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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; and the Independent Expert on minority issues.

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (56-23) Minorities (2005-4)
MYS 11/2013

14 November 2013

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on freedom of religion or belief; and Independent Expert on minority issues pursuant to Human Rights Council resolutions 16/4, 22/20, and 16/6.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning **the decision of the Ministry of Home Affairs and the Government of Malaysia, dated 7 January 2009, as well as the recent decision of the Court of Appeal of Malaysia, prohibiting the usage of the word "Allah" by "Herald – The Catholic Weekly."**

According to the information received:

On 14 October 2013, the Court of Appeal of Malaysia ruled unanimously to allow an appeal of the Ministry of Home Affairs and the Government of Malaysia against the decision of the High Court of Malaysia, dated 31 December 2009, arising from an application for judicial review of the imposition of a condition in the publication permit of the "Herald – The Catholic Weekly", which is published on behalf of the Bishops of Peninsular of Malaysia. The condition was the prohibition of the name "Allah" in the aforementioned publication by administrative decision of the Ministry of Home Affairs and the Government of Malaysia, dated 7 January 2009.

Reportedly the Bishops of peninsular Malaysia do not agree with the decision of the Ministry of Home Affairs and the Government of Malaysia, as well as with the Appellate Court's decision, because Christians in Malaysia have been using

the word “Allah” peacefully for centuries. The aforementioned decisions also allegedly dismayed many Christians in Malaysia because reportedly the Bahasa Malaysia translation and the Arabic equivalent of one God is the word “Allah”.

Furthermore, the Court of Appeal of Malaysia allegedly based its ruling on its finding that the usage of the name “Allah” is not an integral part of the faith and practice of Christianity and it considered that “such usage, if allowed, will inevitably cause confusion within the community.” It is reported that the aforementioned ruling has been appealed and currently is pending consideration at the Federal Court level.

Grave concern is expressed that the decision of the Ministry of Home Affairs and the Government of Malaysia, dated 7 January 2009, as well as the decision of the Court of Appeal of Malaysia may have far-reaching implications and may affect the right of all non-Muslims in Malaysia to use the word “Allah” while referring to God. While we do not wish to prejudge the accuracy of these allegations, we take this opportunity to express our concerns regarding the aforementioned decisions. We would like to urge your Excellency’s Government to take all necessary measures to repeal those decisions in order to guarantee the right to freedom of religion or belief as well as the right to freedom of expression to all religious minorities in Malaysia.

In this context we would also like to refer your Excellency’s Government to its obligation to ensure the right of freedom of religion or belief in accordance with article 18 of the Universal Declaration of Human Rights. We would also like to bring to the attention of your Excellency’s Government paragraph 1 of article 1 of the 1981 General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/36/55), which provides that “everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Furthermore, paragraph 1 of article 2 of the 1981 General Assembly Declaration provides that “no one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.” Also article 3 states that “discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.”

With regard to the condition imposed by the administrative decision of the Ministry of Home Affairs and the Government of Malaysia, dated 7 January 2009, which restricts usage of the word “Allah” in the Herald, we would like to draw the attention of your Excellency’s Government to the General Assembly’s resolution 36/55

(A/RES/36/55) in which the General Assembly asserts in article 6(c) that the right to freedom of thought, conscience, religion or belief includes the freedom, “To make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief;” and further in (d) “To write, issue and disseminate relevant publications in these areas.”

With regard to the allegation that the condition imposed by the administrative decision of the Ministry of Home Affairs and the Government of Malaysia, dated 7 January 2009, prohibiting the usage of the word “Allah” in the Herald also extends this restriction to all Christians, as well as to all other non-Muslims in Malaysia, we would like to remind your Excellency’s Government of paragraph 1 of article 4 of the 1981 General Assembly Declaration, which calls on all States to “take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.” In this context we would like to draw the attention of your Excellency’s Government to article 4(g) of the 2005/40 resolution of the former Commission on Human Rights, in which it urged States “to ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of their official duties, respect different religions and beliefs and do not discriminate on the grounds of religion or belief, and that all necessary and appropriate education or training is provided.”

With regard to the allegation that the Court of Appeal of Malaysia based its ruling on its finding that the usage of the name “Allah” is not an integral part of the faith and practice of Christianity and it considered that “such usage, if allowed, will inevitably cause confusion within the community,” we would like to draw your Excellency’s Government’s attention to paragraph 59 of the interim report of the Special Rapporteur of freedom of religion or belief presented to the General Assembly’s 68th session (A/68/290), which states that “freedom of religion or belief is a right of human beings, [...] not a right of the State.” In this context the Special Rapporteur emphasizes that “it cannot be the business of the State to shape or reshape religious traditions, nor can the State claim any binding authority in the interpretation of religious sources or in the definition of the tenets of faith.”

We would also like to refer your Excellency’s Government to article 19 of the Universal Declaration of Human Rights which provides that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Furthermore, we draw the attention of your Excellency’s Government to international standards relevant to the protection and promotion of the rights of minorities. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires under Article 1.1 that

States “shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.” Article 2.1 states that “persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. In addition, Article 4.1 of the Declaration establishes that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of all religious minorities in Malaysia in compliance with the aforementioned international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide in details how the condition imposed by the administrative decision of the Ministry of Home Affairs and the Government of Malaysia, dated 7 January 2009, prohibiting the usage of the word “Allah” in the Herald is compatible with the aforementioned international human rights standards.
3. With regard to the aforementioned administrative decision please provide information on any measures taken by your Excellency’s Government to ensure full protection and respect of the right of all religious minorities to enjoy freedom of religion or belief, as well as freedom of expression.

We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the right to freedom of religion or belief as well as the right to freedom of expression to all religious minorities in Malaysia are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

Please note that a public statement concerning this issue may be issued.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue
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opinion and expression

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