restricted from going on the Hajj because they were prohibited from declaring themselves Muslims.
- (xxi) The public school curriculum included derogatory remarks and textbooks about minority religious groups, particularly Ahmadis, Hindus and Jews and the teaching of religious intolerance was widespread. The government continued to revise the curriculum to eliminate such teachings and remove Islamic content from secular subjects.
- (xxii) Societal elements also used anti-Ahmadi provisions of the Penal Code to justify abuse and discrimination against Ahmadis.

*Section 3, Status of Societal Respect for Religious Freedom*

- (xxiii) Societal elements also used anti-Ahmadi provisions of the Penal Code to justify abuse and discrimination against Ahmadis.
- (xxiv) Media, particularly the vernacular press, published derogatory reports of minorities, especially of Ahmadis.
- (xxv) Ahmadi individuals and institutions were victims of religious violence, much of it organised by religious extremists. Tehrik-e-Khatme-e-Nabuwat, a Deobandi group, had actively opposed Ahmadiyya beliefs and individuals issued a 2011 calendar with hate propaganda characterising Ahmadis as infidels, cursed and apostates and urged persons to cleanse their streets of Ahmadis.

*SUMMARY OF SUBMISSIONS*

- 43. The detail of all the submissions including that relating to each appellant is set out in Schedules II and III the latter dealing with matters arising after the hearing.
- 44. In essence Mr Malik argued:
  - a. There had been no material change since *MJ*.
  - b. There is no reliable evidence that a mere general application of anti-Ahmadi laws amounts to persecution.
  - c. The state has little interest in prosecuting those who breach the anti-Ahmadi laws
  - d. The state provides protection to Ahmadis
  - e. There is no evidence that the Khatme-e-Nabuwat incites or participates in the persecution of Ahmadis in Pakistan.

- f. There is no reliable evidence that those Ahmadis who live openly in Pakistan are being persecuted
  - g. The way in which a person is able to conduct himself in the United Kingdom, such a person should not expect the same level of tolerance in his country of origin.
  - h. Ahmadi women are not more vulnerable than men.
  - i. The situation for Ahmadis in Pakistan generally is not such that would bring them within the possible parameters of a flagrant or fundamental breach of Article 9 of the Human Rights Convention.
45. The combined submissions of Mr Gill and Mr Lemer (for MN, SB, and LQ) and of Ms Jegarajah and Mr Yeo (for ZN and NH) were based on the argument that the restrictions on the Ahmadis were in themselves persecutory. Furthermore the evidence demonstrated that Ahmadis are at risk of persecution in Pakistan were they to openly express their faith in contravention of the Pakistan Penal code which would result in a real risk of prosecution amounting to persecution and or attract harm from non-state actors hostile to their faith. The submissions we heard were detailed as disclosed in our summary of what we heard and read in the skeleton arguments but were all based on this central argument.

## OUR CONCLUSIONS ON THE EXPERT AND OTHER EVIDENCE

46. We make this assessment of Dr W's evidence. We are satisfied he has considerable strength as a historian and through his evidence we have acquired a better understanding of the background and reasons for the increasing hostility towards the Ahmadi. His evidence, however, on the current situation does not carry quite the same authority. It is surprising that although he lived in Lahore, and had an ongoing interest in Ahmadis, he was unaware of the number of Ahmadi prayer houses or mosques. His evidence that although a well-documented community, such information was not available to non-Ahmadis brings into question the extent of his knowledge and his sources. He appeared to be not so much in contact with the Ahmadi community but instead more reliant on third party sources, as illustrated in his report. We are uncertain how he arrived at his estimate of 1 million or less than 1 million Ahmadis in Pakistan and his understanding that this growth from the figures stated by Mr Lemer of 291,000 in 1998 had been through conversion. There was some imprecision in Dr W's evidence relating particularly to the incident at the Rawalpindi mosque. Nevertheless, Dr W fared well in questions which might have been better aimed at a legal expert regarding the Pakistan Constitution and Penal Code as well as the history of any prosecutions. He did not have any statistics relating to the number of those charged with blasphemy offences resulting in convictions and although we consider Mr Malik was entitled to be concerned about this the other evidence we have heard shows that such data is not readily available.

47. The evidence given by Imam Rashed at the hearing was lengthy and helpful regarding the core beliefs and practices of the Ahmadi faith. He is foremost an Imam who is able to speak with authority about his religion. He last spent a substantial period of time in Pakistan between 1973 and 1975 and his understanding of the circumstances faced by Ahmadis is more likely therefore to be informed by what he has read or has been told, although there are no footnotes identifying his sources to the answers which he gave. He is not therefore a country expert and in fairness to him has not been called as such.
48. Imam Rashed's evidence about his past experiences in Rabwah and Sialkot was graphic, but also showed a lack of knowledge about the current restrictions in Pakistan and the way in which the Ahmadi community is able to function, particularly at prayer. This, coupled with the passage of time since he has been there, reduces the weight that we are able to give to Imam Rashed's evidence about the current situation in Pakistan and recent events other than his own limited direct experiences some time ago. He is not an expert on the current situation. As we have observed above, we nevertheless found his evidence helpful regarding the obligations of Ahmadis, in particular in relation to *tabligh* which is an important issue in these appeals. On this aspect with reference to the *Bai'at*, none immediately identifies *tabligh* as an obligation. They read something akin to the Ten Commandments in the Judaic/Christian faiths with strictures on falsehood, fornication, adultery, un-Islamic customs and lustful inclinations and require the adherer to give up pride and vanity and to hold the faith dear and to be occupied in the service of God's creatures, pledging obedience.
49. Turing to Dr Ansari, her expertise is primarily in relation to the situation of women in Pakistan and the circumstances that they face. She readily acknowledged at the beginning of her evidence that she is not an expert on Ahmadis and therefore not qualified to give an opinion on the specific circumstances of Ahmadis. Accordingly, this diminishes the assistance which we are able to obtain from her evidence.
50. We noted prevalence in her report of broad generalisations on the subject of Ahmadi women. These need to be assessed in the context not only of Dr Ansari's acknowledged lack of expertise but more particularly in the light of the close knit community system enjoyed by the Ahmadi to which she makes no reference. On her evidence as a whole regarding women in Pakistan, it is significant that she was unaware of the Tribunal's most recent country guidance decision on women in Pakistan, *KA and Others (domestic violence – risk on return) Pakistan* CG [2010] UKUT 216 (IAC). In summary, therefore, Dr Ansari has been of limited assistance.
51. Dr Hamid was called to give an inside picture of life for an Ahmadi woman working in the medical profession in Pakistan. Although not an expert her evidence contributes to our understanding of the situation for Ahmadis.
52. She now practises in the UK. She held a position in Pakistan as a senior Doctor at the Community's Tahir Heart Institute and was a teacher of the Quran for the



Ahmadiyya Association. She was veiled at the hearing in the manner as to which we heard evidence is characteristic of the majority of Ahmadi women in Pakistan. First-tier Tribunal Judge Eldridge heard evidence from Dr Hamid's mother, Dr Hamid and additional witnesses. He was satisfied that Dr Hamid's father had been killed for his faith and found the three appellants to be credible. He also accepted accounts of the incidents advanced by the three appellants. Nevertheless, it is significant that despite the death of her father and the difficulties faced by the family, Dr Hamid was able to complete her education and qualifications as a doctor and obtain employment in this role in a Jammah's hospital in Rabwah, a town where Ahmadis are in the majority. She and her family encountered a personal tragedy and her story is one which we do take account of in deciding the issues we are seized of in these appeals.

53. Dr Hamid responded to questions from Mr Malik in a forthright and direct manner. We are satisfied that she is truthful and gave an accurate account of her difficulties in Pakistan which have had a significant impact on her. Much of her account of the troubles encountered by Ahmadi women was however anecdotal or un-sourced and although it would not be correct to characterise her evidence as partisan, nevertheless, she is at best a witness of fact as to her own personal circumstances which have been accepted by the Tribunal. Her experience as a doctor and an active member of the Ahmadi community in Pakistan is the basis of what she had to say rather than an academic background as a researcher.
54. Dr Ayaz's answers demonstrated a broad general knowledge; however his responses were conveyed in a manner that took for granted as an established fact that Ahmadis face persecution from those opposed to their religion in Pakistan and that the police and judiciary are not of effective assistance. This brings into focus the basis on which he has given his evidence. Dr Ayaz's role in the Ahmadiyya Association UK is to assist those seeking refugee status. This is a role he also discharges elsewhere in the world. In that sense, and understandably, he is here to champion the cause of Ahmadis (for which we do not criticise him) but that being so, it cannot be said that he has the detachment and objectivity of an expert witness to whose opinions we could give significant weight. He does not always appear to recognise the importance of careful sourcing. We see his report and the oral evidence he gave as reflecting the views of the Ahmadiyya Association UK for whom he is their commentator. He does not pretend to be otherwise. As to factual matters, the weight we give to his account of events in Pakistan since 2008 as recorded in the report is limited by the fact that Dr Ayaz has never lived in Pakistan and was last there some four years ago.
55. Dr Ayaz is of particular assistance however in describing how the Ahmadiyya Muslim Association UK has been established and how it is run. We have an understanding from his evidence how someone converts to the Ahmadi faith and of the extent to which the community is aware of its members. We understand from answers that emerged in cross-examination the purpose behind the two websites run

by the Ahmadiyya, which Dr Ayaz candidly acknowledged, was simply to record incidents, rather than to show what follow-up there had been in respect of the incidents reported. He was unable to help us with the reason why the Ahmadiyya Association UK has not been able to give us an accurate number of Ahmadis currently registered with their communities in Pakistan and the number who have recently converted.

56. We are unable to give any real weight to the report and evidence by Dr Ayaz on the anti-Ahmadi provisions of Pakistan's legislative code. The first reason is that these are views expressed by someone who is not an expert in this field. We of course accept Dr Ayaz's evidence on what he understands to be the restrictions on Ahmadis arising out of the legislation including Ordinance XX. The examples he gave however were not illustrated by any specific cases. In response to a question whether he had noted a wider interpretation of what amounts to propagation of the faith by those who are against the faith for the purpose of launching actions under 298-C, the answer provided refers to misuse of Ahmadiyya specific laws to be quite common and frequent. The response is in general terms and is of limited assistance to us.
57. Given that Dr Ayaz will have been dependent upon what he has been told by others in the context of his role in the United Kingdom for the Association, we are unable to give any real weight to his evidence regarding recent key events relevant to Ahmadis in Pakistan since 2007. In the course of his cross-examination he referred to 350 Ahmadis having died as the result of violence since 1984. He was unable to give a source for this figure and when Mr Lemer referred us to a document "Persecution of Ahmadis in Pakistan during the year 2011", the report prepared by the Ahmadiyya Association, we noted a reference to 207 Ahmadis having been killed between 1984 and 31 December 2011. Dr Ayaz was only able to surmise that this figure was calculated to 2007 and maintained that the figure to date was 350.
58. Despite our reservations, we accept that Dr Ayaz can only tell us what he has been told and what he has seen reported. We need to look elsewhere for a more precise and closer to hand account of the difficulties faced by the Ahmadi in Pakistan in our assessment of the risk Ahmadis generally face and in particular the appellants before us.
59. Dr Martin Lau is an established authority on Pakistani Law and we give considerable weight to his analysis of the motivation for the constitutional change in 1974 and subsequent amendments to the Penal Code in 1984 and in 1986. He is foremost a lawyer and we have found his evidence helpful on matters relating to legislation which discriminates against Ahmadis and which undermines their ability to practise their faith freely. We also consider his evidence strengthened by the fact that he has been to Pakistan as part of a UK Parliamentary fact finding team in the course of which he met and interviewed a number of Ahmadis.

60. We accept his complaint that the data to which he has access is either limited or simply not available to enable a complete analysis of the way in which the provisions of the Penal Code directed against Ahmadis are policed. However as he makes clear in his article '*Law and [In]equalities,*' the paucity of comprehensive data does not mean that there is no information available on decisions relating to offences against religion in Pakistan.
61. Dr Lau is only able to express his views on the information that has come to light. But his experience and knowledge leads us to accept his views on matters even where there is a dearth of evidence. We are in no doubt that Ahmadis are particularly vulnerable to prosecution for religious matters in a way that the majority Sunni population are not. This is in the light of the specific legislation against them. We accept from what we have heard from Dr Lau that they will be able to obtain bail but not without some difficulty in some cases. We further accept:
- i. that there is a real possibility if Ahmadis are prosecuted under the blasphemy laws or under 298B or C they face a real risk of an unfair trial in the lower courts although it is likely any serious sentences will be overturned on appeal. We accept that the lower judiciary at least are unlikely, largely because of societal pressure, to guarantee a fair hearing for Ahmadis at first instance and
  - ii. such prosecutions have occurred although relatively small in number (based on the conservative estimate of an overall Ahmadi population of 600, 000 referred to in the UNHCR Eligibility Guidelines quoted above) and
  - iii. nevertheless, their effect is clearly to send a deterrent signal to the Ahmadi community not to practise their religion openly.
62. Ms Asma Jahangir has a formidable curriculum vitae and she speaks with authority about not only the difficulties faced by Ahmadis but also all religious minorities in Pakistan. Her main legal work has been on cases of Christians and we take account of her answer that she has not in the last five years represented Ahmadis in proceedings. She clearly is someone with first hand knowledge of proceedings in Pakistan but inevitably as a consequence of her seniority, her knowledge of matters at trial court level is not detailed, as evidenced by her answers at the hearing. Similarly, she makes it clear that she is dependent upon other sources for the data provided in her report and it is necessary for us to evaluate the reliability of that data in determining the weight which we are able to give to her assessment of the difficulties faced by the Ahmadi.
63. The conclusions we draw from her evidence and the expert evidence of Dr Lau is that the filing of an FIR does not necessarily result in the arrest of the accused. It appears that the police do have a discretion which may be shaped by external pressure from interest groups such as the Khatme-e-Nabuwat but we are satisfied that that discretion may also be informed by their own investigations although this is not likely to matter much where the motivation behind the FIR is religion. The police

have power to grant bail for minor offences but they do not have such power for offences under sections 295C and 298C. Bail in those circumstances is only available from the trial court. Timescales in obtaining bail from the court can be lengthy, over several months.

64. Once the police have undertaken their investigation, a police report is prepared. Recent changes in procedures in Pakistan indicate that a prosecutor may have a role in determining whether matters be taken further. The evidence was not however conclusive on this. It appears to us that once a police report has been prepared, it is very likely that an unstoppable process (leaving aside the special procedures that apply to women –see *KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 (IAC)*) has begun in which the trial court frames the charge and further proceedings ensue. If, pursuant to an FIR, the police are unable to arrest the accused, they can make application to the trial court for a form of warrant to be issued. Failure to respond to that warrant will mean the accused will be considered to be an absconder and there is a real possibility he or she will be placed on the Exit Control List which is policed by immigration control in Pakistan not only for those who live in the country but for arrivals.
65. We have been given evidence by the Ahmadi Association of the number of Ahmadis in recent years against whom FIRs have been filed.<sup>10</sup>
66. The Ahmadiyya Association is a highly organised one and is capable of providing sophisticated information on the numbers who have converted to their faith, the number of members and it appears, based on the information provided on its website, the numbers who have faced difficulties. In addition, it appears that in the main, Ahmadis are able to obtain representation in the proceedings against them. Ms Jahangir’s evidence was that Ahmadis are represented by Ahmadi lawyers who would therefore be in a position to inform the communities of the outcome of proceedings against their clients. We have not heard evidence from any such lawyer but instead a non-Ahmadi lawyer who in recent years at least has not represented Ahmadis herself. The provincial FIR collection centre can be accessed but we note Ms Jahangir’s evidence that this poses a risk to the researchers themselves when seeking information relating to Ahmadis. However, if the Human Rights Commission of Pakistan has obtained information on which Ms Jahangir has drawn for her report as data, we do not know how they did so if it was not making direct enquiries.

*JUDGMENT OF SUPREME COURT OF PAKISTAN IN CRIMINAL APPEALS NUMBERS 31-K TO 35-K OF 1988, CIVIL APPEALS NO. 149 AND 150 OF 1989 AND CIVIL APPEAL NO. 412 OF 1992 (ZAHEERUDDIN)*

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<sup>10</sup> See 6 *supra*.

67. This decision of the Supreme Court of Pakistan delivered on 3 July 1993 was raised by Mr Malik with a number of the witnesses. In his judgment at [1] Shafiur Rahman J identified the issue as follows:

“The question of law of public importance common to all these appeals is whether Ordinance No XX of 1984, the Anti-Islamic Activities of the Qadiani Group, Lahore Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984 is ultra vires the Constitution. If not, whether the convictions recorded and the sentences imposed in five criminal appeals are in accordance with Section 5 introduced by it.”

68. At[16] he refers to Article 260 of the Constitution which defines a Muslim as meaning:

“ a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified finality of the Prophethood of Mohammed (peace be upon him), the last of the prophets and does not believe in, or recognise as a prophet or religious reformer, any person who claimed or claims to be, a prophet in any sense of the word or of any description whatsoever, after Mohammed (peace be upon him).”

69. A non-Muslim is defined as:

“ a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the Lahori Group (who calls themselves ‘Ahmadis’ or by any other name), or Bahai, and a person belonging to any of the scheduled castes.”

70. Reference is also made to Article 20 of the Constitution (of Pakistan) in the chapter of fundamental rights:

“20. Freedom to profess religion and to manage religious institutions - subject to law, public order and morality -

- (a) every citizen shall have the right to profess, practise and propagate his religion; and
- (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.”

71. In his minority judgment, Shafiur Rahman J found that clauses (a), (b) and (e) of section 298C were consistent with the constitutional provisions, but he concluded that clauses (c) and (d) of section 298-C of the Pakistan Penal Code would be “violative of the Fundamental Rights of religion’s freedom and of equality and of the speech in so far as they prohibit and penalize only the Ahmadis and Qadianis from preaching or propagating their faith by words written or spoken of by visible representation. “ He declared these provisions to be ultra vires the Fundamental Rights 20 and 25.

72. Abdul Qadeer Chadhry J delivered the majority judgment holding that Ordinance XX was not *ultra vires* the Constitution. The essence of his judgment is to be found at [88]:

“...The Ahmadis like other minorities are free to profess their religion in this country and no-one can take away that right of theirs, either by legislation or by executive orders. They must, however, honour the Constitution and the law and should neither desecrate or defile the pious personage of any other religions including Islam, nor should they use their exclusive epithets, descriptions and titles and also avoid using the exclusive names like mosque and practice like ‘azan’ so the feelings of the Muslim community are not injured and the people are not misled or deceived as regards the faith.”

### PREVIOUS COUNTRY GUIDANCE, RELEVANT CASE LAW AND OUR GENERAL CONCLUSIONS

73. The Tribunal last provided country guidance on Ahmadis and risks they might face in *MJ & ZM (Ahmadis – risk) Pakistan CG [2008] UKAIT 0033* in the following terms as reflected in the head note:

- “1. *The finding in IA and Others (Ahmadis: Rabwah) Pakistan CG [2007] UKAIT 00088 that the existence of a majority Ahmadi community in Rabwah does not justify dismissing an appeal which would otherwise be allowed remains valid. Rabwah is no safer than elsewhere in Pakistan for Ahmadis, but the question whether it is an appropriate internal relocation option for an Ahmadi will always depend on the particular circumstances and facts of that individual’s situation.*
2. *In Pakistan as a whole, whilst it is clear that from time to time local pressure is exerted to restrict the building of new Ahmadi mosques, schools and cemeteries, and that a very small number of Ahmadis are arrested and charged with blasphemy or behaviour offensive to Muslims, the number of problems recorded is small and has declined since the Musharraf Government took power. Set against the number of Ahmadis in Pakistan as a whole, they are very low indeed. The courts do grant bail and all appeals against blasphemy convictions in recent years have succeeded.*
3. *There is very sparse evidence indeed of harm to Ahmadis from non-state agents (though rather more anecdotal evidence of difficulties for Christians). The general risk today on return to Pakistan for Ahmadis who propagate the Ahmadi faith falls well below the level necessary to show a real risk of persecution, serious harm or ill-treatment and thus to engage any form of international protection.*
4. *Where, exceptionally, the facts of a particular appellant’s case indicate that such an appellant cannot be returned safely to their home area, the existence of an internal relocation option, either to Rabwah or elsewhere in Pakistan, is a question of fact in each such appeal.”*

74. More recently the Tribunal in *MT (Ahmadi – HJ (Iran)) Pakistan* [2011] UKUT 00277 (IAC) gave this further guidance (although the case was not a country guidance decision):

“Where it is found that an Ahmadi will be ‘discreet’ on return the reasons for such discretion will need to be considered in the light of *HJ (Iran)* [2010] UKSC 31.”

75. *HJ (Iran)* sets out the approach we are required to take when considering circumstances where potential persecution may be avoided by concealment or the exercise of discretion as opposed to or part of internal relocation. The Supreme Court was concerned with issues surrounding gay men however the principles are applicable to cases other than those involving sexual orientation, see *RT (Zimbabwe)* [2012] UKSC 38 which is discussed below.

76. Lord Hope in *HJ (Iran)* sets out the approach that should be adopted by fact-finding Tribunals in which he describes it as necessary to proceed in stages. The test is set out in [35] of his judgment:

“35. (a) The first stage, of course, is to consider whether the applicant is indeed gay. Unless he can establish that he is of that orientation he will not be entitled to be treated as a member of the particular social group. But I would regard this part of the test as having been satisfied if the applicant's case is that he is at risk of persecution because he is suspected of being gay, if his past history shows that this is in fact the case.

(b) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future. The Home Office's Country of Origin report will provide the background. There will be little difficulty in holding that in countries such as Iran and Cameroon gays or persons who are believed to be gay are persecuted and that persecution is something that may reasonably be feared. The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in this inquiry.

(c) On the other hand, the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test. As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. So it would be wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that

he can live as freely and as openly as a gay person as he would be able to do if he were not returned. It does not guarantee to everyone the human rights standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin.

- (d) The next stage, if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he genuinely fears that otherwise he will be persecuted, it will be necessary to consider whether that fear is well founded.
- (e) This is the final and conclusive question: does he have a well-founded fear that he will be persecuted? If he has, the causative condition that Lord Bingham referred to in *Januzi v Secretary of State for the Home Department* [2006] 2 AC 426, para 5 will have been established. The applicant will be entitled to asylum."

77. Lord Rodger too set out a test at [82]:

"82. When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.

If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality.

If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.

If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly".

If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself *why* he would do so.

If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e g, not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.



If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.”

78. Judgment was given by the Supreme Court in *RT* on 25 July after the final hearing in this appeal. We considered it relevant to the issues we are required to determine and as noted above we invited further submissions on its impact in these appeals.
79. The enquiry addressed by the Supreme Court was whether an individual who has no political views and who does not therefore support a persecutory regime in his home country can be expected to lie and feign loyalty to that regime in order to avoid persecution to which he might otherwise be subjected. The Court was concerned with appellants from Zimbabwe and on the varying facts of the different cases whether the appellants would be forced to lie in order to profess loyalty to the ZANU-PF regime. This was in the context of a finding by the Tribunal in *RN (Returnees) Zimbabwe* CG [2008] UKAIT 00083. The guidance given in that decision was that those at risk on return to Zimbabwe on account of imputed political opinion were no longer restricted to those who were perceived to be members or supporters of the MDC but include anyone who was unable to demonstrate support for or loyalty to the ZANU-PF regime.
80. After reviewing a number of authorities, including *HJ (Iran)*, Lord Dyson, with whom all their Lordships agreed, concluded at [45]:

“There is no support in any of the human rights jurisprudence for a distinction between the conscientious non-believer and the indifferent non-believer, any more than there is support for a distinction between the zealous believer and the marginally committed believer. All are equally entitled to human rights protection and to protection against persecution under the Convention. None of them forfeits these rights because he will feel compelled to lie in order to avoid persecution.”

81. On whether there can be a distinction between core and marginal rights, he observed at [47] to [52]:

“47. Thirdly, Mr Swift's suggested distinction between core and marginal rights is based on a misunderstanding of what we said in *HJ (Iran)*. In order to understand what Lord Rodger and I said on the issue, it is necessary first to see what was said by the New Zealand Refugee Status Appeals Authority in *Refugee Appeal No 74665/03*. At para 82, the Authority said that if the right sought to be exercised by the applicant is not a core human right, the "being persecuted" standard of the

Convention is not engaged. But if the right is a fundamental human right, the next stage is to determine "the metes and bounds of that right". The Authority continued:

"If the proposed action in the country of origin falls squarely within the ambit of that right the failure of the state of origin to protect the exercise of that right coupled with the infliction of serious harm should lead to the conclusion that the refugee claimant has established a risk of 'being persecuted.'"

48. The same point was made at para 90. For the purpose of refugee determination, the focus must be on "the minimum core entitlement conferred by the relevant right". Thus, where the risk of harmful action is only that "activity at the margin of a protected interest is prohibited, it is not logically encompassed by the notion of 'being persecuted'". The point was repeated at para 120.
49. At paras 99, 101 and 102, the Authority gave examples of the kind of activity which were at the margin of a protected right. Prohibition on a homosexual from adopting a child on the grounds of his sexual orientation would not be persecution, because adoption of a child was "well on the margin" of the right enjoyed by homosexuals to live their lives as homosexuals openly and free from persecution. The same point was made in relation to (i) the denial to post-operative transsexuals of the right to marry, (ii) the denial to homosexuals of the right to marry and (iii) the prosecution of homosexuals for sado-masochistic acts. It was suggested that, whether or not any of these involved breaches of human rights, they could not be said to amount to persecution since the prohibited activities in each case were at the margin of the protected right.
50. In *HJ (Iran)*, Lord Rodger gave as another possible example the applicant who claimed asylum on the ground that he feared persecution if he took part in a gay rights march. If a person would be able to live freely and openly as a gay man provided that he did not take part in gay rights marches, his claim for asylum might well fail. At paras 114 and 115 of my judgment too, I was saying no more than that a determination of whether the applicant's proposed or intended action lay at the core of the right or at its margins was useful in deciding whether or not the prohibition of it amounted to persecution. I remain of that view. The distinction is valuable because it focuses attention on the important point that persecution is more than a breach of human rights.
51. What matters for present purposes is that nothing that was said in the Authority's decision or by us in *HJ (Iran)* supports the idea that it is relevant to determine how important the right is to the individual. There is no scope for the application of the core/marginal distinction (as explained above) in any of the appeals which are before this court. The situation in Zimbabwe as disclosed by *RN* is not that the right to hold political beliefs is generally accepted *subject only to some arguably peripheral or minor restrictions*. It is that anyone who is not thought to be a supporter of the regime is treated harshly. That is persecution.
52. For the reasons that I have given, I would reject the restrictive approach suggested by Mr Swift to the application of the *HJ (Iran)* principle to these cases

and hold that it applies to applicants who claim asylum on the grounds of a fear of persecution on the grounds of lack of political belief regardless of how important their lack of belief is to them.”

82. The legislative framework to these appeals includes international and European Union law comprising the Refugee Convention and the European Convention on Human Rights (the Human Rights Convention), the Charter of Fundamental Rights of the European Union (the Charter) and the Council Directive 204/83/EC (the Directive).

83. The Directive at Article 9 defines acts of persecution in these terms:

- “1. Acts of persecution within the meaning of Article 1A of the Geneva Convention must
  - (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
  - (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).
2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:
  - (a) acts of physical or mental violence, including acts of sexual violence;
  - (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory measure;
  - (c) prosecution or punishment which is disproportionate or discriminatory;
  - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
  - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article Article 12(2);
  - (f) acts of gender-specific or child-specific nature.
3. In accordance with Article 2(c) there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.”

84. Article 10 of the Directive sets out reasons for persecution illustrated in a number of ways including:

“1(b) The concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief.”

85. Article 9 of the Human Rights Convention provides:

- “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief in freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

86. Article 9 (1) of the Human Rights Convention is in the same terms as paragraph I of Article 10 of the Charter.

87. We turn to the European case law of particular relevance to these appeals.

88. The fourth Section of the European Court of Human Rights in *Z & T v the UK* (Application No. 27034/05) was concerned with appeals by two Christians from Pakistan in which Article 9 was engaged. The Court took the view that:

“While the Court would not rule out the possibility that the responsibility of the returning State might in exceptional circumstances be engaged under Article 9 of the Convention where the person concerned ran a real risk of flagrant violation of that Article in the receiving State, the Court share the view of the House of Lords in the *Ullah* that it would be difficult to visualise a case in which a sufficiently flagrant violation of Article 9 would not also involve treatment in violation of Article 3 of the Convention.”

89. The route by which the Court reached that decision is reflected in these extracts:

“This case raises the question of what approach should be applied to Article 9 rights allegedly at risk on expulsion. The applicants argue that a flagrant denial test should not be applied in the context of Article 9, as was done by the House of Lords in *Ullah*, as this would fail to respect the primacy of religious rights; and it is contended that effectively requiring them to modify their conduct, concealing their adherence to Christianity and forgoing the possibility of talking about their faith and bearing witness to others, in order to avoid hostile attention would be to deny the right *per se*.

The Court’s case-law indeed underlines that freedom of thought, religion and conscience is one of the foundations of a democratic society and that manifesting one’s religion, including seeking to convince one’s neighbour, is an essential part of that freedom (*Kokkinakis*, § 31). This is however first and foremost the standard applied

within the Contracting States, which are committed to democratic ideals, the rule of law and human rights. The Contracting States nonetheless have obligations towards those from other jurisdictions, imposed variously under the 1951 United Nations Convention on the Status of Refugees and under the above-mentioned Articles 2 and 3 of the Convention. As a result, protection is offered to those who have a substantiated claim that they will either suffer persecution for, *inter alia*, religious reasons or will be at real risk of death or serious ill-treatment, and possibly flagrant denial of a fair trial or arbitrary detention, because of their religious affiliation (as for any other reason). Where however an individual claims that on return to his own country he would be impeded in his religious worship in a manner which falls short of those proscribed levels, the Court considers that very limited assistance, if any, can be derived from Article 9 by itself. Otherwise it would be imposing an obligation on Contracting States effectively to act as indirect guarantors of freedom of worship for the rest of world. If, for example, a country outside the umbrella of the Convention were to ban a religion but not impose any measure of persecution, prosecution, deprivation of liberty or ill-treatment, the Court doubts that the Convention could be interpreted as requiring a Contracting State to provide the adherents of that banned sect with the possibility of pursuing that religion freely and openly on their own territories. While the Court would not rule out the possibility that the responsibility of the returning State might in exceptional circumstances be engaged under Article 9 of the Convention where the person concerned ran a real risk of flagrant violation of that Article in the receiving State, the Court shares the view of the House of Lords in the *Ullah* case that it would be difficult to visualise a case in which a sufficiently flagrant violation of Article 9 would not also involve treatment in violation of Article 3 of the Convention."

