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*To advance international
freedom of religion or
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assessing and unflinchingly
confronting threats to this
fundamental right.*

Pursuing an IRFA Binding Agreement with Pakistan

By Harrison Akins, Policy Analyst

In its [2020 Annual Report](#), the United States Commission on International Religious Freedom ([USCIRF](#)) recommended Pakistan be designated a “country of particular concern,” for its systematic, ongoing, and egregious violations of religious freedom. Pakistan took a number of positive steps during 2019 and early 2020—including the Supreme Court [upholding](#) the acquittal of Asia Bibi, and acquitting Wajih-ul-Hassan on blasphemy charges; as well as the government [re-opening](#) the Shawala Teja Singh Temple in Sialkot, Punjab, to the Hindu community, opening the [Kartarpur Corridor](#) with India for Sikh pilgrims, and [forming](#) a Supreme Court-mandated National Commission for Minorities. Nevertheless, the country’s particularly severe religious freedom violations persisted, largely due to the ongoing enforcement of blasphemy and anti-Ahmadiyya laws and the culture of impunity for violence against religious minorities.

USCIRF has recommended that Pakistan be designated a CPC in every year since 2002; the U.S. Department of State finally made that designation for the first time in 2018, and again in 2019. Yet, given the United States’ security interests in the country, the State Department has twice granted a waiver to Pakistan from any meaningful actions related to its CPC designation. In 2019, the State Department issued three such waivers for countries designated as CPCs: Pakistan, Saudi Arabia, and Tajikistan.

As part of its foreign policy recommendations for the U.S. government, USCIRF recommends that the United States and Pakistan enter into a binding agreement pursuant to Section 405(c) of the International Religious Freedom Act (IRFA)—USCIRF’s authorizing legislation—to encourage the Pakistani government to take meaningful steps to address religious freedom violations with defined benchmarks. A binding agreement could be a constructive tool to engage with Pakistan by providing greater clarity to a path off the CPC list and help improve religious freedom conditions, especially for the country’s religious minorities. This policy update explains the potential usefulness of IRFA binding agreements and provides an overview of key issues that should be included in any binding agreement between the United States and Pakistan, which, if addressed by Pakistani authorities, would merit removal of the CPC designation.



Section 405(c) of IRFA: Binding Agreements

Section 405 of [IRFA](#) specifies targeted responses the U.S. President may take as a response to religious freedom violations abroad. Under Section 405(c), the U.S. President is authorized to “enter into a binding agreement with a foreign government obliging them to cease, or take substantial steps to address and phase out, the acts, policies, or practices constituting violations of religious freedom.” Section 405(c) further provides that “[t]he entry into force of a binding agreement for the cessation of the violations shall be a primary objective for the President in responding to a foreign government that has engaged in or tolerated particularly severe violations of religious freedom.” For a country designated a CPC by the State Department, a binding agreement with concrete benchmarks can provide a defined path off the CPC list and a way of avoiding any accompanying sanctions and other punitive actions authorized under IRFA.

The United States has used Section 405(c) only once: in May 2005, the State Department announced that the United States and Vietnam had entered into a binding agreement consistent with section 405(c) of IRFA to address various religious freedom violations by the Vietnamese government. Vietnam needed to comply with a series of benchmarks for the U.S. government to consider removing its CPC designation. The Vietnamese government [agreed](#) to:

1. implement fully new legislation on religious freedom and render previous contradictory regulations obsolete;
2. instruct local authorities to adhere strictly and completely to the new legislation and ensure compliance;
3. facilitate the process by which religious congregations are able to open houses of worship; and
4. give special consideration to prisoners and cases of concern raised by the United States during the granting of prisoner amnesties.

In November 2006, the State Department removed Vietnam’s CPC designation, and the country has since remained off the State Department’s CPC list. USCIRF, however, has [continued](#) to recommend Vietnam for CPC designation, as the Vietnamese government has not made sufficient tangible progress on the identified issues in the binding agreement and continues to engage in systematic, ongoing, and egregious violations of religious freedom.