90. As it turned out for the appellants, they failed to make out a case of persecution on religious grounds, the court reaching its conclusion in these terms:

"In the present application, the applicants have failed to make out a case of persecution on religious grounds or to substantiate that they were at risk of a violation of Articles 2 or 3. Neither applicant had herself been subject to any physical attack or prevented from adhering to her faith. Both have claimed to have received unpleasant telephone calls and to have felt at risk of attack. The essence of their case rests on the general situation in Pakistan where there have been, over the past few years, attacks on churches and Christians. The domestic authorities however gave weight to the fact that the Christian community in Pakistan was under no official bar and indeed had their own parliamentary representatives and that the Pakistani law enforcement and judicial bodies respectively were taking steps to protect churches and schools and to arrest, prosecute and punish those who carried out attacks.

The applicants have emphasised that the police themselves fear the Islamic extremists and that the authorities have failed in the past to protect Christian churches despite the presence of guards. Nonetheless it is not apparent that the authorities are incapable of taking, or are unwilling to take, appropriate action in respect of violence or threats of violence directed against Christian targets.

In those circumstances, the Court finds that, even assuming that Article 9 of the Convention is in principle capable of being engaged in the circumstances of the expulsion of an individual by a Contracting State, the applicants have not shown that

they are personally at such risk or are members of such a vulnerable or threatened group or in such a precarious position as Christians as might disclose any appearance of a flagrant violation of Article 9 of the Convention.”

91. The Grand Chamber of the Court of Justice of the European Union in *Federal Republic of Germany v Y (C-71/11) & Z (C-99/11)* had before it references for a preliminary ruling concerning the interpretation of Articles 2(C) and 9(1)(a) of the Directive relating to proceedings by Y and Z whose applications for asylum were on the basis that their membership of the Muslim Ahmadiyya community in Pakistan had forced them to leave their country of origin. The questions for the preliminary ruling were worded in almost identical terms in both cases as follows:

“1. Is Article 9(1)(a) of [the] Directive...to be interpreted as meaning that not every interference with religious freedom which infringes Article 9 of the ECHR constitutes an act of persecution within the meaning of [the former provision], and that a severe violation of religious freedom as a basic human right arises only if the core area of that religious freedom is adversely affected?

2. If question 1 is to be answered in the affirmative:

(a) Is the core area of religious freedom limited to the profession and practice of faith in the areas of the home and neighbourhood, or can there be an act of persecution, within the meaning of Article 9(1)(a) of [the] Directive..., also in cases where, in the country of origin the observance of faith in public gives rise to a risk to life, physical integrity or freedom and the applicant accordingly abstains from such practice?

(b) If the core area of religious freedom can also comprise the public observance of certain religious practices:

- does it suffice in that case, in order for there to be a severe violation of religious freedom, that the applicant feels that such observance of his faith is indispensable in order for him to preserve his religious identity,
- or is it further necessary that the religious community to which the applicant belongs should regard that religious observance as constituting a central part of its doctrine,
- or can further restrictions arise as a result of other circumstances, such as the general conditions in the country of origin?

3. If question 1 is to be answered in the affirmative:

Is there a well founded fear of persecution, within the meaning of Article 2(c) of [the] Directive..., if it is established that the applicant will carry out certain religious practices – other than those falling within the core area – after returning to the country of origin, even though they will give rise to a risk to his life, physical integrity or freedom, or can the applicant reasonably be expected to abstain from such practices.”

92. The following conclusions were reached by the court:

[57] Freedom of religion is one of the foundations of a democratic society and is a basic human right. Interference with the right to religious freedom may be so serious as to be treated in the same way as the cases referred to in Article 15(2) of the ECHR, to which Article 9(1) of the Directive refers by way of guidance, for the purpose of determining which acts must in particular be regarded as constituting persecution.

[58] However, that cannot be taken to mean that any interference with the right to religious freedom guaranteed by Article 10(1) of the Charter constitutes an act of persecution requiring the competent authorities to grant refugee status within the meaning of Article 2(d) of the Directive to any person subject to the interference in question.

[59] On the contrary, it is apparent from the wording of Article 9(1) of the Directive that there must be a 'severe violation' of religious freedom having a significant effect on the person concerned in order for it to be possible for the acts in question to be regarded as acts of persecution.

[60] Acts amounting to limitations on the exercise of the basic right to freedom of religion within the meaning of Article 10(1) of the Charter which are provided for by law, without any violation of that right arising, are thus automatically excluded as they are covered by Article 52(1) of the Charter.

[61] Nor can acts which undoubtedly infringe the right conferred by Article 10(1) of the Charter, but its gravity is not equivalent to that of an infringement of the basic human rights from which no derogation can be made by Article 15(2) of the ECHR, be regarded as constituting persecution within the meaning of Article 9(1) of the Directive and Article 1A of the Geneva Convention.

[62] For the purpose of determining, specifically, which acts may be regarded as constituting persecution within the meaning of Article 9(1)(a) of the Directive, it is unnecessary to distinguish acts that interfere with the 'core areas' ('forum internum') of the basic right to freedom of religion, which do not include religious activities in public ('forum externum'), from acts which do not affect those purported 'core areas'.

[63] Such a distinction is incompatible with the broad definition of 'religion' given by Article 10(1)(b) of the Directive, which encompasses all its constituent components, be they public or private, collective or individual. Acts which may constitute a 'severe violation' within the meaning of Article 9(1)(a) of the Directive include serious acts which interfere with the applicant's freedom not only to practice his faith in private circles but also to live that faith publicly.

[64] That interpretation is likely to ensure that Article 9(1) of the Directive is applied in such a manner as to enable the competent authorities to assess all kinds of acts which interfere with the basic right of freedom of religion in order to determine whether, by their nature or repetition, they are sufficiently severe as to be regarded as amounting to persecution.

[65] It follows that acts which, on account of their intrinsic severity as well as the severity of their consequences for the person concerned, may be regarded as constituting persecution must be identified, not on the basis of the particular aspect of religious freedom that is being interfered with but on the basis of the nature of the repression inflicted on the individual and its consequences, as observed by the Advocate General at point 52 of his Opinion.

[66] It is therefore the severity of the measures and sanctions adopted or liable to be adopted against the person concerned which will determine whether a violation of the right guaranteed by Article 10(1) of the Charter constitutes persecution within the meaning of Article 9(1) of the Directive.

[67] Accordingly, a violation of the right to freedom of religion may constitute persecution within the meaning of Article 9(1)(a) of the Directive where an applicant for asylum, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive.”

93. The court went on to observe at [69] to [71] the objective and subjective factors to be taken into account:

“[69] Given that the concept of ‘religion’ as defined in Article 10(1)(b) of the Directive also includes participation in formal worship in public, either alone or in community with others, the prohibition of such participation may constitute a sufficiently serious act within the meaning of Article 9(1)(a) of the Directive and, therefore, persecution where, in the country of origin concerned, it gives rise to a genuine risk that the applicant will, inter alia, be prosecuted or subject to inhuman or degrading punishment by one of the actors referred to in Article 6 of the Directive.

[70] In assessing such a risk, the competent authorities must take account of a number of factors, both objective and subjective. The subjective circumstance that the observance of a certain religious practice in public, which is subject to the restrictions at issue, is of particular importance to the person concerned in order to preserve his religious identity is a relevant factor to be taken into account in determining the level of risk to which the applicant will be exposed in his country of origin on account of his religion, even if the observance of such a religious practice does not constitute a core element of faith for the religious community concerned.

[71] Indeed, it is apparent from the wording of Article 10(1)(b) of the Directive that the scope of protection afforded on the basis of persecution on religious grounds extends both to forms of personal or communal conduct which the person concerned considers to be necessary to him – namely those ‘based on ... any religious belief’ – and to those prescribed by religious doctrine – namely those ‘mandated by any religious belief’.”

94. The first two questions therefore were answered by the court in terms that Article 9(1)(a) of the Directive must be interpreted as meaning that:



- “- not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter is capable of constituting an ‘act of persecution’ within the meaning of that provision of the Directive;
- there may be an act of persecution as a result of interference with the external manifestation of that freedom, and
- for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter may constitute an ‘act of persecution’, the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive.”

95. Turning to the third question which the court considered concerned the situation where an applicant has not already been subject to persecution or direct threats of persecution on account of his religion. The court urged that the assessment of the extent of the risk, to be carried out with vigilance and care “...will be based solely on a specific evaluation of the facts and circumstances, in accordance with the Rules laid down in particular by Article 4 of the Directive”.

96. Echoing the approach of the Supreme Court in *HJ (Iran)* and *RT (Zimbabwe)*, the court observed at [78] to [80]:

“[78] None of those rules states that, in assessing the extent of the risk of actual acts of persecution in a particular situation, it is necessary to take account of the possibility open to the applicant of avoiding the risk of persecution by abstaining from the religious practice in question and, consequently, renouncing the protection which the Directive is intended to afford the applicant by conferring refugee status.

[79] It follows that, where it is established that, upon his return to his country of origin, the person concerned will follow a religious practice which will expose him to a real risk of persecution, he should be granted refugee status, in accordance with Article 13 of the Directive. The fact that he could avoid that risk by abstaining from certain religious practices is, in principle, irrelevant.

[80] In the light of the above considerations, the answer to the third question referred in both cases is that Article 2(c) of the Directive must be interpreted as meaning that the applicant’s fear of being persecuted is well-founded if, in the light of the applicant’s personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.”

97. The court was ruling on the questions before it and we do not consider that in para [79], it was limiting the risk category to those persons who are able to establish that they *will* follow a pattern of behaviour that will expose them to persecution as

opposed to those who would wish to but would not because of persecution risk. Otherwise the obligation will be on a person to be unreasonably expected to show a reckless intention despite the risks involved. That is not the basis on which the right to religious freedom is intended to be preserved and protected or the basis on which protection is provided under the Refugee Convention. The Court of Justice makes clear as did the Supreme Court in *HJ (Iran)* that concealment is not an answer if the reason is a fear of harm. Further, the use of the adverb “reasonably” in para [80] is a reflection of the standard of proof rather than introducing a test of *reasonableness* to the enquiry how someone will conduct themselves on return. We do not see therefore that the Court of Justice was suggesting a different approach from that of the Supreme Court in *HJ (Iran)*.

98. We are unable to accept Mr Malik’s submission that there is an apparent tension between the approach of the Court of Justice and the Supreme Court in *RT (Zimbabwe)* on the validity of the core/margin distinction. Para [50] of the judgment Lord Dyson in *RT* needs to read with [51] in which he explains that there is no scope for the application of the core/marginal distinction. We understand Lord Dyson’s view to be that there is legitimacy in looking at whether a proposed or intended action lay at the core or the margins to see if the prohibition amounted to persecution. The reach of the freedom of religion is a wide one and although it is difficult to think of an example perhaps restrictions on Ahmadis marching down the main road with banners declaring their faith would not be regarded as persecutory as such activity is outside their established ritual and practices. Marginality may also be relevant if the restrictions are peripheral or minor. Were there a fine of a few rupees for someone calling himself a Muslim, displaying the *kalma* or preaching in a public place, it is doubtful this would amount to persecution although it might by repetition acquire the level of severity needed to engage the Refugee Convention.
99. We also do not accept the arguments of Mr Gill and Mr Lemer that there can be acts which are so restrictive of the practice of religion that the intrinsic severity of the restriction itself is enough to amount to persecution regardless of the consequences. If legislation is unenforced or the sanctions are of a minor or non-severe nature there is no need for protection. In the absence of the “harsh treatment” as observed by Lord Dyson in *RT* at para [51] or the “severity of ...consequences” and the nature of the repression as noted by the Court of Justice in *Y & Z*, there is no persecution.
100. We draw the following principles from the various authorities we have referred to.
  - a. For interference with the right to the freedom of religion guaranteed by Art 10(1) of the Charter and Art 9(1) of the Human Rights Convention to constitute an act of persecution within the meaning of Art 2(d) of the Directive, there must be a significant effect on the person concerned.
  - b. Acts which interfere with the right to the freedom of religion, if not of the gravity equivalent to the protected human rights from which there can be no derogation under Art 15(2) of the Human Rights Convention, will not constitute

persecution within the meaning of Art 9(1) of the Directive and the Refugee Convention.

- c. Limitations on the exercise of the Freedom of Religion must be provided for by law and respect the essence of the rights and freedoms recognised by the Charter. They must be proportionate and made only if necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. (Art 52 of the Charter)
- d. There is no basis for distinguishing interference with core aspects from interference with marginal areas of the right to freedom of religion. This is because of the broad definition of religion in Art 10(1)(b) of the Directive.
- e. Nevertheless it is only serious violation of the right to freedom of religion that will give rise to persecution or serious harm or ill-treatment and that will be determined by the nature of the repression on the individual concerned and its consequences with reference to the severity of the measures and sanctions likely to be adopted.
- f. If it is reasonably thought that an individual will engage in religious practices (which may include public manifestations of that religion) or would wish to do so because of the particular importance to the person concerned in order to preserve his religious identity, the fact that an individual could avoid a risk by abstaining from certain religious practices which will expose him to a real risk of persecution is irrelevant.

101. The evidence before us shows that Ahmadis are an oppressed religious minority in Pakistan. The relevant provisions of the Pakistan Penal Code set out above restrict the ways in which Ahmadis are able to express and practise their beliefs. If defied, the provisions expose Ahmadis to the risk of prosecution coupled with a risk of detention pending trial. In addition they face hostility from sectors of the majority of society which is made up of Sunni Muslims. Disagreement with and disapproval of the beliefs of Ahmadis has intensified with the increased Islamisation<sup>11</sup> of Pakistan as well as the growth of fundamentalism. In addition to vulnerability to terrorist threats from the Taliban, they face vehement opposition from the Khatme-e-Nabuwat whose tactics not only include taking out FIRs against Ahmadis but also intimidation. Their influence is pervasive in Pakistani institutions.

102. The ability of Ahmadis to defend any prosecution that may ensue after faith-based FIRs have been issued under the PPC, is hampered by the risk of unfair treatment by the police and the trial courts. These problems relate not only to the substance of any prosecution but also the ability of Ahmadis to readily obtain bail prior to or after proceedings have been brought. According to the respondent's Country of Origin

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<sup>11</sup> The term Islamisation was used in evidence to describe the role of Islam in society in Pakistan and we use it on the same basis.

Information Report dated 7 June 2012 (published before we heard submissions although not referred to) prison conditions vary dependant on the prisoner's background and importance. They are described in the US Department of State Country Report on Human Rights Practices 2011 (published 24 May 2012) as often extremely poor and failed to meet international standards. On the other hand Ahmadis can be reasonably confident that on appeal to higher courts unfair or unreasonable decisions are likely to be overturned.

103. Harassment instigated by the Khatme-e-Nabuwat and other non state actors and the consequent exposure to police action is evidenced in the catalogue of events collated by [www.thepersecution.org](http://www.thepersecution.org) and [www.persecutionofAhmadis.org](http://www.persecutionofAhmadis.org) and the Ahmadiyya Association Persecution 2011 report extracts from which we have set out above. This evidence reveals not only very serious matters such as murders but also incidents where Ahmadis have encountered discriminatory hostility in their everyday life. As a precise and consolidated catalogue the reports leave much to be desired. Nevertheless, they are clearly based on press reports and there is nothing to suggest that those reports exaggerate the incidents they record. We consider that the community is a highly organised one and that it keeps an accurate log of the incidents reported to it. This is reflected in the modest number of prosecutions the community reports for 2011. We give weight to Dr Lau's expert opinion that there is neither under nor over reporting by the Association. All the more so because he has been recently in Pakistan as part of a formal fact finding mission. We accept the evidence of the difficulties and dangers of seeking out the evidence. The UNHCR guidelines and the US Dept of State report on Religious freedom do not question the figures and catalogue of incidents. Dr Lau's explanation that his own enquiries satisfied him that the data was not exaggerated is consistent with the view of Ms Jahangir another expert whose view we respect and give appropriate weight to.
104. In the context of the number of incidents recorded in the past 24 years, it may be thought that the risk to Ahmadis is not as great as has been urged in these appeals. We accept however the explanation in the submissions from the appellants' representatives that this is in part due to the way in which Ahmadis in general deal with their difficulties in Pakistan by self denial, civil obedience and by keeping a low profile. Although some of the incidents reported on [www.thepersecution.org](http://www.thepersecution.org) and its sister site might suggest otherwise, on the whole, it appears to have been a successful approach. With this moderation of the ways in which Ahmadis express and practise their faith including its propagation, we accept that there have been fewer prosecutions and complaints made than might otherwise have been the case. We accept the evidence of Dr W about the increasing Islamisation in Pakistan which undoubtedly would heighten the risks for Ahmadis who chose to flout the law and we accept that the need to keep a low profile is likely to have increased.
105. As Mr Yeo submitted, we should not treat Dr Ayaz, Dr Hamid and Imam Rashed as experts. They speak of their experience and understanding and so are better described as witnesses of fact. Their evidence is consistent as between one another

and also consistent with the experts. Together they describe a pattern of anti Ahmadi activity directly by or condoned by the authorities and non state actors.

106. Mr Malik candidly acknowledged on behalf of the Secretary of State that he did not accept that the anti-Ahmadi laws in the Pakistan Penal Code were fair. It is difficult to see how he could have argued otherwise. There is some force in his contention that Ahmadis are able to practise their faith by attending their places of worship (at least so far as men are concerned) and for women to pray at home. The evidence does not show that undemonstrative activity of this kind alone results in a risk of persecutory treatment. Ahmadis have access to their own TV station broadcast via satellite from London. Their numbers appear to have increased and we heard evidence of conversions in Pakistan. The evidence varies as to the number of Ahmadis and the best we are able to say is that there are several hundred thousand in Pakistan.
107. These arguably positive matters however do not provide an answer to important questions. The way in which the Ahmadi faith may be practised emblemized and preached in Pakistan is constrained by the criminal law with potentially severe sanctions if breached. Is it reasonable to expect Ahmadis to show restraint and not freely manifest their faith in areas that are of particular importance to the individual concerned through obedience to the anti Ahmadi legislation to avoid prosecution? It is established law that this is neither permissible (*HJ (Iran)*) if the purpose is to avoid persecution nor is it relevant: (*Germany v Y & Z*), if there is the possibility open to the claimant to avoid the risk by abstention. Is it reasonable to expect Ahmadis to exercise similar restraint and show appeasement in order to avoid the potential for aggressive hostility from others who form the majority? The answer must be the same. Does the existence of such legislation constitute a fundamental violation of their freedom of religion such that its very existence is persecutory in the light of the consequences if it is breached? On this aspect we consider that it is not simply the existence of the legislation but the severity of consequences of the sanctions if and when applied that dictates the answer. Can the aspects of the faith that might be seen objectively as peripheral to the right of freedom of religion mean that any restrictions no matter how discriminatory are not undermining the core? Such an approach would be incorrect and irrelevant: (*RT (Zimbabwe)* and (*Germany v Y and Z*).
108. In our view, the effect of the anti-Ahmadi legislation is the unthinkable equivalent of the UK parliament passing legislation under pressure from the other faiths restricting the Church of Jesus Christ of the Latter Day Saints from using the word church in its title and in references to its place of worship, from describing themselves as Christians and banning Mormon missionaries from spreading the word by calling on members of the public. Even this analogy does not adequately reflect the difficulties posed for Ahmadis by the legislation in Pakistan arising from the apparent ease with which anti-Ahmadi groups are able to exploit the legislation by taking out FIRs against Ahmadis.

109. As with the Mormons, the Ahmadi faith is comparatively recent in historical terms and one which is dependant on its beliefs being spread in order to grow. We accept the evidence that *tabligh* plays a significantly greater role in the Ahmadi faith than for religions of greater antiquity. Section 298C curbs this activity entirely. The opinions expressed by the majority of the Supreme Court of Pakistan in *Zaheeruddin* betray views that increased Islamisation is unlikely to have diluted.
110. As observed earlier, the Strasbourg court in *Z & T v the UK* emphasised that freedom of thought, religion and conscience is one of the foundations of a democratic society and that "...manifesting one's religion, including seeking to convince one's neighbour, is an essential part of that freedom..." This was the standard applied within the contracting states and as to those states' obligations towards those from other jurisdictions under the Refugee Convention and Articles 2 and 3 of the Human Rights Convention.
111. The court was satisfied that the impediment to religious worship would need to meet the high threshold required by the Refugee Convention or the test in Articles 2 and 3 of the Human Rights Convention:
- "Where however an individual claims that on return to his own country he would be impeded in his religious worship in a manner that falls short of these prescribed levels, the court considers that very limited assistance, if any, can be derived from Article 9 by itself. Otherwise it would be imposing an obligation on Contracting states effectively to act as indirect guarantors of freedom on worship for the rest of the world."
112. The appellants *Z* and *T* were unsuccessful because the court found they had not shown that they were personally at risk or were members of such a vulnerable or threatened group or in such a precarious position as might disclose any appearance of a flagrant violation of Article 9. The facts before the court were that both applicants had received unpleasant telephone calls and had felt at risk of attack. It was noted that the Christian community in Pakistan was under no official bar and had their own parliamentary representatives and that the Pakistan law enforcement and judicial bodies respectively were taking steps to protect churches and schools and to arrest, prosecute and punish those who carried out attacks.
113. Mr Malik argues in his skeleton that the anti-Ahmadi legislation should be looked at in context and the evidence makes it plain that the legislation is neither irrational, nor in itself persecutory. He argues that there were rational administrative and constitutional reasons for parliament to legislate in this way and to define who is a Muslim. We concur that it is unhelpful to talk about laws per se being persecutory, but the extent to which they adhere to international human rights norms is a relevant consideration in deciding whether the way the laws are applied is persecutory. In this regard, we accept that there is justification for the state to define who is a member of the state religion particularly where as in Pakistan there are obligations on members of that religion illustrated by taxation and education. We accept that the mere fact that there is legislation specific to the Ahmadi faith is not persecutory. But

we do not accept that as a matter of internal protection law, there is justification for denying Ahmadis the right to call themselves Muslims and employ the manifestations of that faith, as well as preach, if the reason is simply to appease the majority when the basis is doctrinal disagreement. There is nothing in the behaviour and beliefs of Ahmadis that impinges on the rights of the majority in any way that justifies the repressive effect of the legislation. The anti-Ahmadi legislation may be a means of keeping the peace but the evidence shows that it is the violent aggression of sections of the majority population that needs to be curbed. It is no answer, as suggested by Mr Malik, that there is other legislation applying to individuals of all faiths which can be said to provide equal protection to Ahmadis who alone have specific laws against how the conduct and manifest their faith, the blasphemy law aside.

114. We are therefore unable to accept Mr Malik's submission that the guidance in *MJ & ZM (Ahmadis - risk) Pakistan* can hold in the light of the significant change in the conditions of life for Ahmadis in Pakistan. Unlike the Tribunal in *MJ & ZM*, we have had the benefit of a considerable range of evidence and we have heard not only from senior members of the community but also independent experts. Furthermore, the important legal developments in case law and European legislation drive us to the conclusions we have reached.
115. We earlier concluded that the legislation restricting Ahmadis is a disproportionate measure that furthermore undermines the fundamental right to religious expression. It has been in place for some time but over time the use of it by hostile non-State actors has made its effects pernicious. It is impermissible to expect Ahmadis who regard themselves as Muslims to comply with such legislation that undermines their fundamental identity and which, if flouted, runs the risk of persecutory ill-treatment. Furthermore, an active Ahmadi cannot be expected to be discreet about the practice and manifestation of his faith including its propagation if the decision to do so is to avoid coming to the attention of the authorities or non-state actors who are opposed to the fundamental tenets of the Ahmadi faith.
116. If an Ahmadi therefore, in the genuine pursuit of his faith, is unable to practise that faith openly in ways that are of particular importance to him and his identity as an Ahmadi because of the restrictions placed on him by statute in Pakistan, he is in need of protection in the light of the evidence that defiance would lead to a real risk of an unfair FIR under sections 298B or C or 295C of the Pakistan Penal Code leading to detention and the likelihood of an unfair trial at first instance with a risk of prolonged imprisonment until matters can be resolved on appeal. The risks stem from the sanctions in the legislation itself but also from non-state actors who use the law to pursue Ahmadis in a hostile way. Together, these factors are capable of amounting to a state-approved or state-condoned act of persecution within the meaning of the Qualification Directive and under the Refugee Convention.
117. The risk faced by an Ahmadi from Rabwah for whom the restrictions in Pakistan means that they are unable to practise and manifest their faith in ways that are of

particular importance to their religious identity is the same as for someone from elsewhere in Pakistan. It is national legislation and the way it is applied that is the mischief. Even if it may be thought that there is safety in numbers in Rabwah, our view is that such safety that there may be is precarious evidenced by the collective FIRs, although of questionable validity, that hang over the town and the likelihood that such relative safety is achieved by restraint which does not allow for the open expression of the religion. In the light of this, the option of internal flight to Rabwah is not reasonably available to an Ahmadi who is in need of protection.

## COUNTRY GUIDANCE

118. This country guidance replaces previous guidance in *MJ & ZM (Ahmadis - risk) Pakistan CG* [2008] UKAIT 00033, and *IA & Others (Ahmadis: Rabwah) Pakistan CG* [2007] UKAIT 00088. The guidance we give is based in part on the developments in the law including the decisions of the Supreme Court in *HJ (Iran)* [2010] UKSC 31, *RT (Zimbabwe)* [2012] UKSC 38 and the CJEU decision in *Germany v. Y (C-71/11) & Z (C-99/11)*. The guidance relates principally to Qadiani Ahmadis; but as the legislation which is the background to the issues raised in these appeals affects Lahori Ahmadis also, they too are included in the country guidance stated below.
119. (i) The background to the risk faced by Ahmadis is legislation that restricts the way in which they are able openly to practise their faith. The legislation not only prohibits preaching and other forms of proselytising but also in practice restricts other elements of manifesting one's religious beliefs, such as holding open discourse about religion with non-Ahmadis, although not amounting to proselytising. The prohibitions include openly referring to one's place of worship as a mosque and to one's religious leader as an Imam. In addition, Ahmadis are not permitted to refer to the call to prayer as azan nor to call themselves Muslims or refer to their faith as Islam. Sanctions include a fine and imprisonment and if blasphemy is found, there is a risk of the death penalty which to date has not been carried out although there is a risk of lengthy incarceration if the penalty is imposed. There is clear evidence that this legislation is used by non-state actors to threaten and harass Ahmadis. This includes the filing of First Information Reports (FIRs) (the first step in any criminal proceedings) which can result in detentions whilst prosecutions are being pursued. Ahmadis are also subject to attacks by non-state actors from sectors of the majority Sunni Muslim population.
- (ii) It is, and has long been, possible in general for Ahmadis to practise their faith on a restricted basis either in private or in community with other Ahmadis, without infringing domestic Pakistan law.
120. (i) If an Ahmadi is able to demonstrate that it is of particular importance to his religious identity to practise and manifest his faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code (PPC) under sections 298B and 298C, by engaging in behaviour described in paragraph 2(i) above, he or she is likely to be in



need of protection, in the light of the serious nature of the sanctions that potentially apply as well as the risk of prosecution under section 295C for blasphemy.

(ii) It is no answer to expect an Ahmadi who fits the description just given to avoid engaging in behaviour described in paragraph 2(i) above (“paragraph 2(i) behaviour”) to avoid a risk of prosecution.

121. The need for protection applies equally to men and women. There is no basis for considering that Ahmadi women as a whole are at a particular or additional risk; the decision that they should not attend mosques in Pakistan was made by the Ahmadi Community following attacks on the mosques in Lahore in 2010. There is no evidence that women in particular were the target of those attacks.
122. In light of the above, the first question the decision-maker must ask is (1) whether the claimant genuinely is an Ahmadi. As with all judicial fact-finding the judge will need to reach conclusions on all the evidence as a whole giving such weight to aspects of that evidence as appropriate in accordance with Article 4 of the Qualification Directive. This is likely to include an enquiry whether the claimant was registered with an Ahmadi community in Pakistan and worshipped and engaged there on a regular basis. Post-arrival activity will also be relevant. Evidence likely to be relevant includes confirmation from the UK Ahmadi headquarters regarding the activities relied on in Pakistan and confirmation from the local community in the UK where the claimant is worshipping.
123. The next step (2) involves an enquiry into the claimant’s intentions or wishes as to his or her faith, if returned to Pakistan. This is relevant because of the need to establish whether it is of particular importance to the religious identity of the Ahmadi concerned to engage in paragraph 2(i) behaviour. The burden is on the claimant to demonstrate that any intention or wish to practise and manifest aspects of the faith openly that are not permitted by the Pakistan Penal Code (PPC) is genuinely held and of particular importance to the claimant to preserve his or her religious identity. The decision maker needs to evaluate all the evidence. Behaviour since arrival in the UK may also be relevant. If the claimant discharges this burden he is likely to be in need of protection.
124. The option of internal relocation, previously considered to be available in Rabwah, is not in general reasonably open to a claimant who genuinely wishes to engage in paragraph 2(i) behaviour, in the light of the nationwide effect in Pakistan of the anti-Ahmadi legislation.
125. Ahmadi who are not able to show that they practised their faith at all in Pakistan or that they did so on anything other than the restricted basis described in paragraph 2(ii) above are in general unlikely to be able to show that their genuine intentions or wishes are to practise and manifest their faith openly on return, as described in paragraph 2(i) above.

126. A *sur place* claim by an Ahmadi based on post-arrival conversion or revival in belief and practice will require careful evidential analysis. This will probably include consideration of evidence of the head of the claimant's local United Kingdom Ahmadi Community and from the UK headquarters, the latter particularly in cases where there has been a conversion. Any adverse findings in the claimant's account as a whole may be relevant to the assessment of likely behaviour on return.
127. Whilst an Ahmadi who has been found to be not reasonably likely to engage or wish to engage in paragraph 2(i) behaviour is, in general, not at real risk on return to Pakistan, judicial fact-finders may in certain cases need to consider whether that person would nevertheless be reasonably likely to be targeted by non-state actors on return for religious persecution by reason of his/her prominent social and/or business profile.

### *DETERMINATION OF THE APPEALS - GENERAL*

128. We now set out the additional evidence we heard from four of the appellants and our findings on all five appeals taking account of the specific submission on their appeals. We follow this with our conclusions on each applying the guidance to their appeals before us. In all cases the appellants have not been found credible as to part or the whole of their claims. Having heard the extensive evidence from the expert and other witnesses as to Ahmadi practices and circumstances in Pakistan whose integrity is beyond doubt as well as the appellants who gave evidence before us, we consider that had the First tier Tribunal Judges heard this new evidence it is possible that they might have come to different conclusions. We make it clear however that we leave undisturbed the findings of the First tier Tribunal as this is the basis on which we have conducted the appeals before us. Given however what we now understand to be the position for Ahmadi in Pakistan, the negative findings by the earlier tribunals carry less weight in our assessment of the genuineness of the appellants' religious convictions and what they would wish to do if returned than might otherwise be the case.

### *DETERMINATION OF THE APPEALS – THE FIVE APPELLANTS*

MN

129. The following matters have been agreed by the respondent:

- “(i) The appellant MN is an Ahmadi.
- (ii) He was a successful businessman in Pakistan with sufficient wealth to enable him to donate significant sums of money to the Ahmadi community.
- (iii) He was an active member of the Ahmadi community within the community in Pakistan.

- (iv) The appellant “discreetly proselytised his faith” to non-Ahmadis in Pakistan but only to persons he could trust because he was not allowed to go and preach in Pakistan.
  - (v) The appellant was present at and injured in the attack by Islamist extremists on the Ahmadi mosque in Modeltown, Lahore on 28 May 2010.
  - (vi) He was taken to hospital and in hospital he was visited [there] by the Interior Minister, Mr Rehman Malik, on 29 May 2010.
  - (vii) The appellant’s speaking to the Minister – as a victim of the attack – was shown on Pakistani television.
  - (viii) On 31 May 2010 the hospital in which the appellant lay was also attacked by Islamist extremists.”
130. As to facts asserted but not agreed by the Secretary of State, the appellant states that in early 2010 he received two threatening text messages abusing him and calling him to abjure the Ahmadi faith. One sender was from North West Frontier Province. Furthermore, the appellant had been critical of the Minister and government during his conversation (whilst in hospital) in relation to religious discrimination and a failure to protect Ahmadi mosques from the attack. It is also asserted but not agreed by the Secretary of State that MN is under a religious obligation to preach his faith which he takes very seriously. The appellant also relies on his claims to have converted a Mr AJK and encountered trouble when preaching to the son of a hard-line anti-Ahmadi Punjab Court judge. Following his appearance on Pakistani television, people who did not previously know the appellant was Ahmadi discovered this and were shocked by it, resulting in his brother’s dismissal and beating. Since July 2010, the appellant has been free to be an extremely active preacher of the Ahmadi faith in the United Kingdom.
131. MN gave his evidence in English and relied on statements dated 8 September and 18 October 2010 prepared for the hearing before the First-tier Tribunal and a further statement dated 18 November 2011 prepared in anticipation of an earlier hearing. In summary, he gave evidence about his endeavours to establish an Ahmadi mosque in Leeds and the way in which he sought to propagate the Ahmadi faith in that city. This includes maintaining a stall in a place designated by the local authority and on a less formal basis during the course of his week in his neighbourhood, as he travels and in his dealings with others over the previous sixteen to eighteen months. As to the success of his endeavours, Mr Jorro established the one example of an interested party who was undertaking research in blasphemy law from Hartlepool. They were planning to meet at some time in the future.
132. Under cross-examination MN confirmed that if someone were to ask him to identify his faith, it depended upon the situation. If he was obliged to tell the person concerned, then he would confirm he was an Ahmadi, but in informal situations care was needed and it depended how long he had known his enquirer.

133. As to Ordinance XX, MN confirmed that he considered this unjust and as to whether he had consulted any lawyer in Pakistan for a challenge, MN explained that it had been challenged in the late 1980s when he was part of the security team. A case had been filed in the Supreme Court who had directed it should be determined by the Shari'a Court.
134. As to the fate of his family members, MN thought that his sister and brother-in-law had been persecuted before they left Pakistan (they live in Norway) and last year his brother had been beaten and sacked from his job. As to the restrictions on voting, MN explained that he had not voted. The last opportunity had been in 1971 when he was not eligible. Now he could only vote as a minority. Returning to the difficulties encountered by his brother, MN explained that he had made no complaint about his problems with his employers in the light of his character and he had not reported the matter to the police.
135. Cross-examination turned to the publicity surrounding the Lahore mosque attacks and the evidence produced by MN in support of this. Questions turned to MN's concerns about being unable to live in Pakistan because of outstanding FIRs against him. He explained there was not one but two because of the mosque attacks incidents. These had affected more than 100 people. As to whether those identified were in danger, his response was that it depended upon their particular circumstances but he regarded himself at particular risk because he was a well-known figure from the textile industry for more than twenty years and it was very easy to locate someone in Pakistan. The appellant went on to explain that in his view it was pointless reporting to the police and authorities because they were actively involved with the terrorists or took money from them and their perception was that (anti-Ahmadi) activity was "religiously" good. He also referred to the pointlessness of endeavouring to compel the police to respond by applying to the courts.
136. Questions referred to a retired general, an Ahmadi who had died in the mosque terrorist attacks and the appellant explained that senior military posts were no longer available to the Ahmadi community since 1974 and especially after 1986. Mr Malik asked MN about the fate of Aamir Hussain, a former minister who had spoken out against Ahmadis and who had been expelled from his party as a result. The appellant was unsure about this and made the point that he should have come on television to apologise for what he had said. His understanding of this individual was that he was not a former minister but a religious scholar.
137. Mr Malik's concluding questions related to the opportunity of the appellant exercising internal flight by living in Rabwah. The appellant gave a summary of the difficulties faced by the Ahmadis in that town and his understanding that it was no longer safe.
138. At the conclusion of this appellant's evidence, we were directed to a statement by Dr Asim Salim, the President of the Leeds branch of the Ahmaddiya Muslim Association United Kingdom, in which it reports that membership has 90 devotees.

The appellant is described as one of the most active members and the most active preacher in their *tabligh* team at Leeds. The statement by Dr Salim also refers to the appellant having held several offices in Pakistan and Dubai at a high level on behalf of the community. Mr Salim was at the hearing, however Mr Malik had no questions and accordingly he was not called.

139. Our findings on the new evidence, taking into account the facts agreed between the parties and the preserved conclusions of the FtTm are as follows. (We disregard evidence that sought to reopen this appellant's history before coming to the United Kingdom.) We find that this appellant has a high profile in the light of his business connections in Pakistan and the publicity surrounding the injuries he sustained as the result of the mosque attack in 2010. It is reasonably likely that were he in Pakistan now his presence would become generally known. We further find that he has been particularly active in the UK in propagating his faith with a fervour that he had not evinced in Pakistan. We accept that his reasons given for discretion in matters of propagation were because of the general disapproval of and hostility towards Ahmadis by the majority in Pakistan who are Sunni Muslims, the legislative restrictions and sanctions and out of a fear of harm from extremists. We are satisfied that he is an Ahmadi for whom his faith plays a fundamental role in his life. We accept that the matters restricted by the PPC, in particular *tabligh*, are of particular importance to his religious identity. He is in need of protection and his appeal is allowed on refugee grounds.

NH

140. This appellant adopted a further statement dated 19 December 2011 which had been prepared in anticipation of an earlier hearing of her appeal in the Upper Tribunal. Disregarding new material relating to her past experiences we noted her evidence that as an Ahmadi in Pakistan she would be unable to hide her faith from anyone as they were easily recognised and would and could not live discreetly as this was not permitted by the faith.
141. Mr Yeo's questions in examination-in-chief established this appellant's understanding of *tabligh* which the interpreter explained was the word for preaching in Arabic. The appellant confirmed she understood it to be a duty for Ahmadis to do *tabligh*. As to how she went about this, she referred to sharing the message of peace and acceptance of ideas with friends and others. Examination-in-chief concluded with her evidence that were she to go back to Pakistan she would not be able to take any steps to avoid problems because as part of her faith, she would have to carry on the duty (of preaching).
142. Under cross-examination, Mr Malik asked the appellant to explain the difference between active and non-active Ahmadis, a description appearing in her statement. She explained that an active member is one who keeps in touch on a regular basis with the *Jama'at* (the Ahmadi community) and on the instruction of the *Jama'at* to preach and also to look after the children. The appellant confirmed that if asked

about her religion, she would respond saying she is an Ahmadi. Mr Malik directed questions to the appellant concerning her statement that she would be unable to hide her faith in Pakistan. Her response referred to the freedom everyone had about their faith and contrasted matters (in Pakistan) with those in the United Kingdom. She acknowledged there were places of worship for the Ahmadi in Pakistan but referred to the lack of a right to call it a mosque. She used to go to a mosque on a regular basis to perform prayers but stopped after the attacks on 28 May 2010. Mr Malik's further questions resulted in confirmation by the appellant that she would not and could not live discreetly in Pakistan.

143. The appellant also clarified her evidence in response to a question from us. As to how it is that (female) Ahmadis are recognised, it was because they wear a *hijab* (a veil) and also because of their dealings with other people. Through their "good manners" people came to know who they are. The appellant drew a distinction between the way in which the veil was worn by Ahmadi women and by Sunni Muslim women, explaining essentially that the veil took the form of a scarf which covered the upper and lower part of the face in contrast with those worn by Sunni women which was a simple one.
144. Mr Malik pursued the point that there was nothing stopping the appellant from returning to Pakistan and living the way she had lived before. However she reiterated the problems that she had there, and that the police would not take action to protect her. She did not believe the courts would do anything for them either. She was a single person. She had never been to the courts, something she knew nothing about. Mr Malik returned to questions about why the appellant wanted to live in this country and she referred to the freedom of religion here. Her remaining relatives in Pakistan included a paternal uncle and two sisters, both of whom were married. One lives in Lahore and the other in Rabwah. As to whether they had had problems, she explained they were unable to talk to anybody about their faith and they were unable to go to the mosque to perform their prayers. They were called names. She considered that the life of any Ahmadi in Pakistan was in danger. She was however unable to confirm whether any of her relatives had been charged or prosecuted. As to herself, she confirmed that in the United Kingdom she went to the mosque and in terms of preaching they had held meetings. She also distributed leaflets. She had never voted in Pakistan as their *Jamaat* did not take part in any elections there. Mr Yeo had no questions for re-examination. Our questions were confined to establishing whether her sisters were married or not, an aspect dealt with above.
145. We remind ourselves that this appellant had not been believed as to her past experiences. The First tier Tribunal judge explained at [26] of his determination that he did not intend to assess this appellant's knowledge of her faith which had been accepted by the respondent and tested at interview. He found that her case " at its highest is that [in terms of preaching] she handed out books to friends whom she thought might be interested and invited them to watch Ahmadi television but with

one exception none of these activities caused any adverse interest in her....". Having heard her evidence we accept that, despite the earlier adverse findings, she is a devout Ahmadi and that she takes seriously the propagation of her faith as evidenced by her activity in the UK. She had been discreet in this previously in Pakistan. Her reasons for discretion in matters of propagation were the same as many shared by Ahmadis who wish to propagate. It is because of a general disapproval of and hostility towards Ahmadis by the majority who are mainstream Muslims, legislative restrictions and sanctions and to an extent out of a fear of harm from extremists. We accept that the matters restricted by the PPC are of particular importance to her religious identity and that she cannot reasonably be expected to abstain from manifesting them. We conclude that she too is in need of protection and her appeal is allowed on refugee grounds.

*ZN*

146. As set out in a statement of facts relied on, it is acknowledged that this appellant's account of specific incidents of past persecution had been mainly rejected. This was no longer in issue in the proceedings as permission was not granted on the ground challenging credibility findings. The First-tier Tribunal Judge had found that neither the appellant nor her husband had been open about their faith in public and made findings that they had not carried out the obligation to propagate to any degree and did not feel obligated to propagate their faith. However, the First-tier Tribunal had not rejected the appellant's husband's assertion that he was injured in one of the mosque attacks in May 2010 nor the appellant's assertion that her mother's house in Lahore was subject to gunfire during the night on 24 June 2010.
147. We note that the First-tier Tribunal took the view that it would have been very difficult for the appellant to claim that the attack on her husband was personal given the widely reported events of the day which indicate that it was a generalised attack against the Ahmadi sect. We do not consider that as a matter of law, the judge was right to require evidence of personal targeting in the context of an attack which targeted all Ahmadis at these two mosques. As to the appellant's mother's house being subject to gunfire, the First-tier Tribunal judge's acknowledgement of this was somewhat qualified. His view appeared to be that the appellant's claim that the gunmen were from the Khatme-e-Nabuwat was an attempt to exaggerate the evidence in order to bolster the claim.
148. The judge found that that this appellant and her husband were not credible witnesses but accepted that both are Ahmadis. Although finding that the appellant and her husband had never been open about their faith in public and that they had never felt obligated to propagate their faith, the judge also concluded that the appellant would not be at any greater risk than any other Ahmadi inclined to propagate. We heard no evidence from this appellant and there is no evidential basis for us to reach a different conclusion from the First tier Tribunal on the importance to this appellant of propagation. She has failed to demonstrate that the restrictions on Ahmadis in Pakistan on the practice of her faith are of particular importance to her

religious identity and she has not shown either an intention or wish to defy such restrictions. Notwithstanding our observations at [128], on the adverse credibility findings made as a whole by the First-tier Tribunal judges, there is insufficient evidence to show that this appellant meets the criteria we have set out in our guidance. We dismiss her appeal.

SB

149. This appellant adopted a statement dated 26 March 2012. She refers to the greater freedom Ahmadis had prior to the Ordinance of 1974 and the history of her involvement in preaching until 2011 to non-Ahmadis. We bear in mind, however, that the First-tier Tribunal, although accepting the appellant would have preached to other Ahmadis, had not accepted she would have taken the great risk of preaching to non-Ahmadis. The error of law decision of 18 November 2011 indicated that the findings of the First-tier Tribunal were to stand.
150. The appellant's statement also refers to her activity in the United Kingdom, which includes regular attendance at Friday prayers ("*jummah*") at the local Ahmadi mosque in Hounslow South and her attendance at the annual Ahmadi convention in London in July as well as attending the month-long prayers in Ramadan. She had been unable to preach in the way that she had claimed to in Pakistan due to the language barrier but fully intended to improve her English and "resume" actively preaching. Since November 2011 she has started handing out leaflets around Stock Road in Slough where a particular friend lives but she has not been able to go door to door as the *Jama'at* is not keen for women to do this for safety reasons. She has also been involved in an exhibition organised by the local Ahmadi community which she took friends to. The appellant states she would be unable to preach in the manner she has in the United Kingdom due to the fear of persecution by the Khatam e Nabuwat mullahs and the fear of imprisonment due to the blasphemy laws. Were she forced to return, she would try to continue to preach in the manner she claims to have done before leaving Pakistan.
151. At the hearing the appellant adopted her statement and Mr Malik asked why there were no statements from the friends she had invited to the exhibition. Her response was that if she had asked them they would have come to say that she had invited them. The appellant explained she is living in her brother's house and receives financial support from NASS. Mr Malik put it to her there was an opportunity to attend Ahmadi mosques in Pakistan. Her response was that they used to go but after the incidents on 28 May 2010, females were stopped by the *Jamaat*. Mr Malik pursued a line of questioning with the appellant as he did with others asking why she had not spoken to a lawyer with a view to challenging in the courts the restrictions on Ahmadis. The response was to reiterate the difficulties faced by Ahmadis. Otherwise the questions focused on the restrictions on the appellant's ability to preach in Pakistan. There was no re-examination.



152. We are satisfied that the adverse findings by the First tier Tribunal mean she cannot be accepted as an Ahmadi who has preached to non- Ahmadis and we also consider Mr Malik entitled to ask us to attach limited weight to her *sur place* activities. Nonetheless, as found by the judge and from her evidence before us that whilst in Pakistan, she practised her Ahmadi faith which she preached to other Ahmadis (as found by the judge) and that she is a devout Ahmadi. We accept that she has moderated her behaviour to protect herself from arbitrary and potentially persecutory treatment by the authorities at the instigation of the Khatme-e-Nabuwat and others opposed to her faith. The restrictions in the PPC on her ability to live openly as an Ahmadi are matters of particular importance to her religious identity. She is in need of protection and her appeal too is allowed on refugee grounds

HQ

153. This appellant adopted a statement dated 22 March 2012 in which he refers to his continued activity with the Ahmadi community in the United Kingdom having held two formal positions, one as Sports Secretary between January and December 2009, and Census Secretary for Wimbledon Park branch between January and December 2010. His current position is that of Organiser for Preaching members over the age of 40 (*Ansarallah*). He organises teams to distribute leaflets and organises preaching stalls. He also refers to leafleting in various parts of London. The appellant explains that since leaving Pakistan his family have been unable to live in their main residence in Rabwah and he refers to the police and the Khatam-e-Nabuwat mullahs constantly looking for him, information he has received from a friend living in Rabwah.

154. We remind ourselves that the First-tier Tribunal did not believe the appellant's account. In particular it did not find it credible that the appellant would openly preach and proselytise the Ahmadi faith if he genuinely considered it would put both his and his family's lives in danger. In his error of law decision, UTJ P Lane observed that the First-tier Tribunal Judge had given legally adequate reasons why he did not consider the appellant had suffered the persecutory attentions of anyone in Pakistan prior to his arrival in the United Kingdom although he identified a clear error in that the judge did not consider whether the fear which would stop the appellant from proselytising was a well founded one and if it were, whether it could be eliminated by relocation.

155. The appellant was tendered for cross-examination, in the course of which he gave more detail about the roles he played in his Ahmadi community in the UK. As to his job in charge of the census, he explained that this involved keeping a record of members, recording new arrivals and those who had left. As to the purpose for this, and its connection with preaching, it enabled members to be contacted when a programme was being arranged. The appellant had referred to a Mr Ahmed from Mitcham whom he had invited to a peace conference held by the community in 2011. He explained to Mr Malik that he had not asked him to produce a statement as it would not have been suitable nor did he consider it was necessary. The appellant explained why his wife had not provided a statement explaining why she and the

family had left their main residence (she did not know that it would be needed in this country) and why there was no statement from the informant who had told him about the continuing adverse interest (one had already been given). The appellant confirmed that his family were hiding in Karachi due to their fear but the appellant himself had never been to that city. As to the prospect of living there himself, the appellant referred to the negative aspects of living in hiding. When it was put to him that there are a million Ahmadis living openly in Pakistan, the appellant replied in terms that this may be so but he reminded Mr Malik that they are unable to call themselves Muslim and they cannot preach their faith.

156. Our questions for clarification established the way in which records were kept of members in the appellant's Ahmadi community in the United Kingdom. It appears there are various categories including men over 40 (*majis, ansarullah*), and a further group for males (known as *khudamul Ahmadiyya*) between 15 to 40, together with a group for those aged 7 to 15 (*atfalul Ahmadiyya*), and finally a group for females over 15 years of age (*lhamaimaullah*). The appellant also confirmed the way in which positions of responsibility rotated in the community. The President is elected and he appoints the officers, this position being the same in communities all over the world.
157. We accept that Mr Malik was entitled to ask us to attach little weight to the appellant's *sur place* activities in the light of the judge's findings. Nevertheless, having heard the appellant's evidence in particular that recorded above, we accept that this appellant has become actively involved in his faith in the UK because he is a devout Ahmadi and we conclude that he would want to continue with this adherence to and manifestation of his faith if returned. He has shown that the restrictions on his ability to do so would undermine his religious identity and the matters restricted by the PPC are of particular importance to that identity. He is in need of protection and his appeal too is allowed on refugee grounds.

#### SUMMARY OF CONCLUSIONS

158. By way of summary, therefore, the decisions of the First-tier Tribunal in MN, NH, SB and HQ have been found to contain errors of law and have been set aside. We have remade the decisions in the appeals and allow them on refugee grounds.
159. The decision of the First-tier Tribunal in ZN has also been set aside for error of law. We have remade the decision but come to the same conclusion as the First-tier Tribunal and dismiss her appeal on refugee grounds.

Signed

Date November 2012

Upper Tribunal Judge Dawson

## SCHEDULE I

### THE EXPERT AND OTHER EVIDENCE

DR W

160. Dr W is a Doctor of Philosophy from the University of Punjab and a historian. His current post is at the Centre of South Asian Studies and he is also a fellow at Wolfson College University of Cambridge. He has held previously senior posts at the Government College University in Lahore. At the outset, Dr W explained that he is currently working on the concept of the finality of the prophethood and its political implications in Pakistan. It is a work of an academic nature. He identified the finality of the prophethood as a basic contentious point between Ahmadis and the Sunni state in Pakistan. He confirmed that much of his current research related to the Ahmadi.
161. We have drawn on his report in setting out the summary of the history of the Ahmadi religion in the opening paragraphs of this determination. Additional key points we draw from his report include the following.
- (i) *Tabligh* and *da'wa* (preaching and propagation of the faith) are for Ahmadis the lifeblood and *raison d'être* of the movement. Dr W refers to this being the 'true jihad'. He explains that *tabligh* can take various forms as well as direct preaching and that "individual efforts, individual actions and individual personal examples are classed as 'the most important ingredients of *tabligh*'".
  - (ii) As an important part of *tabligh* and "*da'wa*", members of the "*jama'at*" are asked to distribute literature in abundance but with discretion and "*hiqmat*" (wisdom). A considerable amount of literature is produced by Ahmadis which is considered the biggest tool for conversion. The Ahmadis global satellite television station, Muslim TV Ahmadiyya International transmits programmes 24 hours a day in various languages.
  - (iii) As to the history of the movement and the way in which hostility has become politicised, spilling over into violence, a clash at Rabwah (where 95% of the population is Ahmadi) between the student wing of a religious party, Jamat-i-Islami and Ahmadi youth led to a countrywide condemnation of Ahmadis. Khatme-e-Nabuwat (the spelling varies) is described as a conglomerate of different *Ulema* (religious scholars). Its call to "declare" Ahmadis a non-Muslim minority had a tangible response from the masses, particularly in the districts of Punjab.
  - (iv) The government under Z. A. Bhutto was not willing to accede to such a demand and so a judicial commission was formed to look into the Rabwah incident. Although findings of the commission were not consistent with the accusations of the *Ulema*, pressure continued and eventually on 7 September 1974 the National Assembly passed the resolution which declared that all Ahmadis in the country were to be regarded as a non-Muslim minority.
  - (v) Article 260 of the Pakistan constitution states that 'A person who does not believe in the absolute and unqualified finality of the prophethood of Muhammad is not a Muslim for the purposes of the constitution or law'. Dr W observes:

“However, Ahmadis were subject to the worst possible persecution when Zia Ul Haq took over the reins of power after removing Bhutto. On 26 April 1984 Zia, influenced by reactionary elements, promulgated Ordinance XX which added sections 298(B) and 298(C) to the Pakistan penal code Under this legislation it is an offence, punishable by a prison sentence of up to three years, the imposition of a fine or both for an Ahmadi who:

*directly or indirectly, poses himself as a 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.”* (as quoted from Islam and the Ahmadiyya Jamaat: History, Belief, Practice by S Valentine published in London in 2008.)

He continues:

“In 1986 Ahmadis were subject to even more repressive legislation when 295C was inserted into the Penal Code. This stated that the penalties for blaspheming the prophet Muhammad were death or life imprisonment with fines. This was later amended in 1991 to make the death penalty, the only punishment for blasphemy.”

Although the state had not executed anyone under these provisions, religious extremists have killed some people accused, citing them (no source is given by Dr W for these assertions).

- (vi) A person who does not believe in the absolute and unqualified finality of the prophethood is not permitted to cast a vote as a Muslim and the pro forma for obtaining a Pakistani passport asks applicants to sign a declaration that they consider the founder of the faith to be an imposter and that they also consider his followers to be non-Muslims. Dr W refers to official statistics revealed by Ahmadis that from April 1984 to April 2004 the number of Ahmadis charged for displaying the Kalima was 756, 37 for calling “azan” and 404 for posing as Muslims. Finally 131 were charged for using Islamic epitaphs, 590 for preaching, 213 charged under blasphemy laws and 845 for various other cases against Ahmadis under the anti-Ahmadi Ordinance 298(b)/(c). His source is a report of the Parliamentary Human Rights Group entitled A Place for Martyrs by J Ensor as Editor. These statistics appear to be from an annex to that report, being a summary of cases instituted against Ahmadis in Pakistan from April 1984 to December 2005.
- (vii) There was also reference in the report to the previous Minister for Religious Affairs declaring on 7 September 2008 in his role as the anchor of a popular religious programme that members of the Ahmadi community were “*wajibul qatl*” (obligatory for Muslims to kill). Within 48 hours of the pronouncement on television, two prominent Ahmadis were gunned down, the source cited by Dr W being reports of the Jinnah Institute.
- (viii) It is common for Ahmadi students to be ostracised by teachers and fellow students. Since more and more Ahmadi students enrol each year, members of organisations such as the Jamiat Talaba-i-Islam (the student offshoot of the Jamaat-i-Islami) gather lists of all Ahmadi students enrolled to assist with targeting them for discrimination. There is also reference to the Ahmadis being the subject of hate literature in the report which although short on detail, it does identify a monthly magazine, Laulak.

- (ix) The make-up of Khatme-e-Nabuwat is described as being primarily composed of Sunni (“*deobandi ulema*”) although its membership is said to include some prominent Shi'as as well. It is said to have ties to the Jamaat-i-Islami too. Dr W makes the statement that:

“It is quite active hounding Ahmadis in the UK, Suhail Bava is currently its leader. There are some instances when Khatm-i-Nabuwat operatives exhort on the Muslims to boycott Ahmadi shopkeepers. From the oral source it has been learned that some Ahmadis have moved to other vicinities where they have their kins.”

162. Dr W described when examined in chief by Ms Jegarajah the growing impact on the influence of Khatme-e-Nabuwat who are at the core of the Islamisation process including the Islamisation of the “upper middle classes”. The most recent attack on an Ahmadi mosque had been, as far as he could recall, in the last days of January 2012. He referred also to the linking by people of the Ahmadi to “the Christian and Jewish lobby”. He referred to the Ahmadis as having been regarded as a seed planted by the British to undermine Muslims. In contemporary terms, events in the North West Provinces and in Afghanistan had resulted in hatred towards the West which had spilled over into hostility towards the Ahmadi. He referred to there being at times collusion between the state and the Khatme-e-Nabuwat, particularly at district administration level and illustrated this by referring to the Home Secretary of the Punjab stopping the Ahmadi centennial celebrations. State functionaries have a partisan role towards the Ahmadi.
163. Ms Jegarajah turned her questioning to a reference in Dr W’s report to the Ahmadi population. According to the 1981 census it was 104,244 which had increased to 163,982 in 1992. The census of 1998 showed religious minorities nearing 11 to 13 million with Ahmadis claiming to have a population of 4 million. Dr W estimated that the figures from Ahmadi sources had been exaggerated and appeared in their promotional literature. He did not believe they (the Ahmadi) had carried out a statistical survey and as to his estimate, he would not go beyond 1 million Ahmadis in Pakistan settling on a range of “1 million or less than 1 million”. He described the migration of Ahmadis since 1984 when the Khaliph came to London as quite constant. He characterised Ahmadis as educated people, professionals with emphasis on education having been made by the founder. The only Nobel Laureate from Pakistan had been an Ahmadi. Because of religious pressure Ahmadis were impeded, although not absolutely excluded, from education today, even though there were hazards. He was not however aware of any extreme examples. He went on to say that students had been taken away and tortured although this was not just Ahmadis. Once this had been a regular practice but now matters are slightly better. These practices however had not been totally eliminated. As to security, Ahmadis provided for themselves. Dr W considered this was limited to Rabwah, although he did not consider this foolproof in the face of the “zeal and zest” of the anti-Ahmadi movement.
164. As to complaints against Ahmadis, in the context of FIRs, ever since sections 298B and 298C had been added to the Penal Code, certain incidents had risen to unprecedented levels in the last five to ten years, implicating Ahmadis and Christians. These can arise in property disputes. The mullahs used FIRs in large number and will go to the extent of threatening the attorney or lawyers, even the judge; (Dr W’s source for this being his analysis of the media and reports). As to the frequency, he was unable to be specific other than observing that there were far too many, such FIRs not only being filed individually but collectively also. He

considered 213 FIRs reported for blasphemy not a small number in the context of the death penalty.

165. Mr Jorro established in his questions that the previous Minister for Religious Affairs who had declared it obligatory for Muslims to kill members of the Ahmadi sect had a huge following with the youth and although he has changed channel, he still has a television presence. Dr W explained that prominent Ahmadis can be big businessmen or professionals and referred to the common discourse that the Ahmadi were promoting the interests of people not loyal to Pakistan. People had been entreated not to go and buy things from Ahmadi shops. He confirmed that the Khatme-e-Nabuwat (by their abbreviated name) did not have electoral power but they had "muscle power". He did not consider the attacks on the Lahore mosques to have been random. An attack on a mosque or prayer house is always well planned and targeted.
166. Mr Lemer asked for confirmation of Dr W's earlier answer that the situation for education (of Ahmadis) had improved recently. He confirmed it had generally. When directed to reference in a report by the Asian Human Rights Commission to the need for students, apparently recently, to identify themselves as non-Muslims if Ahmadi, Dr W explained that since the power and presence of the Jameera Islam in education institutions had diminished quite substantively, harassment is not as great as it used to be in the 1980s and 90s. He confirmed that on identity cards and forms there was separate provision for religion, including such disclosure when applying for a passport. He concluded that the diminished number of students who have a leaning towards Islamised groups had made "life comfortable for the Ahmadi student".
167. Mr Malik asked Dr W whether he agreed that the introduction of amendments to the Constitution in 1974 had been the result of a debate and parliamentary process. Dr W accepted they had, although in his view that did not necessarily mean they were rational. Asked by Mr Malik about chapter 1 of the Constitution, that entrenched certain fundamental constitutional rights, Dr W said he believed that there was inconsistency between the rights claimed by Mr Malik to reside in Articles 8 and 20 of the Constitution and the change to the Constitution and the blasphemy laws introduced in 1984. Dr W highlighted that the blasphemy law remained in force and that the real problem was that Ahmadis could not read the Quran or display Quranic verses anywhere on their houses.
168. Mr Malik returned to questioning Dr W about the reasons behind the change in the Constitution in 1974,. Dr W's response was that he was unable to recall any incident in history when the decision as to whether someone was a Muslim or non-Muslim, Christian or non-Christian has been agitated at the floor of a Parliament or the Senate. Dr W took the view that it was not unrest in the country but clerical pressure which led to the change in the Constitution which proved to be decisive. Mr Malik asked Dr W whether he agreed that the judiciary in Pakistan is now "very independent". Dr W said it was "relatively" but not fully so because religious sectors of society had a bearing on whatever decision was reached.
169. Mr Malik asked Dr W whether there was any reason in principle why Ahmadis or a group could not challenge unjust restrictions on their rights. Dr W observed that Ahmadis had brought a challenge but had not been given any relief whatsoever. The decision had been by Justice Khalil Ur Rahman which was available on the internet. Although Mr Malik argued that this decision had been made in the 1980s and that the judiciary were now different, Dr

W responded that he considered there was not enough spine in the judiciary to come up with such a bold decision in the light of current religious views in Pakistan.