An IRFA Binding Agreement with Pakistan

A binding agreement with defined benchmarks would be a constructive step towards improving religious freedom conditions in Pakistan and could provide an off-ramp for the Pakistani government from the State Department’s CPC designation. To be effective in promoting religious freedom, however, any binding agreement between the United States and Pakistan should address the following issues in the short, mid-, and long term.

Short Term Measures

Following the enactment of the binding agreement, the Pakistani government should immediately take the following positive measures to demonstrate its willingness to address religious freedom violations:

- *Eliminate the requirements for self-identification of religion for identity documents.* To obtain a Computerized National Identity Card ([CNIC](#)) from the National Database and Registration Authority (NADRA), individuals must self-identify their religion on the application form. There is no option to list “no religion.” The CNIC is required for adults over the age of 18 and necessary for voting and to obtain a bank account and passport. Members of Pakistan’s religious minority communities have [expressed](#) concern that, within NADRA records, individuals are not allowed to change their religion from Islam, even if they were mistakenly identified as a Muslim. In March 2018, the Islamabad High Court [ruled](#) that individuals must declare their religion to work in government, register to vote, or obtain identity documents. Religious minorities expressed fear that the requirement for self-identification could result in economic and social exclusion. The Ahmadiyya community felt particularly targeted by the requirement for religious self-identification, as Ahmadi Muslims were officially declared non-Muslims by a 1974 constitutional amendment. Following the ruling, NADRA changed its application to require Ahmadis to declare themselves as non-Muslim and sign their name to the [statement](#) “I profess that I am not a Muslim, and I belong to the Qadiani/Ahmadi religion.”
- *Remove the ban on Ahmadiyya religious texts and publications.* In 2015, under the guise of challenging religious extremism and terrorism, the Punjab government [banned](#) Ahmadiyya religious texts, while simultaneously permitting the publication and dissemination of hate speech against Ahmadis by the *Khatm-e-Nabuwat* (Finality of the Prophethood) movement. As a consequence of this ban, Ahmadi Muslims have been subject to arrest and imprisonment for distributing Ahmadiyya literature, a right protected under Article 20 of the Pakistani [Constitution](#)—“the right to profess, practice and propagate his religion.”

In December 2015, following a raid by the Counter Terrorism Department of the Punjab Provincial Government, Abdul Shakoor, a 78-year-old Ahmadi Muslim shopkeeper, was [arrested](#) for selling an Ahmadiyya commentary on the Qur’an and possessing banned Ahmadiyya literature in his shop. An anti-terrorism court sentenced him to five years in prison, yet he was released early in March 2019.

- *Begin an expedited review of all blasphemy cases.* Under Sections 295 and 298 of [Pakistan’s Penal Code](#), originally introduced under British colonial rule and expanded in the 1980s by General Zia-ul-Haq, individuals are prohibited from verbal and nonverbal actions deemed insulting to religious belief and practice. These provisions extend to protect physical documents such as copies of the Qur’an and other religious texts, places of worship, the reputation of the Prophet Muhammad, and other religious symbols. [Pakistan’s blasphemy law](#), however, is often abused to target religious minorities. Courts frequently fail to follow legal procedures and allow unsubstantiated, implausible, or outright false accusations stemming from personal disputes or prejudice against religious minorities to lead to convictions. Religious groups target judges and lawyers through intense political pressure, death threats, and even physical assaults and murder, to ensure the accused is found guilty, regardless of the merits of the case. In recognition of these practices, the Supreme Court [acquitted](#) Asia Bibi in October 2018 due to the use of unreliable evidence in her original conviction in 2010. In September 2019, the Supreme Court similarly [acquitted](#) Wajih-ul-Hassan after he spent 18 years on death row due to the unreliability of the evidence used in his conviction. With nearly 80 people imprisoned on blasphemy charges – many facing the death penalty or life in prison – the Pakistani government should conduct an expedited review of all blasphemy convictions to ascertain any such irregularities and violations of due process. In a 2012 [ruling](#), the Pakistani Supreme Court underscored that “due process should be adopted for conducting a fair trial and an order passed in violation of due process may be considered to be void.”