170. Dr W acknowledged that Ahmadis did have places of worship but considered that their inability to call them mosques was an important symbolic restriction. Such places were available throughout the country. He did not accept that Ahmadis were fully entitled to pray in view of the restrictions on them not praying as Muslims.
171. Questions then turned to an analysis of the blasphemy laws, sections 298B and C. Dr W confirmed that these laws had been deployed against both Ahmadis and Christians and misused in the context of property disputes. Misuse was more the problem than the existence of the law. Asked whether he agreed that nobody had been executed under Pakistan law for blasphemy, Dr W responded that society had done so, illustrated by the killing of General Taseer who had spoken out against the blasphemy law used in the conviction of a Christian. Dr W explained his understanding of the legal process that had followed, in terms that he believed the bodyguard who had been arrested and imprisoned would be released when public interest had died down. He accepted that the person had been convicted and sentenced. He regarded it however, as an isolated incident and he did not consider the government and the judiciary had the power to bring these extremists to justice.
172. Questions then turned to the ability of Ahmadis to vote. In essence, Dr W considered the system in place for Ahmadis who were unable to vote in the general election to be discriminatory in the extreme. Although he acknowledged some Ahmadis had been able to make it to the top of certain professions, in Pakistan currently he did not know anyone who had done so and was still there.
173. Turning to the statistics relating to Ahmadis being charged as appears in his report, Dr W acknowledged that these statistics were not independent and he stated that "there was hardly anybody who was convicted by the court" although qualifying his answer with reference to the process in Pakistan whereby a person is put behind bars in the police station and the way they are treated which he characterised as torture.
174. As to increase in violence in the past three years (referred to in his report), Dr W observed that religious sentiment had gone up "incredibly" and the biggest indication of that was the attack on Ahmadi mosques. He referred to 96 people being killed in a single city and that was good enough to prove that all was not well with the Ahmadis.
175. Mr Malik put to Dr W the observation that the statistics advanced in his report were for the period April 1984 to April 2004. Dr W's response was to refer to events between 2010 and 2012 and he indicated that the information was available "in print" in the newspapers and one could see analysts speaking about it on *YouTube* for example. As to the fate of the Federal Minister for Religious Affairs (Dr Hussain), whose political career with MQM had been ended when he spoke out against Ahmadis, Dr W acknowledged this but said there were other reasons relating to the validity of his PhD degree.
176. Returning to the May 2010 incidents in Lahore, Mr Malik asked Dr W whether he agreed that Sunni and Shia mosques too had also been attacked by extremists (although it appears not on the same occasion). Dr W accepted that in the past three years dozens of Shia and Sunni mosques had been attacked, resulting in the death of several hundred people but said that

the motivation for the attacks on Ahmadi mosques was different and he referred again to the Rawalpindi incident, which he considered had been because army officers were offering Friday prayer there. He considered in any event that attacks on Shia mosques were a symptom of religious exclusion which began with exclusion of the Ahmadis initially. He recorded the context as absolutely different and that every attack had a particular history. He referred to threats against Ahmadis as starting in 1902 when the first fatwa came against them having a different trajectory altogether. Dr W maintained that the attacks on the mosques in Lahore in May 2010 had not been properly investigated.

177. As to whether Ahmadis are doing well in Pakistan, Dr W observed that most of the Ahmadis doing well were moving out of Pakistan. Mr Malik put it to Dr W in respect of hate literature that it was open to someone to make application to the courts for the document in question to be banned. He was not aware of anyone having made such an application or believing it could succeed.
178. Dr W confirmed in response to a question from Mr Jorro that there were no Ahmadi Ministers currently in the Pakistan government. He thought there was no recruitment in the army or air force of Ahmadis within the past twenty to 30 years.
179. In our questions for Dr W, he confirmed that he was last in Pakistan in December 2011 (between the 4<sup>th</sup> and 13<sup>th</sup>) and, prior to that, between February and March that year. He took up his current position in the UK in June 2010 and prior to that he had been in Pakistan. He had been living in Lahore and was there during the mosque attacks in May 2010.
180. Dr W explained that if an Ahmadi were in a place in Pakistan where there was no prayer house or mosque for Ahmadis, his prayers would be done at home. With reference to his report in which he refers to members of the Ahmadi Jama'at being asked to distribute literature in abundance but with discretion and "*hiqmat*" (wisdom), Dr W was unable to give us an Urdu word for discretion but instead gave the illustration that one would not distribute such leaflets to those who would be belligerently opposed or where their life can be threatened. He explained that *hiqmat* is an Arabic word. Asked whether Ahmadis were under a religious duty to spread the faith, Dr W said that if one gets to know there is a potential for conversion anywhere, one must go there and spread the word of God. Dr W accepted that it was basic for Ahmadis to spread the faith through personal conduct and example and he confirmed that Ahmadis did not agree with exerting any sort of pressure because they were a minority community and they had other ways of spreading (the word). He confirmed they did not engage in "door-stepping", explaining that they could not afford to do that.
181. We also asked Dr W whether he knew the number of Ahmadis in the 1998 census in the context of his report which identified 104,244 in 1981 and 163,982 in 1992. He explained that as far as he remembered, all the minorities had been bracketed together. Returning to his estimate of 1 million Ahmadis, we asked whether the increase had been through conversions. He confirmed it had. He did not know the Ahmadi population of Lahore before he left, there being no figure available. As to how many prayer houses or mosques there were in Lahore, he knew of two but he was sure there would be much more than that. The two mosques he knew of were those which had been attacked and were the prominent mosques. Returning to the number of Ahmadis, Dr W considered that many Ahmadis did not reveal where they were such for safety reasons. As to whether the communities knew



how many members they had, he referred to them taking “full care” with their the documentation. They were the most documented community in South Asia probably. Ironically, however, they did not reveal those facts to the non-Ahmadis and that was a real problem he had faced when working on them. He confirmed in reply to our final question that the list of the wounded and dead had been published in non-Ahmadi newspapers following the mosque attacks in Lahore in May 2010.

182. Mr Lemer referred Dr W to the COIS Report indicating that in the 1998 census it was estimated there were 291,000 Ahmadis. Dr W said that he was not aware whether Ahmadis were separately “enumerated” and was therefore not in a position to comment on the estimates in the COIS Report. He agreed, however, with the reports that stated that Ahmadis represented 0.22% of the population.
183. Specific to the circumstances of NM, with his name having been recorded, Dr W considered in reply to a question from Mr Jorro that his “concern” was more than general because he now qualifies to be a prominent Ahmadi so that “trouble may knock at his door any moment”. Mr Malik’s final questions related to the consequences of the appellant MN’s name appearing in Al Faisal newspaper in the context of that newspaper no longer being published in Pakistan. Dr W’s answer was that someone prominent would be at risk of a targeted killing. He regarded important persons from the minority community as being all too easily trackable.

#### IMAM RASHED

184. Imam Rashed was born in Qadian, India. In 1963 he was awarded a BA from Punjab University with a Gold Medal in Arabic and thereafter graduated first class with an MA in Arabic from the same university in 1965. He further qualified with a *Maulvi Faazil* (a specialised honour in Arabic at Punjab University) in 1966 and in 1969 was awarded a *shahid* which is the equivalent to a Master in Divinity in Islamic Studies in Rabwah, described as training as a missionary of Islam. Between 1970 and 1973, Imam Rashed was Deputy Imam at the London Ahmadi Mosque, the first built here in 1924. In 1973 he returned to Rabwah to serve the affairs of the International Ahmadiyya Youth Organisation as its President, a post he held until 1975, and thereafter he became missionary in charge in Japan until 1983. Since then he has been stationed in London as Imam of the London Mosque and missionary in charge, planning and supervising missionary activities in England, Wales, Scotland and Northern Ireland.
185. His report sets out his answers to a number of questions as follows:
- (1) What are the fundamental tenets of the Ahmadi faith?
  - (2) Are Ahmadis Muslims?
  - (3) What are the points of difference from mainstream Sunni Muslims in Pakistan?
  - (4) What are the points of difference between the Ahmadiyya and Lahori groups?
  - (5) How fundamental is the duty to propagate or spread the Ahmadi faith to non-Ahmadis?

- (6) With reference to the text of the anti-Ahmadi blasphemy laws in Ordinance XX, is it important for an Ahmadi to do any of the things prohibited by Articles 298-(b)(1)(2) or 298(c) (the anti-Ahmadi Ordinances)?
- (7) What are your views about the penalties imposed on Ahmadis for posing as a Muslim in Article 295(c)?
- (8) What is the significance of being prevented from doing those things? Do you consider that Ahmadis are obliged to carry out those activities, notwithstanding that they are illegal?
- (9) Do you consider that Ahmadis should adjust their conduct and the practice of their faith in order to avoid acts of persecution?
- (10) How would you describe the duty to spread the Ahmadi faith? Words that have been used previously include "preaching", "proselytising", and "propagating".
- (11) How fundamental is this duty to the modern practice of the Ahmadi faith?
- (12) Is the sole purpose of "preaching" to 'convert' non-Ahmadi or is the duty more complex and if so how?
- (13) Would you say that the duty to spread the Ahmadi faith is greater or lesser than or the same as that within the Sunni system of beliefs?
- (14) In the light of the restrictions in Pakistan on overtly proclaiming and spreading your faith what would be tolerable methods of doing so?

186. In his answers, Imam Rashed sets out the fundamental tenets of the Ahmadiyya faith, including the one which is at the heart of the hostility between Ahmadis and the Sunni majority in Pakistan:

"The Ahmadi person will believe that Muhammad is *khatamun nabiyyen*, the seal of the all the prophets and will believe that Hadrat Mirza Ghulam Ahmad was the same Imam Mahdi and promised messiah whose advent was prophesied by the Holy Prophet of Islam, peace and blessings of Allah be upon him."

187. This is the fourth of five fundamental tenets, the fifth being this:

"The Ahmadi person will promise that he will try his best to abide by the ten conditions of *bai'at* (initiation) as prescribed by the promised messiah (set out below); that he will give precedence to his/her faith over all worldly objects; that he will remain loyal to the institution of *Khalifat* in *Ahmadiyyat* and will obey the *Khalifatul Mashhi* and everything good that he may require of that Ahmadi. Integral to this promise is that the Ahmadi will spread his faith to others who are not Ahmadis and engage in doing good works."

188. Imam Rashed contrasts the Ahmadi and non-Ahmadi beliefs as follows:

- i. The Ahmadis believe that:

“There is no compulsion in faith. *Jihad* now is only meant to be a striving towards righteousness. A *jihad* can only be declared by a state under special conditions and cannot be called by individuals or groups.”

ii. Further:

“There is no worldly punishment for apostasy.”

iii. In contrast, non-Ahmadis believe that:

“*Jihad* means a holy war and is an essential article of faith. Having invited a non-believer to Islam, if he/she does not believe he/she should be killed.”

iv. and:

“Anyone who converts from Islam to another faith must be decapitated.”

189. In response to question 5, Imam Rashed states that the purpose of *tabligh* is to engage in a meaningful debate and provide convincing arguments, propagate, proselytise and actively try to convince the other person to convert to one’s beliefs and way of life. Further, he states that Ahmadi should at least commit one day a week to summon people to God and Ahmadis should try to add at least one other person into the Ahmadiyya fold each year. He goes on to observe:

“All *Khalifa* (heads of the Ahmadiyya community) have been reminding about this obligation to preach. For this task the entire Jama’at, missionaries and the auxiliaries work side by side. The resources of the community (publications, literature, the 24 hour satellite TV channel, a system of trained missionaries with the fresh pool known as *waqfeen nau* children who are committed to devote their lives for the sake of their God) are fully committed to the attainment of that objective.

Nevertheless it must be firmly understood that propagation is one thing and conversion a completely different issue. The aim of each Ahmadi is to convey the message and it is up to God to guide the person to whom the message has been conveyed towards the light... Thus it is the responsibility of each Ahmadi in each community to preach. Each Ahmadi’s task is to fulfil his/her responsibility.”

Imam Rashed observes that Ahmadis believe in open propagation and engaging in dialogue with all communities of society. Notwithstanding the restrictions against international rights in Pakistan, Bangladesh, Indonesia and the authorities who are in control in the Middle East and other Islamic states, Ahmadis are law-abiding citizens wherever they live and do not resort to civil disobedience or taking part in public protests and causing civil unrest. He goes on to observe:

“It should also be remembered that whereas preaching is a requirement of each Ahmadi, an Ahmadi who does not or is unable to preach because of circumstances beyond his reasonable control will not be excommunicated. Different Ahmadis practise their faith at different spiritual levels but just because they have not manifestly preached does not mean they were less devout and sincere in their beliefs.”

And finally on this aspect:

“Quite obviously an Ahmadi must use wisdom and due diligence when engaging in preaching as in some countries, for instance in the Middle East, free assembly and debate is prevented. In such places an Ahmadi is required to display a high moral standard so that others are attracted to that Ahmadi and his way of life and thus wish to enquire about his beliefs. This would be the minimum standard of discreet indirect preaching by leaving an impression on someone about one’s chosen way of life expected of an Ahmadi.

It is only due to the fear of persecution that Ahmadis are obliged to conceal a fundamental obligation of their faith and modify their preaching activities by being discreet to avoid such harassment. Ahmadis therefore believe that such forced concealment makes it persecutory.”

190. The final statement was the subject of questions at the hearing.
191. In response to question 10 ( the duty to spread the Ahmadi faith), Imam Rashed has this to say:

“The duty to propagate beliefs is essential to the missions of prophets. The prophets have a constant urge to spread the message that they receive from God and rescue as many souls as possible and bring such souls closer to the ways of God rather than following ways towards darkness and evil. This work cannot be achieved by one person alone. Following the demise of the prophet, his works are carried on by his successors. Ultimately, it is therefore the adherents of that prophet who are the instruments to broadcast that message to the people.

The Arabic word is ‘*tabligh*’ and is not limited to the narrower translation of how preaching is understood in the UK. It incorporates preaching, proselytising and propagation of the faith.”

192. In response to question 14 (tolerable methods of spreading the faith in the light of restrictions in Pakistan), Imam Rashed refers to the general impression created by Ahmadis in public which is one of honesty and refers again to the subtle methods of spreading the faith.
193. In reply to questions from Mr Jorro, Imam Rashed said that if someone chose not to preach, he would be counted as one of those who failed in their duties, because of the firm belief that the message of Islam is part of the fundamental duty of being an Ahmadi. In response to questions from Ms Jegarajah, he confirmed that *tabligh* applied equally to men and women although the latter’s ability might be qualified by family commitments. Each sex would do it in their own way.
194. Imam Rashed’s belief is that Islam provides for freedom of religion which he considered was supported by his reading of the Quran. In relation to the size of the Ahmadi community in Pakistan including the Lahoris (referred to in his report) he considered it to be significant although figures were not his domain.
195. Mr Malik questioned Imam Rashed about *tabligh* with reference to the ten *bai’at* or conditions. Imam Rashed described these conditions as part of the message of Allah and were based on the holy Quran. He stated that preaching by Ahmadis has been banned in Pakistan and as a consequence they do not have the freedom of expression. *Tabligh* was however an essential part of being an Ahmadi being both a requirement and an expectation. The reference to one day a week showed the importance of *tabligh*. He acknowledged that there were situations where people could not be so active but for some people it was a matter of compulsion and not of desire. Every Ahmadi is keen and desirous to preach and those who cannot do it feel they are unable to discharge their duties as a Ahmadi. When living under a law that prevents that they feel sorry about that. Ahmadis are expected to respect

the law of the country, but this does not mean they do not have the desire of doing *tabligh*. A display of high moral standard by Ahmadis which might attract others does not really discharge the entirety of the obligation of preaching required of all Ahmadis. He believed the population of Ahmadis in Pakistan is increasing although he did not have the figures. But this did not mean that preaching had been (particularly) effective as the numbers would have been much higher but for the restrictions.

196. Imam Rashed accepted that Ahmadis were permitted to have places of worship but reminded us that they unable to refer these as mosques or have the *kalma* on the front gate. He reminded us also that Ahmadis are not allowed to call *azan*. He was not aware whether Ahmadis were permitted to have preaching sessions in their "mosques" as such. The sermon he had given when visiting an Ahmadi mosque in Pakistan, had not been preaching but instead devoted to ways of conducting life for the community. If non Ahmadis were invited it could not be for the purpose of a *tabligh* meeting. He considered that blasphemy with reference to the Quran was not appropriate for punishment under Pakistan law but instead the punishment is in the hands of God. Asked about the reference in his report to women facing harassment, insecurity and problems with admissions and being denied secular education, he accepted that that this did not mean that all women had (such) difficulties. He said the Ahmadi leadership did not put restrictions on the movement of members where there were no restrictions. Ladies used to go the mosque. This should still be done but they can pray at home if it is not safe. The Ahmadis keep a record in its offices of all actions against its members. In terms of preaching to Sunnis, there is a clear instruction from the prophet that when the messiah comes all Muslims should listen to the advice of the messiah and get initiated at his hand and join the community.
197. Imam Rashed confirmed that he had been last in Pakistan for three days in 2007 and prior to that for more than a couple of months at the end of 2004 and the beginning of 2005. During that earlier period he was asked by the head of the community in Rabwah to lead the Friday service and deliver a sermon. He was concerned about the legislation in Pakistan and sought guidance on what he should say and what he should not say. He was given five or six words he was told that he should not utter otherwise they would face prosecution. By way of example he should not mention that "we" (i.e. the Ahmadis) belong to Islam. Further examples were that he should not refer to the *kalma*, nor to the Urdu term for mosque. He was just about to mention these words but had stopped there. It had given him an unforgettable experience how miserable the life of his fellow Ahmadis was in Pakistan. He had addressed a congregation of some 20,000 to 25,000 people.
198. He also went to Sialkot. He happened to be there on Friday. He was asked by the local head of the community to deliver the sermon. As is his practice in the United Kingdom, after initial prayers, called for the person in the front row to announce the call for prayer (*azan*). It was an emotional experience for him that none of the congregation stood up. People with tears in their eyes mentioned in Pakistan we cannot make this call for prayer. It is illegal. He realised he should not have asked them to do so.
199. In response to our questions as to the hierarchy of sources of the Ahmadi faith he said that the highest is that of the Quran then the practical tradition of the prophet (*Sunnah*) which is found in the books and *Hadiz*, ie spoken words. Then there is *Ijmah*, consensus of opinion's of great scholars then *Ijdeha*. The institution of *Bait* (the ceremony of initiation into Islam) comes in *Sunnah*. For Ahmadis, the sayings and books (some 85) of the founder come after *Hadiz*.

The advice of the Khalifah is subordinate to the instruction of the founder of the community all of which are based on the Quran, *Hadiz*, *Sunnah* and the explanations of the founder which are found in his books.

200. As to fundamental tenets of the faith, with reference to spreading the faith and whether this is an article of faith or duty, Imam Rashed said that spreading the faith is included in the 10 conditions of *bai'at* although not in so many words but it is implied in the duty to follow the traditions of the prophet as revealed in verses from the Quran. It should be equally important to all Muslims to spread the faith but it is the Ahmadi community which is doing this on a world wide basis unlike the non Ahmadi. Summoning people to God as a commitment to Ahmadis once a week is from the Quran. As to propagation and conversion no one is compelled to become a Muslim. Propagation goes beyond just leading a good life. Going from door to door has attracted dislike so instead Ahmadis try (in the UK) to invite and meet people for one to one sessions. Imam Rashed was not aware of any law comparable to that in Pakistan affecting Ahmadis in Middle East countries, but some restrictions are there and the free assembly and debate is not possible and discretion is needed. *Hiqmat* or wisdom is needed in the context of not violating the law (of the land) and they should not be creating any difficult situation for themselves or the peace in the country in question.
201. Imam Rashed maintained the assertion in his report that for non Ahmadi Muslims, who have invited a non believer to Islam, such a person should be killed if he does not believe as illustrated by the warrior with the book in one hand and the sword in the other and as reflected in "popular opinion".
202. As to *tabligh* and women, the instruction is for both men and women depending on the situation and commitments such as taking children to school and other domestic matters. Some women are unable to find the time although others are and so the levels of *tabligh* are different. In Pakistan neither Ahmadi men nor women can be effectively involved in *tabligh* because of the law. Although Ahmadi women are not able to hold open meetings, they can be involved in *tabligh* by providing help to their husbands, with hospitality and looking after the catering arrangements. This is also support and so they play a role. Prayer can be offered at home by all. Going to the mosque is not essential for women.
203. In reply to questions from Mr Jorro Imam Rashed said that as to the third tenet of faith, bearing witness, this meant that whenever required one had to verbally announce the faith. Mr Lemer asked about the relationship between *tabligh* and bearing witness. His response was that the latter was in essence a declaration of the faith.

DR ANSARI

204. Dr Sarah Ansari is a Reader in the history of South Asia at the Department of History, Royal Holloway, and University of London.
205. Her report itself lists a number of questions and her responses which include:
  - i. How does the position of women in Pakistan generally affect the treatment of Ahmadi women as a religious minority?
  - ii. How are Ahmadi women generally perceived by mainstream society?

iii. Are Ahmadi women more prone to discrimination, gender-based persecution because they are members of a religious minority and what is the position within society of physically single Ahmadi women (i.e. no male member in the household) in terms of their civil status, access to education and employment and safety, and under the circumstances what risk might their children face?

206. Detailed responses are given in the report followed by a series of conclusions by way of a summary of Dr Ansari's opinions. She identifies Pakistan as an ideological state which is dominated by Sunni Muslims and which has become increasingly intolerant both in terms of its legal structures and public opinion of religious minorities. She concludes therefore that Ahmadi in such circumstances are at risk of persecution and on occasion violent death, both individually and collectively. She further describes Ahmadi women as particularly vulnerable members of their community "...thanks to wider social/gender norms and the restrictions on women's lives that operate in Pakistan".

207. She goes on to observe that:

"Life for Ahmadi women living without the protection of male relatives in the context of present day Pakistan would undoubtedly be fraught with difficulties and dangers, and this scenario becomes even more problematic were they to be bringing up children of their own. The challenge of operating successfully without the involvement of male relatives is intensely difficult for Pakistani women. Ahmadi women without male support would not only be personally endangering themselves but also risking their children's safety and wellbeing."

DR HAMID

208. Dr Zahida Hamid said she had agreed to attend the country guidance case on behalf of the Ahmadi Muslim Association UK. She is an Ahmadi herself and the daughter of Dr Hameed Ullah who was abducted in Pakistan on 20 September 2007 and assassinated on 22 September the same year. She remained living in Pakistan and completed her education and qualifications as a medical doctor. She and her sister arrived in the United Kingdom together with their mother on 1 June 2011 and claimed asylum. Their claims were not accepted by the respondent, however they were successful on their appeals to First tier Tribunal Judge Eldridge who, for reasons given in a determination promulgated on 16 October 2011, concluded that they were refugees. He found the appellant to be credible and accepted that Dr Ullah had been murdered in 2007.

209. Dr Hamid has responded on paper to a number of questions including enquiries as to how Ahmadi women are generally perceived by mainstream society, whether they are more prone to discrimination because they are members of a religious minority and also questions relating to the duty of members to spread the Ahmadi faith. Issues as to security arrangements for women in Pakistan are addressed, including whether Ahmadi women are readily recognisable from the manner in which the *hijab* is worn.

210. One of the questions she was asked to answer in the report was how would she describe the duty to spread the Ahmadi faith; how fundamental this duty was to the practice of the faith and specifically to women? Her answer in brief was that although preaching was an integral obligation on an Ahmadi irrespective of gender, in practical terms, because male members tend to circulate amongst the public, there was a greater obligation on them to engage in preaching, proselytisation, and to secure a conversion if possible than their female

counterparts. As to whether Ahmadi women undertake to propagate their faith and if so how this is done in practice, she confirmed that Ahmadi women in Pakistan do engage in preaching to well known and reliable contacts and at events such as coffee club meetings and are known to have obtained conversions through such means. She describes a marked difference between what females can do so far as preaching is concerned in Pakistan and their contribution to *tabligh* in the United Kingdom. She believes that the zeal that exists amongst the ladies of the Ahmadi community to spread their faith would pay rich dividends were they unfettered by restrictions that primarily prevent their free expression in Pakistan.

211. Dr Hamid explains that as to security arrangements in Pakistan, since May 2010 women are now asked to offer their five daily prayers at home instead of in congregation in the mosque as they once did in the past.
212. Another question she addressed was whether there were particular persecutory actions specifically against women including the unsourced statement that it was understood there were cases of forced marriages in order to convert Ahmadi women into the mainstream Sunni faith. In her response, which acknowledges that there was no specific provision in Pakistan law targeting Ahmadi women, Dr Hamid refers to several girls in their final years of a seven year medicine course at Faisalabad who were expelled *en mass* from the university in appeasement to pressure by the religious fanatics demanding their expulsion. Dr Hamid refers to there having been many cases against Ahmadi women for teaching the recitation of the Holy Quran to non-Ahmadi children and that fines have been imposed upon them as posing as Muslims. She refers to another ploy used by opponents of the Ahmadi faith being the kidnap of young children knowing that their parents are likely to be people of means to pay a ransom. Without further details, she refers to specific cases where a lady has accepted the Ahmadi faith and she is then ostracised by the rest of the family and deprived of her hereditary rights.
213. Although Dr Hamid refers to the difficulties faces by single Ahmadi women she does however refer to the option available to them to live either with a relative in an extended family background (a not unusual circumstance in Pakistan) or "...seek marginal male support by migrating to the community's headquarters in Rabwah". Further in the report, in response to a question asking why there was a need for a separate women's wing, she replies that there is a single organisation looking after the affairs of the ladies of the community known as *Lajna Imaillah* which reports directly to the head of the worldwide Ahmadi community. There is no age criterion and she goes on to state:

"...these auxiliary organisations enable the Ahmadi Muslim community to ensure that no member is disenfranchised and can correlate to a group of likeminded gender, age and interests".

DR AYAZ

214. Dr Iftikhar Ayaz was educated in Tanzania, the United Kingdom and United States and has a PhD in Human Development. He is an eminent member of the Ahmadiyya Muslim Association and was National President of the UK Chapter. He also represents the community internationally to deal with issues relating to Ahmadiyya refugees and asylum seekers. He has served in Tanzania as a Senior Lecturer in the University of Dar Es Salaam and as a Deputy Director of Education. He worked with the UN Sponsored Centre on Integrated Rural Development for Africa and later was awarded a Commonwealth



Fellowship and worked for the Commonwealth Institute. He served as a Field Expert for the Commonwealth Fund for Technical Cooperation and later was a Senior Consultant with UNDP and UNESCO. He has also served for many years at the UN Council for Human Rights.

215. Dr Ayaz has never lived in Pakistan. He last visited the country in 2008 when he was there for some four weeks. Overall he recalls that he has been there on 30 to 35 occasions. His evidence is set out in written responses to some 92 questions entitled:

“Country guidance on the position of Ahmadis in Pakistan. Questions answered by the Ahmadiyya Muslim Association UK; evidence of persecution of the followers of the Ahmadi faith in Pakistan.”

216. The questions in the report are said to have been formulated by the Ahmadiyya Muslim Association UK based on their experience of proceedings on behalf of Ahmadi asylum seekers and by this means there has been indirect lawyer involvement.

217. Key matters that emerge from the questions and the responses at the hearing are as follows:-

- (i) [www.thepersecution.org](http://www.thepersecution.org) is a website maintained by the IT Department of the Office of Wakalat Tabshir in the headquarters of the Ahmadiyya in Rabwah. The same headquarters are responsible for monthly and annual news reports. In most cases the sources of the information for the reports are the Ahmadis themselves and/or the President of the local Ahmadiyya community where the incident occurred. A few stories are also based on reports of the national press or those issued by human rights organisations. The media is only a secondary source. In contrast with the role of locally published English press in Pakistan which is more positive, the “vernacular press” is generally hostile and prejudiced against Ahmadis. A new website was launched last year (<http://www.persecutionofahmadis.org>) which is believed to have a better design and to be more inclusive and more informative.
- (ii) There is reference in a question (2(a)) to an attached schedule of incidents of persecution since 2006 from the two websites. As to whether there are unreported incidents, it is considered that the schedule on the website(s) is fairly comprehensive but not all get reported to the headquarters. As to the circumstances that would give rise to reporting, at the hearing Dr Ayaz responded in general terms that persecution was constant and persistent because there is harassment and discrimination and social boycott. He went on to clarify that cases were reported where the police or judiciary had been involved and where there had been physical violence and kidnappings, murders and killings.
- (iii) The report states that the Lahori group are rapidly dwindling and rejoining the main Ahmadiyya group. They are thought not to exceed more than 35,000 persons worldwide. All incidents relate to the Ahmadiyya denomination, of which the Khalifa is its spiritual head. In response to a question from Mr Lemer, Dr Ayaz explained that nearly 70% of Lahoris were in Pakistan.
- (iv) More than 275,000 Ahmadis were attracted to the last annual convention in Rabwah in Pakistan in December 1983. At the hearing Dr Ayaz explained as to the number of Ahmadis residing in Pakistan, despite migration of at least 100,000, the number

(remaining) should be sizeable but: “We would not like to hazard a guess”. There is reference in the report to the numbers in Pakistan being nearer 4 million. Mr Lemer sought further clarification. Dr Ayaz described conversion to the Ahmadi in the past years to have been very rapid and that conversion itself was very simple. All an applicant would need to do would be to sign a letter of pledge. He went on to explain that every person who wishes to join has to sign a letter of allegiance to the head based in London and he is then accepted. Such letters are sent to the headquarters in Rabwah and then a list of those letters is prepared and sent to the Khalifa in London for his official acceptance. The Khalifa announces the numbers who convert annually. Unless it is reported that an applicant has moral misbehaviour or criminal activity a convert would be accepted after two years when registration would take place. As to the number of Ahmadis in Pakistan, the reference in the report to others having put the numbers there as over 4 million, that was just a guess. Dr Ayaz explained at the hearing that it was difficult to give a precise figure. The number there was definitely under 1 million. We asked why Dr Ayaz was unable to give a more accurate figure of the number of converts in Pakistan and the total number of Ahmadis there in the light of the registration and reporting procedure. He explained that he did not have access to the figures or records which are with the headquarters of the community in Pakistan and it was possible that they might not want to declare them in the light of the legislation and restrictions on the Ahmadi community. As to conversions, a number had signed the form of allegiance but might not want to declare it. Definitely a figure could be obtained of the number of conversions but it was not one he had himself. He referred by way of explanation to the punishment in Pakistan for apostasy and this being a reason why people had not declared their conversion. He believed the figures may have been passed on confidentially and this is why the number was not openly available. The Khalifa announced the number of converts annually but this did not include those who had done so in Pakistan.

Dr Ayaz describes in the report that the Ahmadiyya Muslim Association UK has a rigorous system for verifying that a person is an Ahmadi. If born in this country, a report is obtained from the local President. As to persons who have migrated here from other countries, a form is to be completed which is then attested by a local UK President of the branch where the person has taken residence and is submitted to the Secretary of the General or Public Affairs Department in the UK and then sent via the National President to the Amir of the country from where the migrant last came. Dr Ayaz clarified at the hearing that if a migrant had not completed the two years “probation” period they would be required to do so before they would be registered as an Ahmadi in the United Kingdom. He described in further detail the vetting system that was used by the Association in the UK.

- (v) The practice of preaching or spreading the faith is described in some detail in the report. A theme that emerged in the course of Dr Ayaz’s answers was the importance of this practice but in the context of respect for local laws and the avoidance of unnecessary risks.
- (vi) His report asserts that it is fairly easy to spot an Ahmadi, who are said to be characterised by humility, simplicity and a cultured manner of speaking. As to appearance, an Ahmadi man would have a well-trimmed beard. For women, the manner in which they wear their *hijab* or *burqa* and the method in which it has been

stitched are giveaway signs. In examination-in-chief Dr Ayaz asked for the reference to ID cards to be deleted and for “passports” to be substituted where the report refers to Ahmadis being required to carry ID cards that show their religion. In response to our questions whether Ahmadis were recognisable as such, Dr Ayaz described the way in which they could be recognised by their manner and dress.

- (vii) The report refers to antipathy towards Ahmadi emerging in the United Kingdom including Tooting where there had been a call to sack Ahmadi employees and in Dewsbury and Huddersfield against the community holding Quranic exhibitions. There have been incidents of anti-Ahmadi posters in shop windows in Glasgow and Tooting. In addition there have been incidents of anti-Ahmadi propaganda on TV channels and serious hate matters have been reported to OFCOM. In examination-in-chief Dr Ayaz referred to the link between this behaviour and the Khatme-e-Nabuwat describing them as having a “very functional strong network throughout the world including the UK.” They have held a conference here in the UK. Dr Ayaz also referred to the potential for Ahmadis who have been active in the United Kingdom facing difficulties because of this once back in Pakistan. He gave an example of a student in the United Kingdom who had been handed a leaflet by the Khatme-e-Nabuwat in Kingston in terms that Ahmadis should be killed. The police were involved but the matter was not taken to court.

218. These further matters are explained under a subsequent number of headings in the report including:

- Evidence of persecution of the followers of the Ahmadi faith in Pakistan.
- Ahmadi community structure and processes.
- Alleged denial of civil rights.
- Anti-Ahmadi provisions of Pakistan’s legislative code.
- Propagation of faith.
- Key events relevant to Ahmadis in Pakistan since 2007.
- Anti-Ahmadi practices in the UK.
- Security and protection.
- Sufficiency of protection.
- Internal relocation.

219. Mr Malik sought to challenge a number of the assertions in the report under each of these headings on the basis of inaccuracy, of an absence of sources and a challenge to views expressed which he argued were not sustainable having regard to the circumstances on which they were based. Dr Ayaz answered all the questions with some detail however for the reasons given below we have not set out all that we heard nor the detail of other matters dealt with in the report.

220. In the light of the views expressed throughout cross-examination by Dr Ayaz of the difficulties encountered by Ahmadis in Pakistan, we asked whether it was his view that all Ahmadis in Pakistan were at risk and generally in need of protection. His response was that for Ahmadis who were particularly targeted their life was unbearable. Their children could not go to school they have no jobs and the only way to get them into normal life was for them to get out of Pakistan. The Association does not encourage this but encourages them to face the situation. When they leave however they are provided with help.
221. As to those who were not “particularly targeted” his answers was in terms that it related to (the extent of) “exposure”. Some might lead a “quiet life”. We asked if there was a serious risk of people leading a quiet life coming to the attention of the organisations. He said there was. He considered the point of exposure was when they needed to do something to earn their living. He described the increasing levels of adverse attention up to being removed from their jobs as well as more serious things happening. He described the difficulties in Ahmadis “hiding” themselves even if discreet. They have been advised that they should not expose themselves to threats and dangers but they are also told not to give away any tenet of their faith. A very small number of Ahmadis would be slack in their observance but even the weakest Ahmadi would turn up every week for Friday services. We asked whether he had any information about Ahmadis going back to Pakistan for visits. He said that such were fewer after the Khalifa had moved to London. Before then, visits were frequent. Now people with family would visit on occasion. Pakistanis visiting generally would be at risk in the light of the security situation and a risk of kidnapping but particularly Ahmadis.

*DR LAU*

222. Dr Martin Lau is a barrister and a Reader in Law at the law department of the School of Oriental and African Studies, University of London where he teaches courses on South Asian law at both postgraduate and undergraduate levels. He visited Pakistan as a member of the Fact-Finding Mission of the Parliamentary Human Rights Group (PHRG) which in 2010 examined the human rights situation of members of the Ahmadiyya community and had previously visited Pakistan in April 2009 as a member of a fact-finding mission of the International Bar Association to examine the independence of the judiciary.
223. As with a number of the other experts, Dr Lau has set out his answers to a number of questions. Key responses are as follows:
- a. In relation to the geographical distribution and number of Ahmadis in Pakistan, he explains he is not an expert and refers to the most recent census in Pakistan published in 1998 stating that they represented 0.22% of the population, then 145 million people. He has heard that there are many more Ahmadis in Pakistan than the figures suggest. In response to an invitation to comment on the extent to which the Ahmadi community organises security for itself and how it does so, he explains that he has no detailed knowledge of the security arrangements so organised. During the mission of the PHRG in 2010 he noticed the inconspicuous presentation of several buildings used by the community as community centres and the like.
  - b. Dr Lau provides a brief summary referring to the constitutional amendment in 1974 which he described as largely symbolic as it did not entail any penal sanctions. This changed in the 1980s when amendments to the Pakistan Penal Code 1860 made it a criminal offence for Ahmadis to pose as Muslims. He refers specifically to new

sections 298B and 298C being inserted in the Code in 1984. The former prohibits Ahmadis from using certain names and titles commonly used in Islam. The offence carries a maximum of three years' imprisonment as well as a fine. The latter, section 298C, is wider in scope making it a criminal offence for an Ahmadi to pose as a Muslim, to refer to his faith as Islam or to preach or propagate his faith or invite others to accept it or "*by words, either spoken or written, or by the visible representation or in any manner whatsoever outrages the religious feelings of Muslims*". An offence again carries a maximum of three years' imprisonment as well as a fine. He also refers to the consequences of an accusation of blasphemy under section 295C of the Code which makes it an offence to defile the sacred name of the holy prophet for which the punishment is death and a fine.

- c. Dr Lau considers it safe to state that the vast majority if not every report compiled by well-respected human rights organisations states that Ahmadis suffer persecution under Pakistan's legal system both in respect of laws directed against them as well as the law on blasphemy. He refers also to the COIR paras 19.04 to 19.44 as well as to the Ahmadi community producing an annual report providing a compilation of "persecutions" of Ahmadis in Pakistan. He explains that the PHRG found testimonies of persons, some of whom the group had met, to be consistent with those contained in the report. He points out that the COIR for 2011 does not refer to the most recent of these reports "Persecution of Ahmadis in Pakistan during the year 2011". Dr Lau concludes that there is no doubt that "...a significant number of Ahmadis face criminal prosecutions under Pakistan's criminal law..."
- d. Dr Lau quotes *in extenso* from the PHRG and in addition examples listed in the "Persecution of Ahmadis in Pakistan 2011" report of instances of discrimination. That report is said to list a number of instances of discrimination in educational establishments, for instance the expulsion of Ahmadi pupils and students on the ground of their religion and other educational establishments run by Ahmadis being targeted by extremists and forced to close down. The only specific example given is the forced closure of the College of Commerce and Sciences in Southern Punjab after a sustained campaign by extremists as well as blasphemy charges filed against Ahmadi students.
- e. The next enquiry relates to the use of anti-Ahmadi literature, posters, advertisements and rallies and the effect on the Ahmadi and non-Ahmadi populations. Dr Lau describes the production and distribution of such pamphlets as a popular and frequently used method of extremist groups to incite like-minded people to take actions against the community. He again refers to the 2011 Report of Persecution of Ahmadis in Pakistan and also to regular reports of rallies staged against Ahmadis, illustrated by an ongoing agitation against the use of a building in Rawalpindi as a place of worship which started in January 2012. He concludes with reference to a pessimistic article by the Asian Human Rights Commission of 12 March 2012 entitled 'Pakistan Government makes no effort to halt the persecution and killings of Ahmadis'.
- f. Dr Lau next comments on reported violence and attacks against Ahmadis, particularly in the last few years between 2008 and 2012, not confined to the mosque attacks. Dr Lau quotes from the Asian Human Rights Commission that since January 2011 ten Ahmadis have been murdered and describes also that almost 100 had been killed in

two attacks on the mosques in May 2010. It appears he is referring to the same Human Rights Commission as a source for his knowledge on this.

- g. As to the extent to which violence and attacks are not reported in the media, international country reports, or the Ahmadi community itself, Dr Lau explains from his own experience, from travelling and having worked in Pakistan for many years, that not every incident involving the Ahmadis is reported by the press or the Ahmadi community. He refers to the PHRG having been told that in some cases the police for instance refused to register a criminal complaint made by an Ahmadi and that information regarding the human rights' position of the Ahmadis differs in detail. He states that differences of data were pointed out by the Human Rights Commission of Pakistan in its annual 2010 report.
- h. As to the use of sections 295C and 298B and C of the Pakistan Penal Code, Dr Lau refers to his recent publication<sup>12</sup>. He explains he had examined all reported cases involving offences against religion in Pakistan and observes that it is noticeable that, at least in the reported decisions, sections 298B and 298C of the Code feature rarely and that the majority of cases concern other sections, including 295C ("the blasphemy law").
- i. In the context of 295C carrying a death penalty and a statement that the Pakistan courts have said that only the death penalty can be imposed, the question is asked how often it is. Dr Lau responds, observing that according to the HRCP Annual Report of 2010, there are currently 8,000 convicts on death row, with nearly 6,000 sentenced to death in Punjab alone. He understands the government has made promises to abolish the death penalty and understands, although he has not been able to locate any official confirmation, that under the present government there have not been executions. In his opinion, however, the abolition of the death penalty is likely to prove difficult since, at least in respect of section 295C of the Code, both the Federal Sharia't Court and the Sharia't Appellate Bench of the Supreme Court have ruled that the death penalty for the offence of blasphemy is mandatory. He does not provide a source for this. In his conversations with government officials, he has frequently been told that whilst there had been some death sentences under 295C at the level of trial courts, all get overturned on appeal to the high courts. In his review of cases from the past ten years, the picture has been largely confirmed, although there were exceptions, one involving an 85 year old man of the Ahmadi for whom the death penalty has been confirmed, and he then refers to reported judgments dealing with section 295C, referring to the fate of Bashir Ahmad. He quotes from his research regarding reported judgments concerned with section 295C including the fate of an 85 year old Ahmadi Hajji Bashir Ahmad and Abdul Rehman, decisions which appear to have been reported in 2001 and 2004 respectively.
- j. The next question asks why the death penalty is not routinely imposed. Dr Lau responds by explaining that it is not correct to say it is not imposed; they are by trial courts but in many cases they are overturned on appeal. The next question is a specific one: "What would the likely charge/sentence for someone openly propagating by standing on a street corner issuing leaflets and proclaiming the Ahmadi faith as the

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<sup>12</sup> (Offences against religion in Pakistan: Appellant Review", Dr Martin Lau, LAW and (IN) EQUALITIES, Contemporary Perspectives, Eastern Book Company

true religion?" The short answer by Dr Lau is that it carries a maximum penalty of three years' imprisonment.

- k. Dr Lau is asked to give an estimate of the number of cases filed against Ahmadis under Pakistan Penal Code sections 295 and 298. He states that it is impossible to give an estimate. A criminal prosecution commences with the filing of a First Information Report (FIR). However the statistics record registered cases concerning *all* offences against religion and do not break down the figures according to particular sections of the Code. In response to further questions he explains that he believes there is no central database recording cases.
- l. As to whether he is able to give a figure independent from that obtained from the Ahmadi community's own reports detailing some 3,500 (cases), Dr Lau explains that he is not sure as to what period that figure relates and cannot answer the question with any precision. He refers to the Prosecution 2011 report<sup>13</sup> stating that since promulgation of sections 298B and C, tens of thousands of Ahmadis have been booked under these laws. He states:

"The crime statistics from April 1984 to December 2011, however, list a number of registered cases against Ahmadis for offences against religion that is far below 'tens of thousands' of cases. A possible explanation might be that in two cases the entire population of Rabwah and Kotli respectively were accused of offences under section 298C and for the repair of a mosque - if these two cases are included the figure is indeed in tens of thousands."
- m. Dr Lau goes on to observe, however, that the paucity of centrally and officially collected data on the number of Ahmadis accused should not, in his opinion, "...detract from the fact that all human rights organisations consistently report a significant number of such cases".
- n. In respect of the reliability of the Ahmadi community's own reports and figures, he explains that as a member of the PHRG he was able to interview many of the victims of violence and false prosecutions which featured in the 2009 community report. Without exception, their accounts accorded with what had been written and had been published. He describes the Ahmadi community as quite well-organised and producing reports that are as accurate as possible. He is not aware of any suggestion of over or under-reporting.
- o. Dr Lau observes the limited time available to him in order to prepare his report meant that he was not able to answer an enquiry about a reference in the PHRG report that no Ahmadi dares to propagate in the open. As to reported incidents of Ahmadis operating medical camps, his instructions had not referred him to any incidents of this but he was aware of reports that during the catastrophic floods of 2010 some 500 internally displaced families were denied humanitarian aid apparently on the ground of their religion. He is also aware that the Ahmadi community itself runs medical camps.

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<sup>13</sup> The report entitled "Persecution of Ahmadis in Pakistan during the year 2011"

- p. Questions turn to the availability of bail and whether the provisions under sections 295 and 298 of the Code areailable by the police as opposed to the courts and if so which ones. His response is that: " offences under sections 295 PPC areailable, all others under section 295 are not." He goes on to explain that an offence under 298B and 298C of the PPC is notailable. He had not been able to find any consistent jurisprudence on the grant of bail in relation to offences against religion.
- q. As to the decision of the Tribunal in *KA & Others*, Dr Lau observes that this was concerned with the legal position of women in relation to the grant of bail but he did not think that the case was relevant to prosecutions of Ahmadis, nor to offences against religion in general. In his opinion, the judgment of *KA* does not detract from the findings of the PHRG. As to whether it is more difficult for Ahmadis to get bail as opposed to other types of detainees, Dr Lau explains that in the absence of any comprehensive and thorough research it is difficult to answer this question with a high degree of precision. Cases presented to the PHRG suggested that there are a number of cases where Ahmadis found it difficult to obtain bail.
- r. Turning to the matter of FIRs, Dr Lau explains in his report that there is no comprehensive set of data available that would permit him to determine whether the settling of scores is a predominant motivation behind these being issued against Ahmadis but, as explained by PHRG and his own research, it is a frequent motive. He does not think that the motivation is always a personal one, given the use of criminal proceedings by extremist organisations such as the Khatme-e-Nabuwat against Ahmadis. Exceptions to his view that the filing of FIRs is piecemeal were those filed against the residents of Rabwah and Kotli. As to the police response to the FIRs, Dr Lau refers to *KA* and its finding that the police do not always pursue FIRs. As to whether the police approach is the same in Ahmadi cases as that for domestic violence, he explains that the legal position of women is different and has no application to the legal problems encountered by Ahmadis. *KA* had referred to many FIRs being stagnant. Whether this applies to Ahmadi-related cases, in the absence of better research, he could not say.
- s. Dr Lau believes there is no central register of FIRs and the police in one area could not access the records of another police station except by visiting the police station concerned. He was not able to say whether the police would pursue an FIR where an individual has removed from an area and refers again to the role of extremist organisations such as the Khatme-e-Nabuwat using FIRs. In the absence of a central register, the existence of an FIR would not be automatically highlighted when a person leaves or returns to Pakistan.
- t. Reminded that in giving evidence before the Tribunal in *KA* he had referred to the police being "corrupt, brutal, abusive, particularly towards women", Dr Lau was asked whether there is adequate police protection for Ahmadis. He considers the police protection is not adequate in the light of the large number of murders of Ahmadis as well as the suicide bomb attacks against Ahmadi mosques in Lahore. Asked whether the police were particularly abusive to Ahmadis, he explains in his report that he had not seen evidence of this and could not deny or confirm whether any abuse was worse for Ahmadi women. He was unable to answer whether he saw a rise in the incidence of Ahmadi women being targeted.



- u. As to the internal organisation of the Khatme-e-Nabuwat, Dr Lau states that although not an organisation run or officially sponsored by the state, there were instances of its functions receiving official endorsement or featuring government officials as participants. There are a number of organisations campaigning against Ahmadis. He explains that he is not an expert in this area and could not provide detailed information on groups other than the Khatme-e-Nabuwat who are anti-Ahmadi. Dr Lau's report deals with how the Khatme-e-Nabuwat propagate their anti-Ahmadi practices. He describes it as an extremist organisation using pamphlets, *fatwas*, stickers, as well as rallies and conferences to propagate the abuse. There are now a number of private TV channels that espouse very conservative religious views. He considers it safe to state that the government does not prevent anti-Ahmadi groups from operating. He believes that social prominence of an Ahmadi is a factor in the vulnerability to attack and refers to evidence of the names of prominent Ahmadi businessmen who appear on hit lists.
- v. As to the source of information that many convictions are overturned on appeal, Dr Lau states that this comes from conversations with several lawyers representing Ahmadis. He has found on the whole that the higher judiciary appear to be less intimidated by religious extremists and trial courts and they attempt to evaluate the evidence fairly although there are exceptions. As to whether the judiciary is independent in relation to Ahmadis, the number of reported decisions in relation to Ahmadis is quite small but Dr Lau considers that they suggest that at the level of trial courts judges convict on the basis of thin evidence. There was no data which would permit a precise answer on the likely period a person could expect to spend in detention awaiting trial on remand for blasphemy-related offences and he does not know whether conditions in detention are any worse for Ahmadis than the general population. He believes that as a matter of Pakistan criminal law it was most unusual for an FIR to be filed against an entire community (Rabwah).

224. In response to questions from Mr Gill, Dr Lau referred to his report where it is stated that it is difficult to identify any factors which would determine with any degree [of] certainty which of the sections of Ordinance XX dealing with offences against religion would be used. He explained to Mr Gill that the cases he had referred to had been published in law reports. He also explained the process whereby cases would be reported identifying that there was certainly no comprehensive system of reporting and hence there was no proper data. The only way to find out more data was to spend time in the high courts in each province and to go through the documentation of thousands of cases.

225. He explained that the Federal Shari'a Court did not hear blasphemy cases and described the differing ways in which the jurisdictions worked. In essence the Federal Sharia Court determines whether the law is in accordance with Islam and in its second jurisdiction, the Federal Shari'a Court acts as a Court of Appeal arising out of convictions under the Hudood Ordinance of which the most prominent is the Zina Ordinance.

226. Dr Lau referred also to information kept by the police departments and by that he was referring to FIRs. Individual police departments collect data of cases which is published on their websites but as it is not broken down into sections of the Penal Code, it is not possible how many involved Ahmadis. As to over or under reporting, he had not found an

organisation saying that data was completely out of line with what actually happens in the ground.

227. Sections 298B and C were specifically targeted, according to Dr Lau, at the Ahmadi. He considered it was clear that the Ordinance XX (which introduced these provisions) was designed to prevent the Ahmadi from calling themselves Muslims and to prevent them from propagating their faith. He described the reach of Section 298C and the risk of conviction that could arise. He illustrated this by saying that just leaving a pamphlet somewhere would be a visible representation. He regarded the provision to be all encompassing, as demonstrated by its language and it would include women who invite people round for tea to discuss the Ahmadi faith. It makes it an offence to propagate. He referred to the Supreme Court decision in *Zaheeruddin* as describing the law in terms that if (the provisions of the PPC) were not in force, there would be civil war.
228. Dr Lau explained that the reports available do not single out Ahmadi women facing particular problems. He identified the great difficulties they had in the legal system coupled with the “disability” of being an Ahmadi. As to Ahmadis generally, it was not said in any reports that Ahmadis were more likely to be roughed up by the police in the context of a statement in his report that he had not seen any evidence that the police are particularly abusive to them. He clarified his answer by explaining that even the High Court and Supreme Court would agree that there is certain amount of of police brutality (for the general population).
229. Referring to the Lahore Mosque attacks in May 2010, as a result of research in asylum cases on which he had been asked to provide evidence, Dr Lau was aware that some of the victims who appeared on the FIR involved in the attack have been subject to threats. As to other difficulties faced by the Ahmadis he confirmed that according to the *persecution.org* report for 2011, 50 had been mentioned as being on a hit list following an incident in Faisalabad. As to whether there is evidence of state complicity or acquiescence in anti-Ahmadi activities, Dr Lau reminded us that the Ordinance XX has stood the test of time. This was confirmed by it not having been repealed.
230. In reply to questions from Mr Lemer, Dr Lau said that people who stand up against Islamists face immediate threats and are in very real danger. He referred to news reports that hundreds of lawyers had lined the path outside the courts showering Taseer’s convicted assassin with rose petals. There had been no disciplinary proceedings.
231. As to the numbers of Ahmadis who were reported by their own community to have faced prosecutions under Pakistan Penal Code (sections 295 and 298), he had no proper explanation for the discrepancy between the community’s figure of 3,500 and the statement by Asma Jahangir that this was 27,585. He speculated that the larger figure may include the FIRs issued against whole cities (Rabwah and Kotlah). He confirmed that no website collated the data from various police stations on the FIRs that had been issued and he had no data on how long it would take to appeal refusal of bail or to proceed by way of trial in a higher court. He thought that bail applications in general are heard quite quickly, the main concern according to Ahmadi lawyers being to get someone out of jail as quickly as possible. From the cases he had referred to none was longer than a year. There was no real interest in pushing for a trial which might result in a conviction. He described a case where there had been no trial for ten years.

232. He did not think that the Khatme-e-Nabuwat had their own TV channel but they did have a publicity organisation which organised conferences and he emphasised that it was not an illegal organisation but otherwise he was unable to provide more details.
233. Asked about security arrangements organised by the Ahmadi community, Dr Lau said that these seemed to him to be very much private arrangements but most people with a “household organisation” and the upper middle classes would have private security arrangements in Pakistan which included an armed guard at least at night. Although he could not remember precisely, he presumed that the guards he saw organised by the Ahmadi community would have been armed.
234. As to restrictions on Ahmadis, Dr Lau confirmed that only a Muslim could be the President of Pakistan and similarly judges of the Federal Shari’at Court had to be Muslims. This was not a requirement for judges of the Supreme Court and he was unsure about any non-secular requirements for the office of Prime Minister. He accepted the legitimacy of the Constitution defining who is a Muslim but did not accept that it would have been difficult to operate the Constitution without this referring to the situation prior to 1974 when he considered self declaration was quite sufficient. He referred to the background to the 1974 constitutional change as political (President Bhutto was keen to demonstrate that he was a good Muslim) and public order related in the light of the incidents arising including clashes involving the Ahmadis. A two thirds majority was needed to amend the constitution but he believed that the amendment was carried almost unanimously.
235. When asked about the decision in *Zaheeruddin*, Dr Lau observed that the court was not neutral in its assessment of Ordinance XX and that the Pakistan Penal Code prior to 1984 by contrast was based on the Indian Penal Code of 1860. This had religiously neutral provisions preventing attacks against mosques. He considered that it would be very difficult for an Ahmadi to challenge the constitutional validity of Ordinance XX which could only really be changed by parliament.
236. Dr Lau considered section 295C to be worded in a wide fashion. Inviting someone to a place of worship could well be interpreted to be a visible representation to propagate the faith but he had not seen a case concerned with this scenario. A Muslim who converts to the Ahmadi faith is likely to be regarded as an apostate. He considered apostasy embraced somebody who commits blasphemy and it was not just an offence for an Ahmadi to propagate his faith but for a Muslim who became a non-Muslim.
237. Mr Malik asked Dr Lau about the hypothetical circumstances of a Sunni who converted to the Ahmadi faith and whether he would be committing offences under 295C or 298B or C. Dr Lau responded saying that the basis of his concern was section 295C as one can not convert without annoying the fundamental tenets of the religion which would be committing blasphemy. It was by this route that apostasy would be an offence triable in the secular courts. He was not aware of a decision involving an offence of blasphemy. An amendment to the code in 2004<sup>14</sup> requires a senior police officer to be involved but he was not aware that this had resulted in a reduction in cases. The amendment did not apply to sections 298B and C. As to prosecutions under the Pakistan Penal Code (295C, 298B and C) Dr Lau observed he had seen reference to 56 cases in the Persecution 2011 report. He had found two cases of

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<sup>14</sup> The 2011 Persecution Report states this was in 2005

blasphemy where death sentences had been confirmed although there were more reported case involving acquittals.

238. Dr Lau considered getting rid of an FIR to be difficult and it was necessary to move the High Court to quash one. When asked about the ability of the police to sufficiently protect non-Ahmadis from extremist elements, Dr Lau agreed that the police on the whole find it difficult to protect religious minorities, illustrating this with details of problems suffered by Hindus, Christians and the Shi'a. Dr Lau accepted that section 295 of the Penal Code applied to any person and at this stage of his evidence he referred to the history of this part of the legislation. The 1860 Penal Code only related to physical structures and therefore any prosecution required physical damage. Section 295A was introduced which made it an offence to make offensive statements against another religion. The complaint is made by Ahmadis and other religious minorities that their religions are never protected by the law. Dr Lau explained he was not aware of any cases where the state or the police stepped in to protect Christian churches or an Ahmadi mosque.
239. Mr Malik sought Dr Lau's views on certain statistics, referring to the 86<sup>15</sup> who had been killed in the Lahore Mosque attacks in May 2010 in the context of some 12,580 people that year who had been killed in Pakistan. Overall, 202 (Ahmadis) had died in the previous 28 years. When asked whether he considered therefore that only a tiny minority of those killed were Ahmadis, Dr Lau explained that he was not an expert in this field. Apart from the FIRs issued against Rabwah and Kotli, Dr Lau had not seen any other examples. He spoke however about the difficulties of such FIRs being challenged in the High Court in the light of the publicity that would be created.
240. Questioning turned to the ability of Ahmadis to get bail and whether the police had power to grant bail. A bailable offence entitles the accused and arrested person to be bailed but non-bailable offences require a special application to the court. Dr Lau's understanding is that the police have power to grant bail. Because of popular sentiment with demonstrations outside police stations his impression, absent proper research, is that very often bail is initially refused if only to protect the suspect but successful in a later application. Dr Lau also explained his understanding of the Exit Control List which is run federally but otherwise he did not know the basis on which persons are added.
241. Mr Malik asked Dr Lau about the opinion expressed in his report that procedural safeguards were not observed in the courts and that judges were intimidated by religious extremists and as a result convict even on the basis of thin evidence. He asked whether matters were changing since the installation of the present Chief Justice. Dr Lau replied in terms that the system is clearly improving but he could not confidently say that the system will always pick out every kind of miscarriage of justice that occurs at trial level.
242. In reply to questions from Mr Gill, Dr Lau referred to the insidious nature of the Ordinance XX and its impact on family disputes including divorce. As soon as they drift into what the law considers to be reserved for Muslims, Ahmadis immediately commit a criminal offence.
243. Our questions related to the way in which FIRs worked in Pakistan. Dr Lau explained that these were completed by the police based on information provided by the complainant. If no complaint had been made, the police usually tried to secure witnesses. Otherwise it might

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<sup>15</sup> We heard varying evidence on the number killed.

that the witness reporting the incident is the policeman. The obligation is on the police thereafter to gather evidence and if possible carry out an arrest. The police were required to produce a police report which is referred to as a charge sheet. Once completed, it is submitted to the court to frame the charge. If there is a failure to investigate, one could go to the High Court for judicial review. There was no limitation on the life of an FIR. The decision to refer a matter to the courts was a joint one by the police and the government prosecutor although the latter had little decision making power. Only the High Court had the power to quash an FIR. He was not aware of any association of Ahmadi lawyers and clarified that not only Ahmadi lawyers represented Ahmadis.

244. Dr Lau explained he was quite familiar with the work of the Pakistan Human Rights Commission and he considered it enjoyed an absolutely outstanding reputation. It was very respected both inside and outside Pakistan and he did not think that anyone in government had ever seriously challenged its findings. He provided clarification of the mass Rabwah FIRs and believed there had been two or that the one from 1989 had been renewed in 2008 although this required more research. He questioned the legal soundness of the 2008 FIR when asked about who had been implicated. He considered it would be very difficult to launch a prosecution but also observed that it was extraordinary that this FIR was still be circulated. He believed that as a matter of public interest litigation and human rights litigation, a court probably would be receptive to a third party bringing a public interest litigation case to quash the FIR and there was nothing to prevent the High Court *suo moto* interfering.
245. He confirmed that the term "booked" in the Ahmadi community's report of 2011 was a common expression for an FIR having been filed. He did not believe there was any evidence demonstrating how many FIRs had been taken forward to police report stage and subsequent prosecution in the magistrates' court. It was an area that required further research. He did not believe the (Ahmadi) communities themselves had records of the number of FIRs which had resulted in active prosecutions. The Parliamentary Human Rights Commission in discussions with lawyers had tried to find out the number of cases however lawyers themselves did not actually keep proper records. Of the 3,500 referred to in the question in para 33 of his report, Dr Lau explained there was no information on whether they had been granted bail. It was impossible to answer how many had resulted eventually in prosecutions.

#### MS JAHANGIR

246. Ms Asma Jahangir has been tendered as an expert witness. She has, amongst her many qualifications, a Bachelor of Law degree from Punjab University and since October 2010 has been President of the Supreme Court Bar Association of Pakistan and has been an Advocate in the Supreme Court since 1992. Additionally, since 1994, she has been a Director of AGHS Legal Aid Cell Lahore which was set up in 1980 to provide free legal aid to women. In 1998 she was appointed United Nations Special Rapporteur on Extrajudicial Summary or Arbitrary Execution of the Commission on Human Rights and in 2004 was appointed United Nations Special Rapporteur on Freedom of Religion or Belief of the Council of Human Rights.
247. Ms Jahangir has been assisted in the preparation of her report by her daughter, Ms Sulema Jahangir who is qualified as a solicitor in England and Wales and is eligible to practise in the higher courts in Pakistan. She has a BA from the University of Cambridge awarded in 2003.

Since January 2010 she has been working for AGHS Law Associates in Lahore, Pakistan as an Associate Lawyer specialising in human rights work. She also has experience from employment in the United Kingdom for some two and a half years prior to December 2009.

248. Ms Jahangir has provided her report on the letter head of AGHS Law Associates which appears to be a firm based in Lahore, Pakistan. As with the expert witnesses, she has been invited to respond to certain questions:

- i. *Can Ahmadis openly proselytise in Pakistan? If not, why not?* Ms Jahangir's evidence is that there is "...absolutely no space - legal or otherwise - for any Ahmadi to proselytise in Pakistan." She refers to the discriminatory legislation we have detailed above including the constitutional changes in 1974 and Ordinance XX promulgated in 1984 and now inserted as part of the Pakistan Penal Code 1860, sections 298B and 298C. Ms Jahangir refers to a lawyer belonging to the Ahmadi faith having unsuccessfully challenged the validity of Ordinance XX as being repugnant to Islam and a violation of fundamental rights declared in the constitution.<sup>16</sup>

She refers also to challenges in a case in the Quetta High Court after a number of Ahmadis were arrested for wearing badges of "*Kalma Tayyabba*". The accused are reported to have been convicted and sentenced to undergo rigorous imprisonment of one year and pay Rs1,000 each or in default of payment serve a further imprisonment of one month. These proceedings appear to have been instituted in 1988. This was challenged in the Supreme Court and a number of similar cases were heard there in early 1993. It appears in the same proceedings (although not clear from the report) that Ordinance XX was challenged on this occasion with the outcome that a five member bench with one dissenting judge came to the conclusion that it was a valid and reasonable law as it balanced fundamental rights and public order. All convictions for propagation of their faith by the Ahmadis were said to be justified and upheld under law.

Ms Jahangir's report refers to other proceedings before the courts in Pakistan for Ahmadis dealing with issues over bail, the centenary celebration of Ahmadis (which had been banned by the Government of Punjab) and the fact that as a result Ahmadis could not hold large religious gatherings or ceremonies.

Her conclusion is that it is very clear that under the law (of Pakistan) "Ahmadis cannot proselytise openly or otherwise". We observe at this stage there is no explanation in the report as to what Ms Jahangir understands by the word "proselytise" which we consider to be particularly relevant in the context of other evidence we have heard which refers to preaching or propagation.

As with other aspects, Ms Jahangir refers to the 2010 report of the Human Rights Commission of Pakistan and additionally its report in the following year.