Mid-Term Measures

In the mid-term, the Pakistani government should make substantial efforts to address violations that inhibit freedom of religion or belief, especially the mistreatment of religious minorities within the judicial, security, and education sectors. Such violations include abuses of the legal system; the denial of constitutional protections for religious freedom; and the denial of broader civil rights guaranteed by law to all Pakistani citizens. The Pakistani government should take mid-term measures to:

- *Enforce proper handling of blasphemy cases according to existing due process rights.* Blasphemy cases frequently violate Pakistan's own laws related to the civil rights of the accused and requirements for due process. In 2010, as part of the Constitution (Eighteenth Amendment) Act, Article 10-A was inserted into the [Constitution](#) stating, "For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process." An individual's right "to a fair trial and due process" should include:
 - *Proper investigation by senior police officials.* Under the law, senior police officials are required to conduct an investigation into the validity of any charge before a complaint can be filed. The police, however, do not consistently follow this procedure for blasphemy charges. Unfounded accusations of blasphemy submitted to police, often based in personal disputes or prejudice against religious minorities, frequently result in arrests and trial without being properly investigated by police authorities.
 - *Making blasphemy a non-cognizable offense.* A number of offenses under the blasphemy provisions are currently classified as "cognizable," meaning that police are able to open investigations and arrest individuals in response to any submitted complaint without first receiving a warrant from a magistrate. This removes a layer of accountability that can protect against false accusations of blasphemy leading to arrest, trial, and conviction.
 - *Trials conducted without undue or arbitrary delays.* Despite the right to a speedy trial, blasphemy cases often experience lengthy delays, especially as cases are frequently transferred unnecessarily between judges. For example, the case of [Junaid Hafeez](#), who was imprisoned in 2013 on blasphemy charges and sentenced to death in December 2019, was transferred to eight separate judges before a verdict was given.
- *Making blasphemy a bailable offense.* Many of the anti-blasphemy provisions within the Penal Code list offenses as "non-bailable." This means that a court has the discretion to grant an individual bail, which often is denied without legal justification, but a defendant has no right to request bail. As a result of frequent and arbitrary delays in blasphemy cases, accused individuals often languish for years in prison before the case proceeds to trial and a verdict is rendered.
- *Enforcement of criminal penalties for providing false evidence.* Sections 193–196 of the Penal Code criminalize giving false evidence or fabricating evidence during a trial for the purposes of procuring a conviction. Punishments range from seven years ("punishment for false evidence") to death ("if innocent person be thereby convicted and executed"). As demonstrated in the acquittal of Asia Bibi, blasphemy cases frequently rely on false and fabricated evidence for conviction, with judges often under pressure from religious and extremist groups to find the accused guilty regardless of the merits of the case. Enforcing criminal penalties for providing false evidence should act as a deterrent to prosecutors and witnesses using false evidence to secure convictions on blasphemy charges. Indeed, a March 2019 [ruling](#) by the Pakistani Supreme Court found the judicial system frequently relied on false testimony and held that "a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury." Chief Justice of Pakistan Saeed Khan Khosa, who authored the decision, added, "[o]ur judicial system has suffered a lot as a consequence of deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness."
- *Humane treatment and security for individuals imprisoned on blasphemy charges.* Individuals imprisoned on blasphemy charges often [face](#) inhumane treatment and threats to their personal security. They have been murdered while in custody, both by police authorities and other inmates, and are frequently left in solitary confinement for lengthy periods of time with no access to recreation and limited visitation by their lawyers and families. Indefinite solitary confinement could [constitute](#) torture under international human rights standards. Junaid Hafeez, for instance, has been in

solitary confinement since 2014, with jail officials also denying him in-person visits from his legal team and family members since his December 2019 conviction.