- ii. *"What would the likely charge/sentence be for someone openly propagating for example - standing on a street corner, issuing leaflets and proclaiming the Ahmadi faith?* Ms Jahangir states the charge would be under section 298C but if the pamphlet had any mention of the founder as a prophet or the last prophet in connection with Islam or some mention

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<sup>16</sup> PLD 1985 FSC8 *Majeibur Rehman v The Federal of Pakistan*.

of the prophet or other holy personages it could be framed under 295C or 298A. She observes there have only been a handful of convictions under 295C and so far no sentence has been executed but then observes that a large number of those accused under allegations of blasphemy under this section have been killed.

iii. *What are the special features of Ahmadi women in Pakistani society?*

*Are Ahmadi women at more risk of harm due to their religion than Ahmadi men? If so, why?*

Ms Jahangir considers Ahmadi women are equally at risk. She refers to the prohibition on inter-religious marriages. She states that since prejudice against Ahmadis is "acute" an Ahmadi mother will stand hardly any chance of gaining custody of her minor children.

iv. *"What level of religious practice would give rise to a real risk of targeting from (a) state and (b) religious extremists?"*

Ms Jahangir gives a number of examples prefaced with these remarks.

"The state has passed laws that persecute Ahmadis, the courts have sanctified these laws and impunity has been extended to anyone harassing, discriminating, intimidating or harming an Ahmadi."

v. *In relation to the police:*

(a) *Are the police particularly abusive to Ahmadis?*

(b) *Are they particularly abusive to Ahmadi women, if so, in what manner?*

(c) *Are Ahmadi women at more risk from the Police than Ahmadi men?*

(d) *Would Ahmadi women be at risk of abuse if they report an incident to the police?*

vi. *How would they be treated if they report an incident or try to file a FIR?"*

Ms Jahangir's response is that the police as a whole "is not particularly abusive to Ahmadis but there are elements within the police who will be and they are not discouraged. In any event, like the rest of society, the police are prejudiced against Ahmadis."

vii. In response to questions relating to bail, Ms Jahangir explains that as case law shows that bail for Ahmadis is difficult and would only be granted exceptionally. She refers to cases where an Ahmadi is involved and ultra-right-wing groups are present in the courtrooms in a threatening manner.

viii. The next three questions relate to the use of FIR. The opinion of Ms Jahangir is that religious extremists are the most likely people to file an FIR against Ahmadis and she refers to the police being prejudicial and that they also fear violence in cases where they refuse to file an FIR against Ahmadis. Ms Jahangir explains that an FIR against Ahmadis is vigorously pursued. She refers to the Khatme-e-Nabuwat ensuring that the FIR is pursued in every case against Ahmadis. In response to further questions she

describes the extent and reach of the Khatme-e-Nabuwat which she says is supported by all Islamic religious groups and prayer leaders.

As to treatment of such proceedings by the courts, Ms Jahangir observes in response to further questions that many convictions are overturned and she refers to the delays in these appeals being heard. She explains that she cannot give exact figures for the number of appeals that are overturned. She states that the case law presented with her opinion reflects the bias of the courts in cases of Ahmadis. As to the issue whether Ahmadis receive a fair trial, again referring to courts being crowded by ultra-right-wing Islamic groups, she describes Ahmadi women facing the same prejudices as a male Ahmadi.

ix. In response to questions about detention, Ms Jahangir explains that a person could spend up to three years awaiting trial and several years for an appeal to be heard.

249. Otherwise Ms Jahangir's report is taken up with consideration of the Rabwah FIR and the findings of the Parliamentary Human Rights Group for 2010 which is dealt with elsewhere in this determination. Specifically she is asked whether there have been any particular problems for the victims and families of Lahore mosque attacks following publication of the victims' names. She explains that she has seen pamphlets where prominent Ahmadi names appeared on hit lists created by anti-Ahmadis and observes the state does not act at all to protect Ahmadis. She refers to a large number of *madrassa* students being made to believe that the killing of Ahmadis is Islamic and refers to such students being part of the mob or rallies gathered by the Khatme-e-Nabuwat. She observes the significance of the declaration made by Liaquat Hassain that Ahmadis were *wajibul quatal* to be very significant.

250. Finally, Ms Jahangir is asked whether the incidents reported in the US State Report (the year is not provided) reflect all incidents of persecution against Ahmadis. She observes that the incidents that any report makes cannot be exhaustive because of the paucity of space and observes a similar shortcoming in the UN reporting of the Special Rapporteurs.

251. Her concluding remarks are:

"I would describe the position of Ahmadi men and women as being under extreme risk. Violations of human rights against them are a flagrant denial of their religious rights too. However, in my view the situation of Ahmadis is worse than other religious minorities. Their very existence is under consistent threat. Violations of human rights against Ahmadis are systematic and of a serious nature."

252. Just prior to the hearing, an addendum to Ms Jahangir's report was lodged, posing some further questions. By way of reply, she clarifies that only police can grant bail in bailable offences which she describes as minor offences. Bail in "cognizable" offences (which are non bailable) is granted by the court after arrest. Bail can also be granted before arrest although it is much more difficult to secure. She explains that a police officer has powers to arrest those accused of a cognizable offence as specified in the Criminal Procedure Code. On a private complaint to the court, arrest may also be ordered. There are cases where the police file an FIR but may not arrest the accused and in such an eventuality, the complainant is able to file a writ in the court and after a hearing the investigating officer can order arrest. The figure of 67 cases registered against Ahmadis during 2010 on account of their religious beliefs, come from the Human Rights Commission of Pakistan. Ms Jahangir explains that the Commission



collects data from government sources, press disclosures and carries out its own research. The figure of 67 cases has been provided by the police headquarters at all four ( main) provinces and the capital although it does not cover other provinces (Ajn, Gilgit, Baltistan, or FATA). She cannot imagine that people are convicted without being sentenced.

253. As to timescales for bail, “pre-arrest bail” has a timeframe of one to four months but obtaining bail post-arrest can take up to six to twelve months. Bail following conviction or pre-appeals are exceptional and can take two to six years. Access to the provincial FIR registers can be obtained by the Khatme-e-Nabuwat and she explains “we” can access the information too.
254. As to whether Ahmadi women face any particular harassment or discrimination and whether they are able to go out in public, she explains that she is unable to respond for lack of data, observing however that Ahmadi women keep a very low profile. As to whether houses are a safe alternative to mosque attendance, she explains that houses of Ahmadis are marked and are not safe and every Ahmadi interviewed by her receives pamphlets etc which intimidates them. Hate mail is thrown into their homes. She clarifies that Liaquat Hassain had agreed with a speaker rather than himself declaring Ahmadis *wajibul quatal*. Finally, as to the number of Ahmadis in Pakistan, she observes there is no direct census figure on the actual population.
255. Ms Jahangir gave her evidence before us by video link. On our direction, Mr Malik had submitted a number of questions in advance. Ms Jahangir had not had the opportunity of reading them. Before she was cross-examined on these questions, she gave this further evidence by way of clarification:
- (i) FIRs are kept in the police stations. Access to the central FIR registry system was not normally available but lawyers are able to get hold of them in restricted circumstances. After a conviction occurs, an appeal might take quite a long time to come on for hearing. On appeal, a request would be made for suspension of sentence, which comes up in two, three, or four years. In the case of blasphemy offences, there has rarely been any case of an Ahmadi where a suspension of sentence has been lifted. The actual appeal can take any amount of years. Ms Jahangir has a client who has been accused of blasphemy and has been in a cell for the last 40 years. Unless the sentence has been suspended, the convicted person remains in custody.
  - (ii) As to the position of Ahmadi women, Ms Jahangir referred to the steps taken by the community to protect them. In custody cases where an Ahmadi woman is fighting a non-Ahmadi husband for custody, she is less likely to succeed than a non-Ahmadi woman would.
  - (iii) Ms Jahangir has seen several houses of Ahmadis which have been marked.
256. As to the questions sent in advance:
- (i) *Are people automatically detained after an FIR is filed under sections 298B or C of the PPC or whether the police have a discretion?*

Ms Jahangir’s response is that the police would arrest unless they believe the FIR is completely false. She was aware of three cases (relating it appears to blasphemy)

which have been reported whereby the courts have instructed the police to go and arrest the accused. There is however discretion but it is limited both in law and in practice because of pressure.

- (ii) *Can you clarify the difference between bailable and non-bailable offences? Is there a right of appeal or review if the first instance court refuses bail?*

Bailable offences are those where the police can grant bail without the need of going to court. If one goes to the court, refusal would be an exception. However, non-bailable offences are at the discretion of the court. A refusal gives a right of appeal to the High Court and from there to the Supreme Court. The police have no power to keep someone in detention beyond 24 hours without approval by a magistrate.

- (iii) *At paragraph [9] you have referred to some statistics that were given by the petitioner's Counsel to the Supreme Court in Zaheeruddin's case. Do you know anything about the source of those statistics?*

The statistics have been taken from the document itself.

- (iv) *Do you have any statistics as to how many Ahmadis have been convicted/sentenced under sections 298B, C and 295C of the PPC?*

Personally, Ms Jahangir did not have such statistics but she had quoted the Human Rights Convention Reports although she did not consider these very comprehensive. She was sure that the statistics of persons actually convicted and sentenced existed within the community itself.

- (v) *Do you know how many Ahmadi lawyers are practising in Pakistan?*

Ms Jahangir said that she did not count lawyers by their religion.

- (vi) *You state at paragraph [38] that every province has a central register of FIRs. Do you have any statistics as to how many FIRs have been lodged against Ahmadis since the promulgation of Ordinance XX?*

Ms Jahangir stated that between 1984 and 1988 people did not have access to FIRs as the country was under a military regime. [Today] the Human Rights Commission researchers are very careful when they are researching blasphemy, particularly on Ahmadi issues because they themselves would be putting their lives at risk.

- (vii) *If an FIR is registered against a low profile Ahmadi in, let's say, Islamabad and that person moves quickly to, let's say, Karachi, how easy would it be to track that person by (a) the police and (b) KN?*

Ms Jahangir replied that both will be able to track that person quite easily unless protected by intelligence agencies. However, the latter do not normally protect religious minorities. The KN has a good network and partnerships with state agents, their efficiency demonstrated by the marking of houses of Ahmadis.

- (viii) *You state at paragraph [42], that 'The names of absconders [are] fed into the immigration system. What is the source (i.e., any legislation or policy document) of this assertion? What do you mean by the 'immigration system'?*

The exit control list (ECL) is maintained by the Interior Ministry and all provinces provide the names of people who the courts have ordered to be put on ECL for example in child cases. In addition, this list contains absconders who are declared as such by the court and those provided by agencies such as the FIA. Ms Jahangir herself was put on this list during the military government and many of (her colleagues) were not allowed to leave the country. If an FIR is registered against someone, his name does not automatically go to the ECL. An absconder is someone against whom a case has been registered and the police wish to arrest but the party is hiding. The court would declare someone to be an absconder at the request of the police. ECL checks take place for persons both leaving and returning to Pakistan and Ms Jahangir referred to cases where people had endeavoured to enter as dual nationals.

- (ix) *You state at paragraph 43 that 'The government is intimidated by [KN]'. Can you explain how the government is being intimidated?*

There is an absolute refusal (by the government) to investigate the KN or to arrest anybody from the KN or even go and talk to them.

- (x) *You state at [44], that KN's network 'extends to a number of professional groups like lawyers'. Is there any evidence that KN which includes professionals like lawyers, is involved either in killings or inciting killings of Ahmadis?*

Her reply was that there is a KN lawyer group which operates quite openly and makes statements in the press. This group recently asked for a soft drink called Shezan to be banned from the Bar Association because the company belonged to an Ahmadi. This group makes statements against people, something Ms Jahangir encountered when she was contesting election to the Supreme Court Bar Association. Statements against her included the assertion that she supported the Ahmadis and should not be elected. She clarified that this group did not indulge in killings or any such violence.

- (xi) *At [63] you have referred to prominent Ahmadis. What is the difference between prominent Ahmadis and Ahmadis that are not prominent?*

Prominent Ahmadis are those who are in public life or in a position of more visibility such as a known writer, a television anchorman or a bureaucrat of high stature.

257. In response to further questions from Mr Malik which had not been put in advance, the following key points emerged:

- (i) Shi'a mosques have been attacked in addition to Ahmadi mosques. However Sunni mosques less so probably less because they are in a majority. Attacks on non-Ahmadi mosques are denounced by the government in no uncertain terms but this was not the case in respect of the attacks on the Ahmadi mosques in May 2010. The threat of those particular attacks had been there for some time and Ms Jahangir and the Secretary of the Human Rights Commission of Pakistan met the Chief Minister and warned him beforehand yet nothing was done.

- (ii) Decisions such as those where an Ahmadi student was denied access to a college could be challenged in the courts but to do so would result in a risk to life and reputation.
- (iii) It is correct that no-one has ever been executed under section 295C, the blasphemy provision, but several people have been in a cell for many years, running to between 90 and 120. Three were her clients, one being an Ahmadi and two Christian.
- (iv) Previously, Ahmadis intermarried with other Muslims. Such unions were not banned before 1974. Now such marriages are exceptional.
- (v) In relation to the reference in her report to the government stating that in October 2012 they had foiled an attempt by militants to attack Ahmadis' place of worship Ms Jahangir stated that whether this demonstrated the will of the government to protect Ahmadis from militants depended upon who was in the government. She knew of no "single" case where Ahmadis have gone to the court asking for an FIR to be registered against people. They have never dared to go to court. In contrast with collective FIRs, those against individuals are rigorously implemented in the large majority of cases.

258. In response to further questions from Mr Gill, Ms Jahangir explained that it would be exceptional in cases brought under sections 295C and 298C if bail were granted. Courts are restricted in granting bail illustrated by a High Court ruling that it would not grant bail as it would be unfair to the accused as his life would be in danger. Decisions on bail are therefore influenced by the activities of groups outside the court. Pre-conviction bail may take, in a normal case, six months to a year to be granted but in the case of sections 295C and 298C, Ms Jahangir would be surprised if people got bail at all. As to any dangers in police custody, women's organisations rallied to change the law so that women were not kept in police custody because rape and torture were endemic. The alternative was prison. Such places are overcrowded by four times their capacity and there have been reports of the killings of non-Muslims and Ahmadis whilst in prison. Ms Jahangir has two clients, both Christians, who were killed whilst in prison. There was no post mortem, nor investigation, nor any enquiry.
259. Clarifying research into FIRs against Ahmadis, from 1988 research was possible but in difficult circumstances. To actually go and ask for details of all blasphemy cases was "suicidal". When asked whether the Khatme-e-Nabuwat generally engaged in killing, she confirmed there were reports that they did so although she was reluctant to develop this answer [with the implication she would be at risk herself].
260. In response to questions from Mr Lemer, Ms Jahangir explained that the courts and the police send details (of absconders) to the Interior Ministry to go on the Exit Control List. Mr Lemer sought clarification with reference to the Home Office Country Report on Pakistan which referred to people on the ECL as those involved in mass corruption, economic crime and people involved in terrorism but did not refer specifically to people who simply absconded. Ms Jahangir referred to reports in newspaper, two days ago of a lawyer being caught because he was an absconder and trying to leave the country. If an Ahmadi were to abscond when they were being accused of a blasphemy offence, it would be impossible for them to leave the country because there were organised groups set up that would ensure such people do not do so. It is very likely the person would end up on an ECL. The procedure for someone to be registered as an absconder is this. The police would look for the person and if unsuccessful would file (a suit) in the High Court. Notice would then be given outside the absconder's place of residence sometimes two, sometimes three times,

depending on the court, and thereafter under criminal procedure (rules) that person would be declared an absconder by the court. If the courts do not go through this procedure, someone will not end up on the ECL.

261. As to prominent Ahmadis, in the context of evidence of discrimination against them, Ms Jahangir confirmed there were exceptional people in high places in the government as public servants, but they stood out like a "sore thumb". Everybody would know they are Ahmadi. Many were there before 1974 but she was not able to say that none had been there post-1974.
262. The visit by Ms Jahangir and the Human Rights Commission of Pakistan to the Chief Minister took place two months before the attack on the mosques in May 2010. Their visit had been followed up by two letters.
263. Ms Jahangir explained that English language newspapers by and large would not "persecute" Ahmadis but "vernacular" newspapers would never write anything about Ahmadis unless it was to threaten or demonise them.
264. As to whether matters had got better or worse for Ahmadis in the last three years, Ms Jahangir said that violence has escalated for everyone.
265. In response to our questions for clarification, Ms Jahangir explained that in the previous five years she has not acted for Ahmadis as she practises mostly in the Supreme Court and most of the (Ahmadi) cases appear at trial and High Court level. A lot of Ahmadi lawyers undertake Ahmadi cases. On the matter of FIRs, these should be prepared at the police station. Thereafter, if the accusation is one of a very serious nature (a cognisable offence) the police will go and arrest an accused. If it is a minor offence, the police grant bail to the person. Because of the volume of cases, if it is a very minor offence, the police will take some time to (contact) the accused. The decision to refer the matter to the trial court is taken by the police and they are required to do so within 24 hours of arrest. The role of the prosecutor is reflected in a new system put in place. It has been operational for only a couple of years. Such prosecutors will accompany the police and they will be the persons who present the case to the court. However the police will come with a file. As to whether the prosecutor makes the decision whether the case should be referred to the trial court, this has started in some provinces but it is a new system and still in its infancy.
266. Ms Jahangir confirmed that the FIR against Rabwah has never been cancelled. From what she had been told, Ms Jahangir understood that this "blind FIR" is used against members of the Ahmadi community. It was being misused in this way until a year ago.
267. As to the number of Ahmadis who are awaiting trial, Ms Jahangir confirmed that her quotation was from that quoted in the *Zaheeruddin* case. She did not have a countrywide figure.
268. Ms Jahangir's impression was that she believed, as did other members of the Human Rights Commission, that the Ahmadi Association were keeping good figures and monitoring events affecting their members in Pakistan. She clarified a reference in her report to a large number of Ahmadi youth being kidnapped by Taliban on the assumption that ransom taken from non-Muslims was not forbidden in Islam. She understood the number involved to be in the "tens".

## SCHEDULE II

### THE SUBMISSIONS

269. The Secretary of State's case is set out in a skeleton argument dated 16 May which Mr Malik supplemented with argument at the hearing. He made the following key points:

- (i) There has been no material change since the decision in *MJ* and Mr Malik adopted the Secretary of State's position in that decision. The problem identified by the Tribunal in *MJ* over the extent of evidence of the number of blasphemy cases remained the same. The Tribunal then said that it was very difficult to assess real risk in a population of millions of Ahmadis based on an unspecified proportion of an unspecified level of blasphemy charges out of about 50 cases a year.
- (ii) Mr Malik noted that the appellants were relying on these four key points: the application of anti-Ahmadi laws amounts to persecution; the existence of such laws amounts to persecution; the risk from non-state actors and the state's failure to provide protection and internal relocation not being a viable or reasonable option.
- (iii) He argued that the proper inference that can be drawn from the lack of evidence is that either the number of prosecutions and convictions is so insignificant that no-one has ever documented it or the author of the report prepared by the association as evidence of the number of incidents against Ahmadis wants to put forward one side of the picture.
- (iv) The statistics relied on by the Ahmadi Association in its 2011 Persecution Report covered a 20 year period between 1984 and 2011. Even if one were to accept that the figures referred to many cases actually being registered against Ahmadis, the number was still very insignificant. The registration of a case against someone meant nothing. It is the police and prosecution who make the decision whether to arrest or charge a person. There is no reliable evidence that a mere general application of anti-Ahmadi laws amounts to persecution.
- (v) As to the proposition that the mere existence of the anti-Ahmadi legislation amounted to persecution, leaders of the Ahmadi faith were given the opportunity to address the law makers before the Constitution was amended (in 1974) and it had been accepted by Dr W that the legislation was rational.
- (vi) The decision of the Supreme Court in *Zaheeruddin*, although argued by Dr Lau to be biased, this was not the position of Ms Jahangir.
- (vii) There was no evidence that a well-known Ahmadi who had appeared on national TV as quoted in the Ahmadi Times to have made a mockery of anti-Ahmadi Ordinance was either arrested or charged. According to the article, someone had gone to the court for registration of the FIR but that petition was dismissed straightaway. This demonstrates the state has little interest in prosecuting those who breach the anti-Ahmadi laws.

- (viii) As to the risk from non-state actors, around 207 Ahmadis were killed in the 28 year period between 1984 and 2011 which includes 86 who were killed on 28 May 2010. The number of attempted murders is quoted as 234. As confirmed in his skeleton argument, overall in Pakistan 12,580 people were murdered in 2010 and there were 14,431 attempted murders. There were eight mosque attacks (as evidenced in a report from South Asian Terrorism Portal) in 2010. In 2009 there were 17 and in 2008 12. Such attacks are widespread. The attacks on 28 May 2010 were the only major terrorist attacks on Ahmadi mosques. This demonstrated either that the militants or the non-state actors were not keen to attack Ahmadi mosques or that the mosques are adequately and sufficiently protected. Despite the evidence that no-one in mainstream politics expressed any sympathy in 2010, federal ministers did visit injured people in hospital and the attacks were condemned by everyone in Pakistan. The attacks were carried out by the Taliban and within weeks after the attacks the suspects were arrested and weapons discovered. Mr Malik could not see what else a state could conceivably do.
- (ix) The killers of Governor Salman Taseer and the Minister for Minorities, Shahbaz Bhatti, were subsequently arrested.
- (x) It cannot be said that the media on the whole is biased or hostile towards the Ahmadi. The evidence by witnesses relating to what it had been asserted by the former Minister Aamar Hussain was exaggerated. He had been expelled from his party and this was evidence that anti-Ahmadi views were not welcomed in mainstream Pakistani politics.
- (xi) There is no evidence that the Khatme-e-Nabuwat incites or participates in the persecution of Ahmadis in Pakistan.
- (xii) Dr Lau had given evidence that it would simply be impossible to enforce the FIR against the City of Rabwah. Despite the evidence of Ms Jahangir, she acknowledged in her report that no-one had been arrested pursuant to that FIR. There was nothing to back the oral assertion she had made.
- (xiii) As stated in his skeleton argument, it is accepted that liberal values are much less respected in Pakistan and Ahmadis do face discrimination in certain circumstances. Mr Malik relied on the observations in *Shah v Islam* [1999] UKHL 20 as well as in *Sepet v SSHD* [2003] UKHL 15 and *Amare v SSHD* [2005] EWCA Civ 1600. In particular risk to the latter Laws LJ said:
- “The Convention is not there to safeguard or protect potentially affected persons from having to live in regimes where pluralist values are less respected, even much less respected than they are here.”
- (xiv) The TV station of the Ahmadiyya Muslim Association, MTA, is readily available throughout Pakistan and they have a number of publications which are both published and circulated in Pakistan.
- (xv) Ahmadis are generally safe in Pakistan but where exceptionally it is found one cannot return to one’s home area, the existence of the internal flight option will always be a question of fact.

- (xvi) As to the applicability of *HJ (Iran)* UKSC 31, the court was not setting a rigid principle but a flexible one to be applied according to the context of the claim made. There is no reliable evidence that those Ahmadiis who live openly in Pakistan are being persecuted. They are free to go to their places of worship up and down the country. As to preaching, individual Ahmadiis take their duty more or less seriously according to their own views and the strength of their devotion. It should not be assumed on the basis of the evidence of Imam Rashed that every single Ahmadi has a very deep conviction to preach his faith. Quoting from his skeleton, “the Secretary of State accepts that if an Ahmadi applicant demonstrates that if he returns to Pakistan and lives openly as an Ahmadi, he will face real and continuing prospect of persecution, he will be a refuge, even if, because of dangers of living openly, he will actually live discreetly.” Mr Malik clarified this by affirming in response to our enquiry “only then after as an Ahmadi he will face a real and continuing prospect of persecution”.
- (xvii) It is one thing to say that an Ahmadi should be permitted to live openly as an Ahmadi but it is quite another to say that he should be able to do all the things he is able to do in the United Kingdom or to preach his faith in a particular way. With reference to his skeleton argument, there was no evidence that an Ahmadi is at risk merely because he is an Ahmadi. The matters that are prohibited under section 298B of Pakistan’s Penal Code do not form part of their core religious doctrine and are at the margin of the protected interest. This provision does not bar Ahmadiis from practising the core of their faith. Section 298C restricts the ability of Ahmadiis to preach or propagate their faith in a particular way but does not prohibit preaching or propagation altogether, such as by conduct or attitude or inviting someone to attend their place to worship. Ahmadiis therefore can effectively preach and propagate their faith by remaining within the four corners of the law. There was no evidence that Ahmadiis were being denied their fundamental right to be what they are. There was no suggestion an Ahmadi should be forced to lie or be discreet about their faith in order to avoid persecution.
- (xviii) The approach of the Advocate General in *Germany v Y & T* is slightly different from what was said by John Dyson in *HJ (Iran)* but no matter what approach is adopted, the answer remains the same. The act in question must be particularly severe such that the person concerned can legitimately no longer live in or tolerate living in his country of origin. According to the Advocate General, it is for the authority responsible for reviewing the application for asylum to verify whether the legislation is actually implemented by the Pakistani authorities on the basis of regular reports issued by the states and by organisations. By way of conclusion of his analysis of the A-G’s opinion, Mr Malik argued the way in which a person is able to conduct himself in the United Kingdom was not a proper criterion; he should not expect the same level of tolerance in his country of origin.
- (xix) As to risks faced by Ahmadi women, Dr Ansari had acknowledged that she was not an expert specifically on Ahmadi issues. Dr Hamid is not an expert with experience in law or social sciences but just a layperson expressing her view. Dr Lau had not answered questions about women in his report and Ms Jahangir positively rejected the notion that women are more vulnerable than men.



- (xx) The situation of Ahmadis in Pakistan generally is not such that would bring them within the possible parameters of a flagrant or fundamental breach of Article 9 such as to amount to a denial or a complete nullification of rights.

270. Mr Malik then dealt specifically with the claims by all five appellants in his oral submissions as follows:

- (i) NM - The appellant is inviting the Tribunal to go beyond the ambit of the hearing. The evidence adduced had been rejected by the First-tier Tribunal and those findings have been preserved in the decision of UTJ Dawson on 10 May 2011. The Upper Tribunal had very properly stopped him (Mr Malik) from cross-examining NM on those matters and it would be wrong in principle to go beyond that ambit. He accepted that NM has been preaching in the United Kingdom since arrival, but he did not accept that he is a prominent or very exceptional Ahmadi and were he to return to Pakistan he would be able to live freely. Mr Malik did not accept there was a general risk to the community as a whole and if there is no general risk, the further questions of *HJ (Iran)* do not apply.
- (ii) NH - The First-tier Tribunal rejected all the evidence she had given and gave cogent reasons for doing so. She did not give evidence before the Upper Tribunal as to what she is doing in the United Kingdom and what it would be she would do on return. Her claim was bound to fail.
- (iii) SB- Her account put forward was rejected by the First-tier Tribunal. SB had adduced no reliable evidence that she was actually preaching in the United Kingdom and had failed to provide corroborative evidence from the friends and associates she had claimed to preach to.
- (iv) NH - Here the First-tier Tribunal had rejected her account. In explaining why she wished to stay in the United Kingdom there was no reference to any fear of persecution. We were directed to her answers from the transcript that was available "...because it is freedom over here, it is a good environment and one has freedom about religion...the imam the *khalifa* lives in this country...that is all." It is submitted that her claim is bound to fail also.
- (v) HQ - the First-tier Tribunal had made very clear findings rejecting his account. Unlike NM he has adduced no reliable evidence that he has been preaching in this country since arrival. Again Mr Malik relied on the lack of corroborative evidence.

271. In response to our questions for clarification, Mr Malik explained that there needed to be a fact-sensitive exercise to decide whether or not a particular Ahmadi is an exceptional Ahmadi and by that he meant to establish how an Ahmadi would conduct himself in Pakistan. An Ahmadi is exceptional in the sense of being at risk of arrest or being charged under, for example, the blasphemy provision. Being a prominent businessman in itself is not exceptional. His submission is that the state does take additional care in respect of Ahmadis, illustrated by there being only one major attack on Ahmadi mosques in the previous ten years, from which the proper inference was that such places are well protected.

272. Mr Malik further clarified that the question as to whether an activity (for instance propagating or preaching faith) was marginal or core is not dependent on any religious

doctrine as such but on the individual person. There were a number of ways to preach and propagate one's faith. On either a human rights analysis, in terms of core and peripheral elements of a right, or the approach of looking at the severity of the interference, Mr Malik submitted that the outcome was the same.

*SUBMISSIONS BY MR GILL QC AND MR D LEMER (FOR MN, SB AND HQ)*

273. A joint skeleton argument was adopted, supplemented by submissions from both Mr Gill and Mr Lemer. Key points in the skeleton of general application are these:

- (i) The focus is on the test in Art 1A(2) of the Refugee Convention for which the Qualification Directive provides a full and inclusive application setting out minimum tests for persecution and the reasons for persecution in Articles 9 and 10.
- (ii) There is no room for limiting the protected area of an individual's conduct to those actions which could be said to form the central core of his protected characteristic, reliance being placed on *Germany v Y & Z* and *HJ (Iran)*. All aspects of the expression of the protected individual identity are in principle protected and the attempt to restrict the protected area to the core activities arises from the misplaced attempt to introduce objectivity to what is a fundamentally subjective assessment of an individual's faith; and for the Tribunal to apply the core/peripheral test the Tribunal in fact would divert from the key question of assessing what the appellant would wish to do on return; and, furthermore, it suggests erroneously that the Pakistani state has a margin of appreciation that allows for the restriction of an Ahmadi's allegedly "peripheral" religious rights.
- (iii) There is no room for a consideration of what degree of feared interference with the full expression of one's protected characteristics may be reasonably tolerable. The search is not for what or may not be tolerable; it is to identify whether the situation into which the applicant risks being faced (and ignoring the fact that harm may be avoided by a self-induced restraint or concealment of his protected characteristic due to a fear of harm) amounts to a severe violation of his basic human rights or freedoms and thus to persecution.
- (iv) The question which is likely to require greater scrutiny is not whether the applicant's desired activity is protected by international human rights norms: the full breadth of it almost certainly will be, so long as he does not engage in that activity in a way which amounts to a disproportionate interference with the internationally recognised basic human rights and freedoms of others. The question which is likely to require the greatest attention is whether the feared interferences with the manifestation or expression of the applicant's protected characteristic amount, by reason of their nature or repetitive or cumulative effect, to persecution.
- (v) The correct analysis involves a consideration of:
  - (a) what religious activities would an applicant wish to engage in upon return; and
  - (b) whether, if he were to engage in those activities, he would be exposed to a real risk of persecution.