- *Establish and train a special police task force to protect religious minority communities and their houses of worship.* Despite an overall decrease in terrorism in recent years, religious minority communities have continued to come under assault from terrorist groups; including the [April 2019 bombing](#) of the Hazara Shi'a community in Quetta (claimed by the Pakistani Taliban and the local Islamic State affiliate) and the [March 2015 bombings](#) of two churches during Sunday services by the Pakistan Taliban in Youhanabad, Lahore, Punjab. Mobs have continued to attack religious minorities and their houses of worship, including [September 2019 riots](#) against the Hindu community in Sindh, during which a Hindu temple was damaged, following a false blasphemy accusation against a Hindu principal; and a [May 2018 mob attack](#) that destroyed a 100-year-old Ahmadiyya mosque in Sialkot, Punjab. There are also ongoing [reports](#) of underage girls from religious minority communities being kidnapped for forced conversion to Islam and forced marriage. Such mob attacks and kidnappings reportedly occur with impunity from local officials and police. In recognition of the ongoing vulnerability of religious minorities and the culture of impunity surrounding violence against them, in 2014, the Supreme Court [directed](#) that a "Special Police Force be established with professional training to protect the places of worship of minorities," and held that "in all cases of violation of any of the rights guarantees under the law or desecration of the places of worship of minorities, the concerned Law Enforcing Agencies should promptly take action including the registration of criminal cases against the delinquents." Reforms should also include increased oversight of police and government activities to protect against impunity for local officials engaged in mob attacks or kidnappings targeting religious minorities.
- *Remove material denigrating religious minorities from educational curricula and train teachers on the importance of religious tolerance.* Textbooks and other educational material [used](#) in Pakistan's education system have often exhibited a strong Islamic orientation with anti-minority bias that helps to incubate prejudice and intolerance of religious minorities, especially Hindus, Christians, and

Ahmadis. Moreover, teachers have demonstrated a limited awareness or understanding of the beliefs and status of religious minorities within Pakistan, further contributing to the negative perception of these communities. In addition, a number of madrassas operating outside of government supervision have contributed to the spread of religious extremism and hostility toward religious minorities. The federal government has taken some steps to address this problem, such as announcing, in April 2019, a [plan](#) to bring 30,000 madrassas under government control to mainstream their curriculum and combat the spread of religious extremism. In September 2019, the Federal Minister for Education also [announced](#) that efforts were underway to integrate all schools under a common national curriculum scheduled to be implemented in 2021.

Long Term Measures

In the long term, the Pakistani government should dismantle the existing legal framework that systematically and institutionally restricts the freedom of religion or belief in Pakistan. Considerable domestic political outreach and groundwork will be necessary given that such legal changes implicate sensitive issues and reformers have faced political pressure as well as threatened or actual violence in the past. The Pakistani government should take the following long term measures:

- *Repeal Articles 295 and 298(a) of the Pakistan Penal Code which criminalize blasphemy.* As USCIRF notes in an April 2020 [Legislation Factsheet](#), "Blasphemy laws are inconsistent with universal human rights standards, failing to respect recognized rights including freedom of religion and expression. While it is legitimate to speak out against blasphemy, laws criminalizing blasphemy are detrimental to religious freedom and related human rights." Furthermore, the vague and overbroad blasphemy law in Pakistan promotes intolerance and discrimination against minorities and is often abused to target anyone expressing a different religious belief from the majority. Blasphemy laws can also embolden non-state actors to commit acts of violence against individuals and communities accused of blasphemy, even if the accusations are false. Until complete repeal of these articles is accomplished, the government should remove blasphemy as a capital offense.

- *Repeal Articles 298(b) and 298(c) of the Pakistan Penal Code and the Second Amendment of the Pakistani Constitution which criminalize the Ahmadiyya faith.* The Ahmadiyya community, who self-identify as Muslim, is one of the most persecuted religious communities in Pakistan. In 1974, the Constitution was amended to officially declare Ahmadis non-Muslim. Articles 298(b) and 298(c) of the Penal Code also introduced criminal penalties for Ahmadis if they self-identify as Muslims, preach or seek to propagate their faith, use Islamic symbols or greetings such as assalam alaikum (peace be upon you), or identify their houses of worship as mosques. These laws effectively criminalize the Ahmadiyya faith; severely limit the freedom of Ahmadis to enjoy all their rights as Pakistani citizens, including voting; and encourage non-state actors to commit acts of violence against the Ahmadiyya community often with impunity from authorities. This targeting of Ahmadis violates international human rights standards on the freedom of religion or belief. According to [Article 18](#) of the International Covenant on Civil and Political Rights, for example, “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice.” While not sanctioning or supporting any position within Islamic theology, the repeal of these criminal laws allows the Ahmadis to live according to their self-identified beliefs, in line with international human rights standards.
- *Release all remaining individuals imprisoned due to their religion or beliefs.* Accompanying the repeal of the blasphemy and anti-Ahmadiyya laws, all non-violent prisoners of conscience still imprisoned due to their beliefs, religious identity, religious activity, or advocacy for the freedom of religion or belief should be immediately pardoned and released, and provided government support and security as they transition back into society.

Conclusion

A binding agreement between the United States and Pakistan will encounter challenges related to domestic politics in Pakistan and the bilateral relationship between the United States and Pakistan. In particular, the Pakistani government may be unwilling to enter into a binding agreement as long as the State Department continues to waive any meaningful actions related to Pakistan’s CPC designation—in light of the “important national interest of the United States” in Pakistan.

It is important for the U.S. government to utilize the full range of options authorized by IRFA to impose meaningful costs on the most egregious violators of religious freedom. In the [2020 Annual Report](#), USCIRF recommends that the U.S. government “discontinue[s] the repeated imposition of preexisting sanctions or waivers for CPC-designated countries; instead, for each such country, take a unique presidential action or commensurate action pursuant to Sections 6445(a) (9) – (15) of IRFA, or negotiate a binding agreement pursuant to Section 6441(c)(1)(C) of IRFA, to demonstrate meaningful consequences and encourage positive change.” The absence of punitive actions related to religious freedom violations for CPC-designated countries limits the leverage of the United States to encourage governments to protect the freedom of religion or belief. In order to apply meaningful pressure on Pakistan through U.S. government action, the State Department needs to lift the waiver currently in place.

The use of government actions authorized by IRFA, or the threat of such actions, would be an important part of an effort to push Pakistan to agree to enter a binding agreement with a clear roadmap off the CPC list. During negotiations on the binding agreement, it would be necessary for the State Department and Pakistani government to agree to an appropriate and realistic time frame for implementing these incremental measures. This will be important in order to ensure that a time frame is set for completion of these measures within the near future and Pakistan makes meaningful and consistent progress. As a complement to the binding agreement, the U.S. government should also look at instituting new initiatives or integrating existing programs and funding streams to support Pakistan’s efforts, such as U.S. support for the Ministry of Education reforms and for the creation and training of a special police task force to protect religious minority communities.



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Professional Staff

Harrison Akins

Policy Analyst

Danielle Ashbahian

Communications Specialist

Keely Bakken

Policy Analyst

Dwight Bashir

Director of Outreach and Policy

Elizabeth K. Cassidy

Director of Research and Policy

Patrick Greenwalt

Researcher

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Communications Associate

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Policy Analyst

Jamie Staley

Senior Congressional Relations Specialist

Zachary Udin

Project Specialist

Nina Ullom

Congressional Relations Specialist

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Policy Analyst

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Supervisory Policy Analyst

The U.S. Commission on International Religious Freedom (USCIRF) is an independent, bipartisan federal government entity established by the U.S. Congress to monitor, analyze, and report on threats to religious freedom abroad. USCIRF makes foreign policy recommendations to the President, the Secretary of State, and Congress intended to deter religious persecution and promote freedom of religion and belief.