- (vi) The general submission is made that the evidence demonstrates that at the very least Ahmadis are at risk in Pakistan when they openly express their faith (in contravention of the Pakistan Penal Code) resulting in a real risk of prosecution amounting to persecution and/or when they become known to non-state agents as Ahmadis resulting in ill-treatment against which the state will be unwilling or unable to protect them. Additional risk factors included activities for the Ahmadi community in the United Kingdom.
- (vii) The risk of persecution of Ahmadis in Pakistan has to be viewed in the context of Pakistan's legislative measures, the actions and policies of state organisations, law enforcement agencies, the media and other leading institutions.
- (viii) A prosecution will amount to persecution where (with reference to Article 9(2)(c) of the Qualification Directive) the prosecution or the punishment arising from it is discriminatory and/or disproportionate as well as the impact of the criminal justice process considered as a whole.
- (ix) It may be open to the state to provide for restrictions upon religious practices supported where necessary by criminal punishment, provided that those restrictions are both non-discriminatory and proportionate to the legitimate aim of promoting religious pluralism and ensuring peaceful coexistence of religious groups, reliance being placed for this contention on *Federal Republic of Germany v. Y & Z*.
- (x) It is contended that the introduction of the provisions in the Pakistan Penal Code were motivated by increased religious extremism in Pakistan rather than the need to secure public order and if it was the latter it meant the state had capitulated and sacrificed the rights of a minority group in view of the demands of an oppressive majority. Thus, far from being a rational system it is contrary to all norms of human rights, as indicated by Lord Dyson in *HJ (Iran)* in his reference to African countries needing to reflect in state practice strongly and genuinely anti-gay views.
- (xi) It is argued that it is not realistically open to Ahmadis to achieve an amendment of the provisions and as an indicator of persecutory treatment reliance is placed on the targeting of Ahmadis under the relevant provisions of the Pakistan Penal Code, the length of pre-trial detention and the inability of Ahmadis to secure release on bail, as well as a lack of fair trial procedures. Account is to be taken also of the length of post-trial detention pending appeal and the treatment of Ahmadis in detention.
- (xii) It is further contended that persecution can be established in other ways and for the Ahmadi there are restrictions in relation to voting, marriage, education, employment, freedom of expression, freedom of assembly and access to humanitarian relief.
- (xiii) It is necessary for adherents of the Ahmadi faith to curtail their expression of religion by avoiding the use of the nomenclature set out in section 298B, abstaining from reciting *azan*, not defining or referring to themselves as Muslims, not being able to undertake the *haj* (one of the five pillars of Islam) and not disseminating their faith.
- (xiv) As to Convention reason, the protected religious activity is relied on coupled with actual or imputed political opinion which can cover any action perceived to be a challenge to government authority.

- (xv) Non-state actors including the Khatme-e-Nabuwat are central to the risk of persecution of Ahmadis arising from their instigation of prosecutions under the Pakistan Penal Code and the fact that the Pakistani state is either unwilling and/or is unable to provide adequate protection in the face of ill-treatment from non-state actors.
- (xvi) Internal relocation is not available because an open expression of faith will lead to real risk of prosecution and/or ill-treatment from a non-state agent throughout Pakistan.
- (xvii) Ahmadis are the most targeted minority in Pakistan and there has been an increase in incidents of violence over the past three years. Although in absolute terms the statistics regarding the number of prosecutions and deaths do not demonstrate a vast number, this is explained by under-reporting, inadequacies of the system for recording, statistics and the great extent to which most Ahmadis exercise extreme discretion in the exercise of their faith in the light of the high risk of targeting by state and non-state agents.
- (xviii) In so far as Article 9 of the Human Rights Convention is engaged, it is accepted it will be necessary to show a flagrant denial of the Convention right: see *R (Ullah) v Special Adjudicator (DO v AIT)* [2004] UKHL 26 and *EM (Lebanon) v SSHD* [2008] UKHL 64. To the extent that any of the acts or anticipated acts relied on are not deemed to amount to persecution in themselves, it is contended that they form part of the relevant flagrant denial which has resulted in a virtual nullification of their ability to practise their faith. It is contended that those Ahmadis who do not satisfy the *HJ* (Iran) test on the basis that they have not acted discreetly for fear of ill-treatment are able to succeed under Article 9 ECHR.

274. In his oral submissions, Mr Gill developed these arguments. The following key points emerge in addition:

- (i) There is a fundamental flaw in the way in which the Secretary of State has put the case because on the one hand it is accepted that concealment, discretion, restraint, is not to be expected of an individual and that a real risk of persecution would be made out if a person behaves as an Ahmadi openly and if he faces certain consequences which arise to an inappropriate level, it is accepted by the Secretary of State that will amount to persecution. However the Secretary of State has submitted that it is only her definition of openness that the Tribunal can adopt. The Secretary of State's idea of openness denies an Ahmadi even the most basic aspects of his identity which is to pray openly in public or in private in the community of others and denies them the essence of their religion which would include their right to preach or to propagate.
- (ii) There is no basis in any form of international case law or domestic case law which would support the proposition that the Pakistani law affecting Ahmadis is rational.
- (iii) The individual is entitled to the fullest expression of a religious identity which is one of the most important and personal things to an individual which the lexicon of human rights seeks to protect. It is degrading to an individual to have to conceal something as fundamental as a religious identity. To deny the right to do that on a discriminatory basis is degrading treatment.

- (iv) For the Ahmadi there is an atmosphere of constant insecurity and fear of arbitrary violation of Article 3 rights, Article 5 rights, Article 9 and 14 rights. The fact that the risk of detention is constantly there, the effect that one can assume will have on a person's state of mind and the chilling effect that there will be on such individuals to therefore hide their identity, all that is a condition of being rendered invisible, effectively as the Jews had to be during the course of 1930s Nazi Germany.
- (v) In contrast with the appeals before us, the previous case law did not analyse the Pakistani laws or the application in the way which has now been possible and things have changed significantly since *MJ*. There is a growing trend of Islamisation in Pakistan so that any group or individual who is perceived as being anti the mainstream Islam is a legitimate target.
- (vi) With reference to the opinion of Advocate General Bot:

"It is for the authority responsible, the asylum granting authority for reviewing the application of someone to verify whether the legislation is actually implemented by the Pakistani authority ... on the basis of regular reports issued by states and by organisations for the protection of human rights. If it is it can reach the level of persecution."

Mr Gill accepted that despite these remarks, it is a shared duty.

- (vii) The category of individuals therefore who are at risk is going to be far, far broader than was thought to be the case in *MJ*. It is going to encompass anybody who genuinely says:

"The following activities are important to me in the way in which I express my faith. If I indulge in those activities I will come to the attention of groups like KN, and that will give rise to an atmosphere of insecure daily living, which I should not be expected to put up with and if an FIR is issued, even more so."

The case was not being kept that narrow and (based on Mr Gill's earlier submissions), to deny people the ability to express aspects of their faith, amounts in itself to persecution irrespective of whether they attract the interest of the Khatme-e-Nabuwat.

- (viii) The evidence of Ms Jahangir is important as she accepts that women face additional hurdles and problems and additional discrimination and risks within Pakistani society and so therefore are more easily targeted. They become visible partly from the way they dress. Although women tend to get bail more easily, one could see why, bearing in mind the criticism there has been of Pakistan's treatment of women in the legal system.
- (ix) As to Article 9 of the Human Rights Convention the law on proportionality needed to be applied but when there is a manifestation of such a fundamental right as the right of religion, a high set of circumstances would be required which could justify interference. Even though Mr Gill did not accept the core periphery analysis, he submitted that the manifestation of religious identity of the Ahmadis is being interfered with in Pakistan in a very core way, amounting to a denial of core identity.

- (x) It is not just a case of the law which on its face is neutral being applied in a discriminatory and persecutory manner, the case being put is that the law itself is stated to be anti-Ahmadi and targeting a particular community group.
- (xi) All Ahmadi are potentially at risk but that does not mean to say that there will not be cases that fail. By the phrase "genuine Ahmadi", it was meant somebody who was actually interested in expressing a religious identity. One may have a genuine Ahmadi who may say, "Well I am a genuine Ahmadi but I don't actually do anything about it, I don't manifest my "Ahmadiness" in any way because it is not important to me". That is not the sort of person, Mr Gill argued, needs protection. Mr Gill illustrated this with reference to someone who was born an Ahmadi but did nothing about it in practice or in terms of openness in the way in which life was lived.
- (xii) In principle, the perception of others that a lapsed Ahmadi is still an Ahmadi could in theory give rise to an argument for protection but evidence would need to be produced in such cases.

275. Mr Lemer added these additional points:

- (i) It is right to recognise that there is an apparent contradiction between the information available that the numbers of Ahmadi being prosecuted or encountering ill-treatment looks quite low and the evidence of significant problems for Ahmadi in Pakistan. The vast majority of Ahmadi however will take significant precautions in manifestation of their religious beliefs and so the incidents of violations are less. There are reasons why individuals would not want to involve the community for support as they may wish to use other means to solve the dispute by perhaps giving in to the business rival and it may not be in the particular interests of an Ahmadi to raise the profile of their complaint by reporting it to the community.
- (ii) The annual community report for 2011 records the outcome of cases where FIRs had been issued, indicating there is some analysis. Analysis of outcomes of FIRs on a systematic basis will require a very considerable amount of organisation to track through what has happened to each person who ends up within the Pakistani criminal justice system.
- (iii) It is not right to say that there have only been two mosque attacks in 2010. These have been the only ones in the recent past as illustrated by page 114 of the Persecution Report 2011<sup>17</sup>.
- (iv) The authorities have not undertaken any investigation into the shortcomings exposed by the May 2010 mosque attacks. No action has been taken against the six people who have been arrested and so, although they may languish in jail, nothing further has happened in relation to them.
- (v) Dr W had given evidence that the reason for the changes to the Pakistan Penal Code was not public disorder but pressure from religious minorities. There is objective evidence showing the involvement of the Khatme-e-Nabuwat in the Rawalpindi incident as illustrated by the Amnesty International news report of 2 February 2012

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<sup>17</sup> 12 Ahmadi Mosques set on fire, 16 forcibly occupied and 23 demolished.

and a report by www.ucanews.com dated 14 June 2011 recording Ahmadis seeking government protection after Khatme-e-Nabuwat distributed pamphlets including a hit list containing the names of 32 businessmen, teachers, and doctors, along with their addresses in Punjab province. Their involvement is further demonstrated by the records (at Annex D).

- (vi) MTA TV is based in the United Kingdom and it would be requiring a lot of the Pakistan state to block the satellite transmission.
- (vii) If an FIR had been issued against someone historically the longer they are in the United Kingdom in general terms the higher the likelihood of absconder status with consequent risk on return because of the ECL.
- (ix) Pre-arrest bail covered situations where someone against whom an FIR has been issued goes straight to court to obtain bail. This would arise where someone had found out about the FIR prior to the police arresting them.

*SUBMISSIONS BY MS JEGARAJAH AND MR YEO (ZN AND NH)*

276. A joint skeleton argument was been provided. Although we do not wish to do any injustice to the quality of the skeleton and subsequent submissions we heard, our focus is on points not already canvassed by Mr Gill and Mr Lemer. In particular we note this additional material:

- (i) Article 18 of the Universal Declaration of Human Rights of 1948 became a norm of international law in 1966 with the International Covenant on Civil and Political Rights which made concrete the basic freedoms of religion and conscience articulated in the UDHR and made its signatories bound by it. In addition to prohibiting state coercion that would impair a person's freedom to practise or adopt a religion or belief of their choice, the ICCPR also prohibits states from denying religious minorities the right, in community with other group members, to enjoy their own culture, profess or practise their own religion or to use their own language. Such rights are non-derogable except where the interests of public safety, order, health or morals, or the fundamental rights and freedoms of others as prescribed by law, justifies their limitation.
- (ii) There is a consistent theme within international jurisprudence that restrictions on public and other expressions of faith will amount to persecution under the Convention: *Bastanipour v Immigration & Naturalisation Service* 980 Fm 2<sup>nd</sup> 1129 (7<sup>th</sup> Circuit, 7 December 1992), *Kazemzadeh v Attorney General* (11<sup>th</sup> Circuit, 6 August 2009) (US);, *Appellant S395/2002* [2003] HCA 71 (Australia), *NABD v Minister for Immigration & Multicultural & Indigenous Affairs* [2005] HCA 29 (Australia) *Wen v Minister for Immigration & Multicultural Affairs* [2000] FCA 1599 (Australia), *Fosu v Canada (Minister of Employment & Immigration)* [1994] 90 FTR 182, FCJ No. 1813 (Canada), *Husseini v Minister of Citizenship & Immigration* [2002] FCT 177, *Irripugge v Canada (Minister of Citizenship & Immigration)* [2000] 182 FTR 47 (Canada), *Golesorkhi v Canada (Citizenship & Immigration)* [2008] FC 511 (Canada), and *Zhou v Minister of Citizenship & Immigration* [2009] FC 1210.
- (iii) *HJ (Iran)* is born out of these authorities.

- (iv) Attempting to divide Ahmadis into categories of ordinary and exceptional or proselytising and quiet misses the point and is legally flawed. The Tribunal should be cautious of questioning the importance to Ahmadis of calling themselves Muslim or calling their mosques 'mosques', using the azan and similar. There is no authority or support for the Secretary of State's distinction between core and peripheral aspects of a religious faith or the practice of a religion and the Tribunal should reject this proposed approach: see *RT (Zimbabwe) & Others v SSHD* [2010] EWCA Civ 1285 and the *Federal Republic of Germany v Y & Z*.
- (v) In 1985 the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution stating that Ordinance XX violated prima facie the right to liberty and security of person, the right to freedom from arbitrary arrest and detention...the rights of religious minorities to profess and practise their own religion and their right to an effective legal remedy.
- (vi) The UNHCR Eligibility Guidelines for assessing the international protection needs of members of religious minorities from Pakistan is relied on.
- (vii) Pakistani law provides ineffective citizenship or effectively denies effective citizenship to Ahmadis as a class. They may only enjoy citizenship if they deny their faith. Pakistan is the only state to have declared Ahmadis to be non-Muslims by law.
- (viii) Ahmadi women constitute a PSG, with faith and gender being clearly immutable characteristics comprising a group. Self-protection is the only limited protection available to male members of the community and is not available to women who are impossible to protect with lack of resources and the effect of non-attendance by them at their place of worship is profound. Ahmadi women cannot obtain protection as with other women in general or particularly as Ahmadi women.

277. Key points from Ms Jegarajah's oral submissions were these:

- (i) It is important to look at faith and belief in a holistic way but the starting point is whether Ahmadis consider themselves Muslim to which the answer is a definite yes and as a consequence should be able to stand in a market and say "I am a Muslim".
- (ii) There is nothing disguised about the Ordinance XX and the anti-blasphemy laws; you do not have to work on the basis of any subtle inference, it is persecutory as it declares Ahmadis to be non-Muslims and they are not permitted to express themselves as such.
- (iii) It is very difficult to divorce the question of being an Ahmadi from a political issue as it is one that strikes at the very heart of the integrity of the Pakistani state and that is the reason why Ahmadis - as opposed to all other minorities - pose much more of a threat than any of the other minorities as is clear from history.
- (iv) The Pakistani state uses the law as a persecutory tool against Ahmadis and the anti Ahmadi legislation itself is persecutory as it breaches core principles of human rights law.
- (v) An Ahmadi is somebody who declares himself to be an Ahmadi not somebody who has committed various degrees of propagation of the faith.



- (vi) Ahmadis have had to perform self-repression and self-denial since the anti-blasphemy laws came about.
- (vii) For 22 years, Ahmadi women have actually never been considered by the Tribunal. The role of women within the Ahmadi community is quite core. They are educators, they are nurturers and they retain the honour of the community. They are in a particularly vulnerable situation. They are unable to take their children to the mosque and they cannot meet other women in communality of worship which is the highest form of worship with other women in the mosque. They experience persecution as Ahmadis through a different prism. Women's organisations within the Ahmadi community are extremely visible. The way in which the community is protecting Ahmadi women is to require them to stay at home and this is one of the worst and most profound aspects of persecution in Pakistan. Ahmadis neither enjoy the full rights nor the basic rights of citizenship in Pakistan evidenced by the situation over passports.
- (viii) The anti-blasphemy laws negate the essence of being an Ahmadi. The issue is not whether an Ahmadi being returned is going to propagate but rather the issue is the right of an Ahmadi to declare himself a Muslim in any way, shape or form.
- (ix) Among the many cases relied on by Ms Jegarajah, the concluding one was a New Zealand case<sup>18</sup> from which she quotes: "by requiring the refugee applicant to abandon a core right, a refugee decision maker is requiring the refugee claimant, the same submissive and compliant behaviour, the same denial of a fundamental human right which the agent of persecution in a country of origin seeks to achieve by persecutory conduct". Although the New Zealand Tribunal was dealing with a case by an Iranian homosexual, she considered this analogous to the Ahmadi cases.
- (x) The reason why there is an absence of evidence (of the outcome of FIRs and their number) is not because of some deficiency in the data collection process but because people do not stick around. They go into hiding. They claim asylum.

278. Mr Yeo's submissions included the following points:

- (i) Gay marriage and the right to organise a parade are rights which are protected by international law in the same way that the right to freedom of religion is.
- (ii) Despite the submission of the Secretary of State that Ahmadis are not being forced to lie, it is his contention that they are in order to obtain a passport or to vote which are core civil rights.
- (iii) "Living openly" (the phrase in *HJ (Iran)*) is about sexuality. However what is in issue in the appeal is freedom of expression of religion and this would be a better way of putting it rather than living openly.
- (iv) It was an incorrect approach to divide a religious group into quiet and loud adherence and its previous approach to exceptional and unexceptional or proselytising and quiet

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<sup>18</sup> Refugee Status Appeals Authority New Zealand Appeal No 74665/03

Ahmadis relying on *NABI v Minister for Immigration and Multicultural Affairs & Anor* [2005] HCA39.

- (v) A further authority *NAEB v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCAFC 79 indicated the correct approach where somebody had only a loose commitment which if so might not create a Convention reason at all.
- (vi) In assessing risk it is not only the way in which people themselves self-identify but also the perception of others around them. If someone is seen as an Ahmadi they would be at risk and this would apply even if someone were not going to the mosque on a regular basis.
- (vii) Mr Yeo urged caution on the Tribunal as to its expectations of the evidence that might be available for Ahmadis. The Ahmadi Association does not exist for the purpose of collecting statistics and they do their best to collect data. It is correct that there is an absence of information on the follow-up to Ahmadis against whom FIRs have been filed. It is not that they have got the data and are hiding it, it is simply that they did not see that it is particularly important and those affected would not always want or be able to inform them.
- (viii) It is important not to hold the experts out as something they are not. The Ahmadis are the best people to give evidence on what it is like to be an Ahmadi and on the experience of Ahmadis in Pakistan. It is true that they are not independent and it would also be right to say that they are not objective but that does not mean that they are not reliable. Dr Hamid's evidence should be seen in this light.

*MN, SB, and HQ*

279. The joint skeleton argument by Mr Gill and Mr Lemer provides additional submissions on each of the above appellants. Starting with MN, it is argued:

- (i) The appellant has advanced significant evidence as to his religious activities in the United Kingdom.
- (ii) It is recognised that the Tribunal has expressly chosen to limit its further consideration of his case to his proposed conduct on return. It is submitted that he would be at risk on return in the light of the evidence advanced during the course of the hearing before the Upper Tribunal as a result of his presence on the published list of Ahmadis who were injured during the 28 May 2010 mosque attacks and his consequential position as a prominent Ahmadi upon return.
- (iii) The evidence clearly indicates that those who would wish to openly proselytise are at risk of ill-treatment from non-state agents and prosecution by the Pakistan state under the Pakistan Penal Code on the basis that any prosecution under that code would amount to persecution and in the event it did not it amounted to a breach of Article 9 of the Human Rights Convention.
- (iv) It is not open to the appellant to temporarily relocate as no evidence suggested an openly proselytising Ahmadi could live safely elsewhere, taking account of the nationwide structure and reach of the Khatme-e-Nabuwat.

- (v) A further risk factor is the profile of the appellant within the Ahmadi community in the United Kingdom and the evidence suggesting that the Khatme-e-Nabuwat have the ability to identify such individuals to their colleagues in Pakistan.
- (vi) For the appellant, open preaching forms an important/core part of his religious identity but he does not accept that it is necessary to demonstrate that preaching forms part of the core identity, merely that he would genuinely wish to preach and manifest that aspect of his faith.

280. The additional submissions on SB argue:

- (i) None of the matters asserted by SB (in support of her claim) are actually rejected by the First-tier Tribunal save for the complaint made against her in December 2010. The core of her claim was accepted and on the further evidence she gave to the Upper Tribunal:
  - (a) she is an Ahmadi woman who has had to restrain or conceal her religious activities including preaching due to a fear of serious harm;
  - (b) she has been restricted in numerous ways from the expression of her faith which strike at the heart of her religious identity;
  - (c) she had occupied a preaching role for about twelve years but contrary to her reasonable desires this had to be limited to select audiences;
  - (d) SB occupies a position more prominent or visible than the average Ahmadi who does not speak out or does not take the lead preaching role. The First-tier Tribunal had not rejected the account that she suffered the attentions of Khatme-e-Nabuwat for many years.
- (ii) Had the FT addressed the issue of restraint due to fear, her appeal would have been allowed.

281. Additional submissions on HQ:

- (i) It is noted that the Upper Tribunal's consideration of HQ's claim is limited by virtue of the various unchallenged findings of the First-tier Tribunal, namely:
  - (a) the account of events in Pakistan has been rejected;
  - (b) however the appellant's account of active involvement with the Ahmadi community in the UK and his wish to be fully involved in the practice of his religion including openly preaching is unchallenged, such practice including distributing leaflets, explaining the brief ideas of her faith, referring people to the community website, undertaking various posts in the United Kingdom, and attendance and participation on preaching stalls.
- (ii) Were HQ to openly proselytise she would face prosecution and that prosecution would amount to persecution. If not it would amount to a flagrant breach of Article 9 of the Human Rights Convention.

- (iii) The option of internal relocation is not available as there was no evidence to suggest that an openly proselytising Ahmadi could live safely anywhere in Pakistan and having regard to the nationwide structure of the Khatme-e-Nabuwat.
- (iv) It is argued that the appellant's risk is heightened by the high profile he has had with the Ahmadi community in the United Kingdom and the evidence suggesting that the Khatme-e-Nabuwat have the ability to identify such individuals.

282. Both Mr Gill and Mr Lemer supplemented their skeleton argument with oral submissions directly on the circumstances of all three appellants from which the following key points emerge:

- (i) As to NM, there was unchallenged evidence as to his acts of preaching in the United Kingdom. It was of somebody who had really exhibited his intention to openly preach in the UK and that has to be contrasted with the findings in relation to what had happened to him in Pakistan. NM is a person who would wish on his account to openly preach and exhibit his faith upon return to Pakistan.
- (ii) Internal relocation was not raised in SB's case in the First-tier Tribunal and no Rule 24 response has been raised in relation to it. The First-tier Tribunal Judge had only mentioned four reasons for concluding that he could not accept the account as true of her activities and experiences in Pakistan. In essence, the judge had accepted that she had taught for about twelve years and had taught to non-Ahmadis but had taken great care to ensure that it was not to people she did not know something about.
- (iv) The same questions are applicable to HQ. Mr Malik had argued that HQ had not submitted any evidence to demonstrate he had been preaching. This is not accepted. Findings were actually made by the First-tier Tribunal that he had been distributing leaflets to homes and shops in the United Kingdom and referring people to the community website in explaining the brief ideas of the Ahmadi faith, all of which had been accepted. A letter from the Ahmadi Muslim Association of 13 March 2012 corroborated his activities.

283. In respect of NH, we heard the following key points in supplementary submissions from Mr Yeo that this appellant is clearly a committed Ahmadi and has been involved in proselytising and seemed to have done so discreetly in the sense that it did not lead to difficulties. Reference is made to her evidence whether if asked in Pakistan about her religion she would respond that she is an Ahmadi.

284. Mr Yeo also made specific submission on ZN. The First-tier Tribunal Judge had found that she and her husband had never been open about their faith in public and that they do not carry the obligation to propagate to any degree. The judge did not reject her claim that she had had problems from time to time. The incidents on which the appellant relies are the sort of incidents that it is argued Ahmadis suffer on a day-to-day basis and it could not possibly be the case that the appellants NH and ZN could have given their accounts around the submissions that have emerged and evolved through the course of the hearing before the Upper Tribunal.

### SCHEDULE III

#### SUPPLEMENTARY SUBMISSIONS

285. The Secretary of State's response to our invitation for further submissions on the relevance and effect of *RT (Zimbabwe) & Others v SSHD* [2012] UKSC 38, the United States International Religious Freedom Report 2012 and the decision in *Federal Republic of Germany v Y (C-71/11)*, & *Z (C-99/11)* are in summary:

##### *RT (Zimbabwe)*

- (i) The appeals before us are fundamentally different from the circumstances in *RT (Zimbabwe)*. There is no suggestion that any Ahmadi should lie and feign loyalty to the majority faith in order to avoid the persecutory ill-treatment to which he would otherwise be subjected. There is no suggestion that any Ahmadi should conceal his faith in order to avoid persecution that would follow if he did not do so.
- (ii) The Secretary of State's primary position is that there is simply no reliable evidence that Ahmadis who live openly or those who do not demonstrate positive support to Sunni majority faith are generally at risk of persecution in Pakistan.
- (iii) The restrictions on Ahmadis propagating their faith or the fact that they do not have the same rights as non-Ahmadis may be discriminatory but fall short of the required threshold to establish persecution for the purposes of the Refugee Convention. The distinction as to what is at the core of the protected right and what is at its margin is valuable here because, adopting the words of Lord Dyson "It focuses attention on the important part that persecution is more than a breach of human rights".

##### International Religious Freedom Report

- (iv) This report does not take the evidence heard at the appeal hearing much further.
- (v) The report acknowledges that a 2005 law requires a senior police officer to investigate any blasphemy charge before a complaint is filed which demonstrates there is now an additional hurdle in registering a complaint under the blasphemy provisions and thus a procedural safeguard.
- (vi) There is no restriction on Ahmadis (in relation to citizenship rights including the right to vote) who declare themselves as Ahmadis.
- (vii) The report acknowledges the provisions in the Constitution for freedom to manage religious institutions.
- (viii) The report notes the efforts of the government to promote interfaith harmony and its efforts to regulate religious schools (madrassahs).
- (ix) The statistics of the data provided by the National Commission for Justice and Peace during the year of a total of 49 cases registered under the blasphemy laws of which eight were against Christians, and two against Ahmadis, with 39 against Muslims

undermines the appellants' contentions that Ahmadis are the specific target of the blasphemy laws.

- (x) The report highlights key improvements and developments in respect for religious freedom.

Federal Republic of Germany v Y & Z (C-71/11 and C-99/11)

- (xi) It is submitted that the restrictions on the followers of the Ahmadi faith in Pakistan may amount to an interference with their right of religious freedom, however the interference is no way near to "severe violation" of the protected right. There is no reliable evidence that any interference is of such gravity so as to be categorised as persecution.
- (xii) In relation to the distinction between core and marginal rights there is an apparent tension between the approach of the Court of Justice (at paragraphs 62 to 66) and some of the observations by Lord Dyson in *RT (Zimbabwe)* at paragraph 50: "A determination of whether the applicant's proposed or intended action lay at the core of the right or at its margins [is] useful in deciding whether or not the prohibition of it amounts to persecution." It is submitted that whether the approach in *Y & Z* or in *RT (Zimbabwe)* is adopted, the result remains the same. Whether the matter is considered by reference to "the severity of the measures and sanctions adopted" or by using "a human rights framework in order to determine the limits of what an individual is entitled to do and not do", the treatment of Ahmadis falls short of the required threshold to establish persecution for the purposes of the Refugee Convention.
- (xiii) There is no reliable evidence that Ahmadis generally run "a genuine risk of being prosecuted or subject to inhuman or degrading treatment or punishment" by exercising the freedom to live openly as Ahmadis in Pakistan (with reference to the observations of the CJEU at paragraphs 68 to 70. The question as to how an Ahmadi looked at individually will conduct himself if returned to Pakistan and how others will react to what he does will always be fact sensitive. The concluding observation of the Court of Justice at paragraph [79] is consistent with the Secretary of State's submissions. It is argued there is no suggestion that any Ahmadi should conceal his identity, lie about his faith or abstain from key religious practices in order to avoid the persecutory ill-treatment which would follow if he did not do so.

286. Mr Gill for SB and Mr Lemer for MN and HQ have made further submissions on *RT (Zimbabwe)*, the US Department of State Religious Freedom Report 2011 and *Germany v Y & Z*. Ms Jegarajah and Mr Yeo have also on behalf of ZN & NH. In summary, Mr Lemer made these points:

*RT (Zimbabwe)*

- (i) This case is relevant as it addresses the core/marginal belief discourse.
- (ii) As Lord Dyson recognised [paragraph 42], the SSHD's attempt to shift the debate towards a reliance on a core/marginal distinction "bears a striking resemblance to the Secretary of State's contention in *HJ (Iran)* that the individuals in that case would only have a well-founded fear of persecution if the concealment of their sexual orientation

would not be ‘reasonably tolerable’ to them”. Reference is made to para [47] of *RT (Zimbabwe)* where Lord Dyson says that the Secretary of State’s suggested core/marginal distinction misunderstands *HJ (Iran)*.

- (iii) It follows from *RT (Zimbabwe)* that an analysis of the nature of the proposed/actual activity needs to be undertaken.
- (iv) Both *Germany v Y & Z* and *RT (Zimbabwe)* are entirely consistent with the appellants’ submissions that the Pakistani state is not entitled to prescribe limitations to the right to religious belief in the way that it has done. The conduct which the appellants wish to be able to carry out (the various forms of expression and manifestations of their religious belief in which they consider are restricted) cannot be described as being part of the margins of the protected right.
- (v) In the context of Ahmadis in Pakistan the appellants submit that any manifestation of belief that would lead to potential prosecution within the PPC, or ill-treatment at the hands of extremists, is by definition sufficiently core to attract the protection of the Refugee Convention. There is no reason to treat being at the margins of any type of expression of religious identity (which go far beyond just religious preaching and propagation of belief) which the appellants wish to carry out in these cases.
- (vi) The rejection in *RT (Zimbabwe)* of the Secretary of State’s reliance on the core/marginal distinction was in firm terms. Protection will extend for example to an Ahmadi businessman who may not be religious in many ways but it was treated by others as being an Ahmadi and who by reason of that fact, faces persecution. There is nothing marginal about the right of an Ahmadi not to practise his religious identity and yet be free of the risk of persecution at the hands of those who would label him as an Ahmadi and persecute him on that ground.
- (vii) The question is not how important is the right in question to the individual. The question is whether the right in question falls from the area of protected activity and whether the right (or perceived or imputed possession or expression of it) gives rise to a risk of persecution. As the appellants have been at pains to point out, the present case is not simply about preaching. It involves the expression of *all* aspects of “Ahmadiness” in Pakistani society.
- (viii) The importance of the right in question can however be relevant in intensifying the sense of persecution so that acts which may not otherwise be persecutory become persecutory because of the importance to the individual of fully protected right.

#### International Religious Freedom Report 2012

- (ix) It is submitted that this report is consistent with the country information previously advanced and specific passages are referred to including the increase in societal intolerance and violence against minorities. Of the statistics concerning murders of Ahmadis it is noted that five were murdered in the year and two blasphemy cases were registered against Ahmadis, such figures being consistent with the persecution of Ahmadis in Pakistan during the year 2011 report.

#### Federal Republic of Germany Y & Z C-71/11, and C-99/11

- (x) The CJEU makes it clear that it is not necessary to distinguish between core and non-core areas of an individual's religious manifestation. The definition of religion encompasses all of its aspects, be they public or private, collective or individual.
- (xi) The CJEU has clarified that acts which may constitute a "severe violation" within the meaning of Article 9(1)(a) of the Qualification Directive includes serious acts which interfere with the applicant's freedom not only to practise his faith in private circles but also to live that faith publicly. All kinds of acts of interference with the right to practise one's religious belief may amount to persecution depending on whether by reason of its nature or repetition, it amounts to a severe violation. Reliance is placed on the appellants having already demonstrated the evidence of this.
- (xii) The CJEU has held that acts which on account of their intrinsic severity as well as the severity of their consequences for the person concerned may be regarded as constituting persecution and that such acts must be identified, not on the basis of the particular aspect of religious freedom that is being interfered with but on the basis of the nature of the repression inflicted on the individual and its consequences as observed by the Advocate General at point 52 of his Opinion. It is argued that there can be acts which are so restrictive of the practice of religion that the intrinsic severity of the restriction itself is enough to amount to persecution irrespective of the consequences. The mere fact that communal worship is so rigidly controlled by the state, so that even the collective saying of prayers in the manner required by Ahmadi religious belief is prohibited, in itself amounts to persecution.
- (xiii) An assessment of the severity of the measures and sanctions adopted (or likely to be adopted) determines whether the violation constitutes persecution. It is contended that at paragraph 69 the CJEU made it clear that persecution for participation in formal worship, either alone or within a community, may well amount to persecution. The court further held that it was relevant in determining whether there is a risk of persecution to make an objective assessment as to what an individual would wish to do.
- (xiv) It is submitted that the CJEU continues to reject the core/peripheral dichotomy proposed by the respondent. Whilst the Secretary of State had suggested that the Supreme Court's judgment in *RT (Zimbabwe)* should be confined to its political opinion based context, it is now clear that such a distinction is redundant.
- (xv) As to the respondent's submission that it is material to determine whether the religious manifestation is core or peripheral to the protected right, the Court of Justice judgment expressly undermines the contention that a focus on the nature of the religious manifestation is relevant.
- (xvi) The need to consider the subjective circumstances requires a consideration of what the individual appellant would wish to do on return to Pakistan in the practice of their Ahmadi faith. The court's judgment is a clear and unequivocal endorsement of the position adopted by the appellants:

"The application of the tests set out by the CJEU are to the sort of conduct which the appellants would wish to carry out in Pakistan and as the appellants have made clear, we are not simply talking about preaching but about manifestations of their religion and the



practice of what is required by the religion in all aspects of life means that each of the appeals must now succeed.”

287. Turning finally to the further submissions on behalf of ZH and NH by Ms Jegarajah and Mr Yeo, specifically as to *RT (Zimbabwe)*, it is submitted:

- (i) The appellants’ case is that the Ahmadis are persecuted by being prevented from practising their faith at pain of persecution and are actively targeted for persecution and are denied protection and their civil rights which either constitutes persecution or contributes to it.
- (ii) Some of the terminology of *RT (Zimbabwe)* may require adjustment for the concepts to be applied accurately in the different context of religion as opposed to sexuality or political opinion. ‘Living openly’ is not quite the right test in the context of religion for example. A better analogy would be ‘free to practise one’s religion’.
- (iii) In *RT (Zimbabwe)* Lord Dyson comprehensively rejects the Secretary of State’s proposed distinction between core and peripheral aspects of rights or gradations of Convention reasons. At a practical and basic level, what is considered peripheral to one person may be considered core to another but this may be irrelevant because the perception of the persecutor may be more important. The use of the false core/peripheral dichotomy risks in the context of Ahmadis in Pakistan and other groups who have suffered longstanding persecution embedding and retrospectively justifying the very persecution complained of.
- (iv) All that matters is whether the person genuinely self-identifies as Ahmadi or in the alternative would be perceived as being Ahmadi by actors of persecution.
- (v) The anti-Ahmadi laws, the discriminatory application of blasphemy laws and the increasingly militant public discourse in Pakistan engender an atmosphere of ‘if you are not with us you are against us’. Ahmadis are perceived as being disloyal to the Prophet Mohammed, to Islam and to the Pakistani state.
- (vi) The submissions reiterate the appellants’ case regarding the difficulties encountered by Ahmadis in Pakistan with the argument that Ahmadis have to pretend not to be Muslim and not to consider themselves Muslim in order to avoid being persecuted. They consider this a lie and they have to live that lie everyday in Pakistan.

#### Religious Freedom Report 2011

- (vii) It is observed that the report repeatedly indicates that religious freedom generally is deteriorating in Pakistan not improving identifying that legal and policy restrictions on religious freedom are generally enforced against Ahmadis.

288. Submissions by Ms Jegarajah and Mr Yeo on *Federal Republic of Germany v Y & Z* argue:

- (i) The requirement to self-repress is a requirement in place throughout the life of an Ahmadi. The restrictions on civil rights are part of the accumulation of various measures including violation of human rights.

- (ii) There is no distinction between peripheral and core areas of practice. Ahmadis cannot engage in formal worship without profound restriction and women cannot engage in formal restriction in community with others, at all.
- (iii) It is not reasonable that Ahmadis deny that they are Muslims and assert the finality of the prophet in order to avoid persecution.

## APPENDIX A

Glossary of words as provided by the parties

No	Word	Literal Translation	Ahmadi context Translation
1	<i>Ahl-e-Bait</i>	Term to describe the people of the House of Prophet Mohammed and his family	The Ahmadi community also use this phrase to describe the household and family of Mirza Ghulam Ahmad
2	<i>Al-Fazal Newspaper</i>	Grace	The official Ahmadi community newspaper, established in 1913
3	<i>Al-Hadees</i>	Muslim Sect	Muslim Sect
4	<i>Al Misbah Magazine</i>	A source of light	Official Women's magazine/journal
5	<i>Anjuman</i>	Association	Central organisation that administer the day to day affairs of the Ahmadi community
6	<i>Anssaar Ullah</i>	Helper in the cause of Allah	Organisation of the Ahmadi community for 40 plus males
7	<i>Aslam-o-Alikam</i>	Peace Be upon you, Islamic greening: Hello	The members of the Ahmadi faith are banned from using this phrase
8	<i>Azan</i>	Islamic call to Prayer	Islamic call to Prayer
9	<i>Baad Bakht</i>	Wretched individual	Derogatory term used against Ahmadis
10	<i>Bai'at</i>	Pledge	Oath of allegiance to the Ahmadi faith
11	<i>Bait-ul-Nur</i>	House of light	Ahmadi Mosque in Model Town, Lahore Pakistan
12	<i>Burqa</i>	Islamic veil/covering for women	The Ahmadi women will distinguish her burqa by additionally covering her face and loosely draping it around her head
13	<i>Dai lillah</i>	Caller towards Allah	Preacher, to seek conversion
14	<i>Darood</i>	Prayer recited by Muslims to send peace and blessings upon Prophet Mohammed and Abraham	Ahmadis are prohibited from saying any such prayer which identifies/characterises them as Muslims
15	<i>Darul Zikr</i>	House of remembrance	Ahmadi mosque in Gari Shauw, Lahore, Pakistan
16	<i>Dawa</i>	Claim	Claim
17	<i>Deobandis</i>	Muslim Sect	Muslim Sect
18	<i>Ewan-E-Tauheed</i>		Largest Ahmadi place of worship in Rawalpindi, Pakistan
19	<i>Fatwa</i>	Decree	Decree
20	<i>Firqa</i>	Sect	Sect
21	<i>Hadood Ordinance</i>	Islamic Penal Injunctions	Islamic Penal Injunctions
22	<i>Hijab</i>	Head covering of Muslim women	Head covering of Muslim women
23	<i>Hiqmat</i>	Wisdom	The prudence provided by Ahmadi

			leadership on particular issues relating to community affairs
24	<i>Hoor, Hoors</i>	Woman of Paradise	Derogatory phrase used against Ahmadi women to objectify them
25	<i>Inshallah</i>	Islamic phrase: God willing	Islamic phrase: God willing
26	<i>Izzat</i>	Honour/prestige	Honour/prestige
27	<i>Jalsa Salana</i>	Annual gathering	The annual convention of the Ahmadi community, held around the world
28	<i>Jamaat</i>	Community	The phrase most commonly used to describe the Ahmadi community
29	<i>Jihad</i>	Holy war	Ahmadis are targeted by extremists, who consider killing an Ahmadi as part of their duty to conduct holy war
30	<i>Jizya</i>	Levy/Tax	The tax levied on non-Muslims in a Muslim state
31	<i>Kafir</i>	Infidel	Derogatory term used against Ahmadi, who state themselves to be Muslims
32	<i>Kalma</i>	Proclamation of faith	Proclamation of faith
33	<i>Kalma Tayyaba/Qalma Tayyaba</i>	Formula of faith	Formula of faith
34	<i>Khalifa</i>	Successor	Supreme Head of Ahmadiyya Community
35	<i>Khatme-e-Nabuwat</i>	Finality of the Prophethood	An organisation in Pakistan with an anti Ahmadi agenda
36	<i>Khilafat</i>	Institution of succession	The institution of the Supreme Head of Ahmadiyya Community
37	<i>Khilafat Jubilee</i>	Centenary of the succession	100 year anniversary of the Supreme Head of Ahmadiyya Community
38	<i>Khulafa-e-Rashideen</i>	4 leaders (Khalifs) who succeeded the Prophet Mohammed	4 leaders (Khalifs) who succeeded the Prophet Mohammed
39	<i>Lahori Group</i>	Sub sect of the Ahmadi community	A branch of the Ahmadiyya community, established in 1914
40	<i>Madrassa</i>	School	School where Islamic subjects are taught
41	<i>Mahram</i>	Male relations of a Muslim female whom she does not require to observe purdah (veil) in front of	As is the mainstream Muslim belief these male relations include: husband, father, father-in-law, brother, paternal uncles and maternal uncles
42	<i>Majlis-i-ahrar-e-islam</i>	Liberal party of Islam	A political party formed by Islamic clerics in 1929. Their manifesto was to eliminate the Ahmadiyya community
43	<i>Majlis-i-Amala</i>	Executive committee	Executive committee
44	<i>Majlis-i-Shura</i>	Consultation committee	Elected assembly of Ahmadi community members who provide advice and consider the affairs of the Ahmadiyya community. The assembly is held once a year

45	<i>Masjid</i>	Mosque, place of worship	Ahmadis are prohibited to call their place of worship a "Masjid" and therefore have to name them "Bait" - meaning house
46	<i>Mirzai, Mirzais</i>	Names given to Ahmadis	Derogatory term used to describe members of the Ahmadi community
47	<i>Mujahideen</i>	Soldier/ warriors	Soldier/ warriors
48	<i>Mullah</i>	Islamic Cleric	Islamic Cleric
49	<i>Munazra</i>	Debate	Debate
50	<i>Nabi</i>	Prophet	Prophet
51	<i>Naib Amir</i>	Deputy Head	Vice President
52	<i>Nikah</i>	Islamic marriage	Islamic marriage
53	<i>Nubwat</i>	Prophethood	Prophethood
54	<i>Purdah</i>	Islamic covering for women - veil	Islamic covering for women - veil
55	<i>Qadiani</i>	Member of Ahmadi group	The founding branch of the Ahmadi community and used as a derogatory term
56	<i>Qadiyan</i>	City of India	The city where the Ahmadi community was founded in 1889
57	<i>Qadiyaniat</i>	Ideology of Ahmadi community	Derogatory term used to describe the doctrine of the Ahmadiyya community
58	<i>Risalat</i>	Carrying the message of Allah	Carrying the message of God
59	<i>Sahaaba</i>	The companions of the Prophet Mohammed	The Ahmadi community include the companions of the Mirza Ghulam Ahmad as Sahaaba
60	<i>Sawab</i>	To earn merit	To earn merit
61	<i>Sharam</i>	Modesty/ prestige	Modesty/ prestige
62	<i>Sharia't</i>	Islamic rules/norms/law	Islamic rules/norms/law
63	<i>Sunni Tehreek/Sunni</i>	Muslim Party/ sect	Muslim Party/ sect
64	<i>Tabligh</i>	Preaching	Preaching, propagation to non Ahmadis
65	<i>Tablighi Jamaat</i>	Religious preaching party	Religious preaching party
66	<i>Tahaffuz Namooos-E-Risalat</i>	Protection of honour of Prophet Mohammed	A movement/organisation
67	<i>Tajneed</i>	Record of membership	Record of membership
68	<i>Tashez-ul-Azahan</i>	Increase intelligence	Children's magazine/journal issued by the Ahmadi community
69	<i>Tauhin-e-Rasalat</i>	Blasphemy	Blasphemy
70	<i>Ulema</i>	Religious scholars	Religious scholars
71	<i>Umm-ul-Mummineen</i>	Mother of the believers	The term used to describe for the wives of the Prophet Mohammed and Mirza Ghulam Ahmad
72	<i>Wajib-ul-Qatl</i>	Liable to be killed	Liable to be killed
73	<i>Waqfeen Nau</i>	New devotee	New devotee
74	<i>Zakat</i>	Religious tax/tythe	Religious tax/tythe
75	<i>Zina</i>	Fornication	Fornication
76	<i>Zindique</i>	Heretic	Heretic

77	<i>Lajna Amanullah</i>	Maids of God	Organisation of the Ahmadi community for women 15+
78	<i>Atfaal</i>	Children	Male children up to age of 15
79	<i>Khaddum</i>	Servant	Male 15-40 years old
80	<i>Nasrat</i>	Helper	Girls up to 15 years old

**APPENDIX B**  
(as provided by the parties)

**Copy of Ordinance No. XX Of 1984 and 1986**

**Amendment to the section 295c of the Pakistan Penal Code**

**EXTRAORDINARY  
PUBLISHED BY AUTHORITY  
ISLAMABAD, THURSDAY, APRIL 26, 1984**

**PART 1**

**Acts, Ordinances, President's Orders and Regulations including Martial law Orders and Regulations of the Government of Pakistan**

**MINISTRY OF LAW AND PARLIAMANTARY AFFAIRS (LAW DIVISION)**

**Islamabad, the 26th April 1984 No. F.17 (1) 84-Pub.**

The following Ordinance made by the President is hereby published for general information.

**ORDINANCE NO. XX OF 1984**

**AN ORDINANCE**

to amend the law to prohibit the Quadiani group, Lahori group and Ahmadis from indulging in anti-Islamic activities:

WHEREAS it is expedient to amend the law to prohibit the Quadiani group, Lahori group and Ahmadis from indulging in anti-Islamic activities:

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action:

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

**PART I - PRELIMINARY**

**1. Short title and commencement.**

(1) This Ordinance may be called the Anti-Islamic Activities of the Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984.

(2) It shall come into force at once.

**2. Ordinance to override orders or decisions of courts.**

The provisions of this Ordinance shall have effect notwithstanding any order or decision of any court.

**PART II - AMENDMENT OF THE PAKISTAN PENAL CODE (ACT XLV OF 1860)**

**3. Addition of new sections 298B and 298C, Act XLV of 1860.**

In the Pakistan Penal Code (Act XLV of 1860), in Chapter XV, after section 298A, the following new sections shall be added, namely:

**“298B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.**

(1) Any person of the Quadiani 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;

(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’, ‘Khalifatul-Muslimeen’, ‘Sahaabi’ or ‘Razi Allah Anho’

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

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

**298C. Person of Quadiani group etc., calling himself a Muslim or preaching or propagating his faith.**

Any person of the Quadiani 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.”

**ACT III OF 1986**

**CRIMINAL LAW (AMENDMENT) ACT, 198**

*An Act further to amend the Pakistan Penal Code and the Code of Criminal Procedure, 1898 (Gazette of Pakistan, Extraordinary, part 1, 12th October 1986)*

The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on the 5th October, 1986 and is hereby published for general information:

WHEREAS it is expedient further to amend the Pakistan Penal Code (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1893), for the purposes hereinafter appearing:

It is hereby enacted as follows:

**SECTION 295C PAKISTAN CRIMINAL CODE**



**1. Short title and commencement**

- (1) This Act may be called the Criminal Law (Amendment) Act 1986.
- (2) It shall come into force at once.

**2. Insertion of new section 295-C, Act XLV of 1860.** In the Pakistan Penal Code (Act XLV of 1860), after section 295-B, the following new section shall be inserted, namely:

**“295-C. 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.”

## APPENDIX C

### DOCUMENTS BEFORE THE UPPER TRIBUNAL

Item	Document	Date
1	Aysha Haroon, International: The News, 'While the State Looks Away'	23 May 2012
2	Rana Tanveer, The Express Tribune, 'Ahmadi place of worship: Clerics press for demolition of dome'	21 May 2012
3	UNHCR, Eligibility guidelines for assessing the international protection needs of members of religious minorities from Pakistan'	14 May 2012
4	Persecution of Ahmadi in Pakistan: News Report	April 2012
5	Dawn.com, 'No looking back for us'	7 April 2012
6	Asian Human Rights Commission, 'PAKISTAN: Government makes no effort to halt the 12 March 2012 Persecution and killings of Ahmadi'	12 March 2012
7	John Cheetham, <a href="http://www.canberratimes.com.au">www.canberratimes.com.au</a> , "A good Muslim's better life cut short by Extremists'	11 March 2012
8	March 5-11: Extremism Watch, Jinnah-institute	5-11 March 2012
9	Ahmadiyya Muslim Jamaat International Press Release, 'Another Ahmadi Martyred in Pakistan'	7 March 2012
10	Azam Khan, The Express Tribune, 'Police bar Ahmadi from entering worship centre'	2 March 2012
11	Rahab Fizah & Anna Thorning, Asian Human Rights Commission, 'PAKISTAN: More Muslim than the Muslims'	2 March 2012
12	Z Ali, The Express Tribune, 'Targeted Attack: Ahmadi Killed, grandson injured in Shaheed Benazirabad'	1 March 2012
13	Abdul Alim, The Muslim Times, 'Pakistan: Punjab govt orders Ahmadiyya women Magazine 'Misbah' banned, threatens Daily Al-Fazal'	21 March 2012
14	The Express Tribune, 'Minority Issue: Cameras forced off Ahmadi worship Centre'	25 February 2012
15	Pakistan Today, 'Shahbaz Bhatti's alleged killer remanded for 7 days'	14 February 2012
16	Rana Yusuf, The Express Tribune, 'Barred: Lawyers ban drink on court complex'	11 February 2012
17	Asian Human Rights Commission, 'Ahmadiyya community targeted by terrorist organisations'	4 February 2012
18	Amnesty International News, 'Pakistan should protect	2 February 2012

	Ahmaddiya community against threat of violence'	
19	Imran Jattala Ahmadiyya Times, 'Rawalpindi'	30 January 2012
20	Mudassir Raja, The Express Tribune, 'Protest against 'unconstitutional' practices becomes Ahmadi rally'	29 January 2012
21	Human Rights Watch World Report 2012	2012
22	Asian Human Rights Commission, 'Pakistan: the State of Human Rights in 2011'	2011
23	Persecution of Ahmadis in Pakistan during the Year 2011: A Summary	31 December 2011
24	Rana Tanveer, Express Tribune, 'Harassment: Three Ahmedis [sic] accused under Blasphemy laws'	24 December 2011
25	Atif M Malik, Health & Human Rights Journal, 'Denial of flood aid to the Ahmadiyya Muslim community In Pakistan'	2011
26	Amnesty International Report 2011 (Pakistan)	2011
27	Jinnah Institute, 'A Question of Faith: A Report on the Status of Religious Minorities in Pakistan'	2011
28	Abdul Manan, The Express Tribune, 'For minorities in Pakistan, persecution never ends'	4 December 2011
29	Rana Tanveer, The Express Tribune 'Blasphemy allegations: Ahmadi family under threat from Clerics'	1 December 2011
30	Syed Danish Hussain <a href="http://www.nation.com.pk">www.nation.com.pk</a> 'Banner against Ahmadis not removed despite passing 10 Days'	20 November 2011
31	Muhammad Sadaqat, The Express Tribune 'Hint of Ahmadi ties gets <i>hakkem</i> 'banished' '	1 November 2011
32	BBC News Asia, 'Pakistan judge Pervez Ali Shah 'flees death threats'	25 October 2011
33	Rana Tanveer, The Express Tribune, 'Qadri supporters rail against US, Ahmadis'	10 October 2011
34	Zeenews.com, 'Ahmadi students, teacher expelled from Pak schools	8 October 2011
35	Declan Walsh, the Guardian, 'Pakistan's blasphemy laws have left even judges in fear of their lives'	3 October 2011
36	BBC News Asia, 'Salman Taseer murder: Mumtaz Qadri sentenced to death'	1 October 2011
37	Home Office UK Border Agency, Country of Origin Report: Pakistan	29 September 2011
38	Asian Human Rights Commission, 'PAKISTAN: Ahmadi students are under threat from the Extremist religious groups - government turns a blind eye Again'	28 September 2011
39	Asian Human Rights Commission, 'PAKISTAN: The federal government must intervene To stop the killings of Ahmadis'	5 September 2011
40	Omar Oakes, This is Local London, 'Morden man fears for brother named on Ahmadiyya Muslim murder list in Pakistan'	5 August 2011
41	Home Office UK Border Agency, Operational Guidance Note, Pakistan	August 2011
42	Daily Times, 'Ahmadi community slams govt over killing of	13 July 2011

	minority Member'	
43	Saba Imtiaz, The Express Tribune, 'Ahmadis in Karachi: Pulpit pounding, barricades, prayers But no peace'	19 June 2011
44	'Ahmadis panic over hit list' <a href="http://www.ucanews.com">www.ucanews.com</a>	14 June 2011
45	Afnan Khan, Daily Times, <a href="http://www.dailytimes.com.pk">www.dailytimes.com.pk</a> 'Terrorists chalk out plan to target Ahmadis' [sic]	14 June 2011
46	Shamsul Islam, The Express Tribune, 'Textile City: Politicians turn blind eye to hate pamphlets'	13 June 2011
47	Asian Human Rights Commission, 'PAKISTAN: Extremists openly plan to kill hundreds of Ahmadis – government turns a blind eye'	11 June 2011
48	Umer Nangianna, The Express Tribune 'Ahmadis fair game for TTP Kidnappers'	10 June 2011
49	Shamsul Islam, The Express Tribune, 'Targeting minorities: No friend to Ahmadis in Faisalabad' (Copy of Pamphlet mentioned in article with translation from Persecution.org)	9 June 2011
50	Asian Human Rights Commission, 'PAKISTAN: A year on from the Lahore attacks but Ahmadis Still suffering' [sic]	30 May 2011
51	PAKISTAN: Observatory for the Protection of Human Rights Defenders Annual Report 2011	2011
52	BBC News South Asia, 'Pakistan Minorities Minister Shahbaz Bhatti shot dead'	2 March 2011
53	The Independent, 'Pakistan: Boy arrested for exam blasphemy'	2 February 2011
54	Julie McCarthy <a href="http://www.npr.org/2011/01/24">www.npr.org/2011/01/24</a> , 'Extremist Intimidation calls Pakistan secular society'	24 January 2011
55	Home Office UK Border Agency, Country of Origin Information Report: Pakistan [Extract]	17 January 2011
56	BBC News South Asia, 'Punjab Governor Salman Taseer assassinated in Islamabad'	4 January 2011
57	Human Rights Watch World Report 2011: Pakistan	2011
58	Persecution of Ahmadis in Pakistan during the Year 2010: A Summary	2010
59	BBC South Asia, 'Pakistani Christian Asia Bibi 'has price on her head''	7 December 2010
60	Human Rights Watch, 'Pakistan: Repeal Blasphemy Law'	23 November 2010
61	US Department of State: Pakistan International Religious Freedom Report	17 November 2011
62	US Department of State, International Religious Freedom Report [extract]	July-December 2010
63	Dawn.com, 'Firing at Ahmadi worship place in Lahore; no casualties'	19 November 2010
64	Immigration & Refugee Board of Canada, Response to Information Request 'RIRs'	4 November 2010
65	BBC News South Asia, 'Pakistan Ahmadi man forcibly exhumed in Lahore'	2 November 2010

66	Immigration & Refugee Board of Canada, Response to Information Request 'RIRs': 'Arrest Warrants'	28 October 2010
67	Pak Tribune.com, 'Ahmadi leader killed in Mardan suicide attack'	4 September 2010
68	David O'Reilly, The Philadelphia Inquirer, 'US citizen slain over his religion in his native Pakistan'	25 August 2010
69	Ahmadiyya Times, 'Pakistan: Plea against Mubashir Luqman dismissed'	16 August 2010
70	Afnan Khan, Daily Times, 'Inquiry into attacks on Ahmedis pulls off vanishing act' [sic]	6 July 2010
71	Los Angeles Times, 'Pakistan sect endures persecution' Alex Rodriguez	6 July 2010
72	Aljazeera News, 'Lahore most assault suspects held'	5 July 2010
73	Mohsin Hamid, Dawn.com, 'Fear and Silence - Why are Ahmadis persecuted so ferociously in Pakistan?'	27 June 2010
74	Rana Tanveer, Express Tribune, 'Shezan factory attacked in Lahore'	14 June 2010
75	Duncan Walsh, The Guardian, 'Ahmadi massacre silence is dispiriting'	7 June 2010
76	Fayed Pervez/PPI Photographs of KN protest, Pashawar, Pakistan	7 June 2010
77	The Economist, 'Into the heartland; The Punjabi Taliban'	5 June 2010
78	Human Rights Watch, 'Pakistan: Massacre of Minority Ahmadis'	1 June 2010
79	Abdul Manan, Express Tribune, 'Ahmadi man murdered in Narowal'	1 June 2010
80	BBC News, 'Gunman attack Pakistani hospital'	1 June 2010
81	Reuters & Khaleej Times, 'Pakistani law fuels hatred of Ahmadis: UN experts'	31 May 2010
82	BBC News South Asia, 'Pakistan mosque attacks in Lahore kill scores'	29 May 2010
83	Jane Perlez, New York Times, 'Pakistani Taliban carried out attack on Lahore Mosques, Police say'	29 May 2010
84	Ahmadiyya Muslim Jama'at International Press Release, 'Ahmadi Muslim Killed in Karachi'	26 May 2010
85	'Police Organisations in Pakistan', Extract of 2.7 Women in the Police HRCP/CHRI 2010	May 2010
86	Farhad Jerral, 'Culperable [sic] role of PML-N in Lahore's Ahmadi massacre' with English translation	May 2010
87	Dawn.com, 'A community harried by threats'	14 April 2010
88	Ahmadiyya Muslim Jama'at International Press Release, '3 Ahmadi Muslims Killed in Pakistan in Barbaric Attack'	4 April 2010
89	US Department of State, 2009 Human Rights Report: Pakistan	11 March 2010
90	Human Rights Commission In Pakistan, 'State of Human Rights in 2009' [extract]	February 2010

91	Parliamentary Human Rights Group Report of the fact Finding mission to Pakistan to examine the human rights Situation of the Ahmadiyya community	13-22 February 2010
92	Ahmadiyya Muslim Jama'at International Press Release, 'Retired Ahmadi Professor Murdered in Lahore'	5 January 2010
93	Ahmadiyya Muslim Jama'at International Press Release, 'An Ahmadi Teacher Killed in Pakistan'	30 November 2009
94	Human Rights Watch, World Report 2010: Pakistan 'Events of 2009' [extract]	undated
95	Persecution.org, Persecution of Ahmadis in Pakistan during the Year 2009: A Summary	undated
96	Ahmadiyya Muslim Jama'at International Press Release, 'Murder of Another Ahmadi Muslim in Pakistan'	5 October 2009
97	UN High Commissioner for Refugees 'Pakistan: The situation of religious minorities' [extract]	May 2009
98	Ahmadiyya Foreign Missions Office Press Release, 'Brutal Murder of Two Ahmadi Doctors in Multan'	18 March 2009
99	International Crisis Group, 'Reforming the Judiciary in Pakistan, Asia Report 160'	16 October 2008
100	Human Rights Watch, World Report 2010: Pakistan 'Events of 2008'	undated
101	Immigration and Refugee Board of Canada, Response to Information Request (AMA UK procedure)	26 November 2007
102	Persecution of Ahmadis in Pakistan during the Year 2008: A Summary	undated
103	Home Office UK Border Agency, Country of Origin Information Report Pakistan [extract]	30 April 2007
104	Parliamentary Human Rights Group, 'Rabwah: A Place for Martyrs?'	January 2007
105	The Constitution of Pakistan, Part 2, Chapter 1: Fundamental Rights and Principles of Policy	undated
106	Judgment of Supreme Court of Pakistan Criminal Appeals No 31-K to 35-K of 1988; Civil Appeals No 149 and 150 of 1989 and Civil Appeal No 412 of 1992	1992, 1989, 1988
107	Pakistan Penal Code	6 October 1860

## APPENDIX D

### Extract from "Persecution of Ahmadis in Pakistan during the Year 2011"

#### Annex I. Particulars of Police Cases Registered on Religious grounds against Ahmadis during 2011

No	Number	Names of Accused	Police Station	FIR No.	Date [2011]	Penal Code	Remarks
1	1-9	Malik Mohammad Rafiq Muhammad Faazal Butt Naeem Ullah Mehboob Ahmad Muhammad Arshad Junaid Ahmad Jahangir Khan Gohar Butt Tariq Ahmad (Residents of Ahmad Nagar)	Chenab Nagar (Rabwah)	26	20/01	379	Baseless allegation of theft, on communal grounds
2	10-12	Irfan Ahmad Amir Ahmad Shafiq Ahmad (Residents of Mir Pur Sindh)	Satellite Town, Mir Pur Sindh	75	29/04	279, 337	Car accident case, pushed by mullahs
3	13-28	Amin Naseer Shahid Ameer Ahmad Zafer Iqbal Tahir Ahmad Tufiq Ahmad Mohammad Imran Habib Ahmad Hamid Javed Saeed Ahmad 5 unknown persons	Anti-Terrorism Court Sargodha Camp at Faisalabad	Complaint case	06/08	302, 324, 148, 149, 109, 7ATA	Murder allegation (Chak 194 R.B., Lathianwala Faisalabad)
4	29-32	Shamshad Ahmad Tariq Mehmood Maqsood Ahmad Nusrat Ahmad	Kunjah, Gujarat	665	20/10	302, 324, 148, 149	False murder allegation; Nusrat Ahmad arrested
5	33	Rana Sajeel Ahmad	Khushab	352	15/12	295-C	Fabricated blasphemy case
6	34	Rana Hakim Jameel	Khushab	349	14/12	298-C	
7	35	Asfandyar s/o Rana Hakim Jameel	Khushab		-	16 MPO	Arrested

8	36	Basharat Ahmad	Kunjah, Gujarat	765	17/12	295-B	Arrested
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**Penalties under the Pakistan Penal Code:**

**Article**

**Penalty**

295-C, 302

Death

295-B

Life imprisonment

324

Seven years' imprisonment

298-C, 379, 337, 148, 149

Three years' imprisonment

279

Two years' imprisonment

109

As for the offence:-

7-ATA, 16 MPO

- detention up to three months;

7-ATA

- trial in an anti-terrorism court.