

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL RUS 19/2018

14 September 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 34/18, 32/32, 34/6, 31/16 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the continued criminalization of Jehovah's Witnesses in the Russian Federation.

Concerns at the banning of the religious activities of Jehovah's Witnesses in the Russian Federation were raised in a communication to your Excellency's Government by several Special Procedures mandate holders on 23 March 2017 (ref. no RUS 2/2017). Concerns about amendments under the Yarovaya Law, including restrictions on religious expression and activities, were raised in a joint communication on 28 July 2016 (ref. no RUS 7/2016). Concerns about the violations of the rights to freedom of expression and freedom of association and peaceful assembly of Jehovah's Witnesses in the Russian Federation were raised in a joint communication on 11 November 2015 (ref. no RUS 6/2015). We thank your Excellency's Government for its engagement with Special Procedures through substantive responses to these communications, dated 25 May 2017; 12 October 2016; and 21 December 2015, respectively. We remain concerned, however, in light of the continued criminalization of Jehovah's Witnesses through the application of counter-extremism legislation in the Russian Federation.

On 14 May 2018, the UN Universal Periodic Review for the Russian Federation took place. Among the recommendations addressed to the Russian Federation were recommendations to refrain from outlawing religious groups, including Jehovah's Witnesses as "extremist" (recommendations no. 6.199; 6.200; 6.202; 6.202; 6.203; and 6.204).

According to the information received:

On 20 April 2017, the Supreme Court of the Russian Federation rendered a decision to liquidate the Administrative Center of Jehovah's Witnesses and all 395 of the local entities on grounds of "extremism". In Court, the authorities guaranteed that the ban on the legal entities of Jehovah's Witnesses would not affect the right of individual Witnesses to practice their faith. A similar finding was expressed in an appellate ruling of the Supreme Court on 17 July 2017, which said that the trial court did not rule on the legitimacy of the religious beliefs of Jehovah's Witnesses or the ways in which those beliefs are expressed.

On 25 May 2017, the Government of the Russian Federation assured the UN Human Rights Committee that the judicial acts do not limit the right of its citizens to freedom of religion or belief, and that members of the liquidated organizations have the ability to independently practice their beliefs, provided they do not distribute "extremist" literature or otherwise participate in "illegal" activities.

On 16 May 2018, in Orenburg, police officers raided and searched private homes and arrested three Jehovah's Witnesses. On 18 May 2018, the Promyshlenniy District Court charged one of the individuals with "financing extremist activity". The court released him but ruled that he be kept under house arrest. The following day, the same court charged the two other individuals with "organizing the activity of an extremist organization" and ordered that they be kept in pretrial detention until 14 July 2018. The investigator also ordered seven other Jehovah's Witnesses to sign an agreement not to leave the city during the investigation.

On 17 May 2018, in Birobidzhan, in a string of operations code-named "Judgment Day", 150 police officers and members of the Federal Security Services raided 22 homes of Jehovah's witnesses. The police seized tablets, cell phones and money. Police arrested one Jehovah's Witness. On 18 May 2018, the Birobidzhanskiy District Court charged him with "organizing the activity of an extremist organization" and ordered that he be kept in pretrial detention until 13 July 2018. On 25 May 2018, the Appellate Court of the Jewish Autonomous Region reversed the order of pretrial detention.

On 22 May 2018, in Perm, police officers arrested two Jehovah's Witnesses on the train station and escorted them to the police station. On 24 May 2018, the Sverdlovskiy District Court charged one of them with "participating in the activity of an extremist organization" and placed him under house arrest.

On 27 May 2018, in Naberezhnye Chelny in the Republic of Tatarstan, Federal Security Services searched ten private homes and seized electronic devices, cell phones, and passports. Three Jehovah's Witnesses were arrested and taken into custody. On 29 May 2018, the Naberezhnochelnyinskiy District Court charged the three Jehovah's Witnesses with "organizing and recruiting for an extremist organization" and for participating in its activity. The Court ordered that they be kept in pretrial detention until 25 July 2018. On 31 May 2018, the Court ordered one additional Jehovah's Witness to be kept in pretrial detention as well.

On 29 May 2018, in Shuya in Ivanovo Region, authorities detained and charged a Jehovah's Witness with "financing extremist activity". On 3 June 2018, the Shuya City Court ordered that he be kept in pretrial detention until 19 July 2018.

On 30 May 2018, in Khabarovsk, police arrested one Jehovah's Witness after invading and searching his home. On 1 June 2018, the Zheleznodorozhniy District Court charged him with "organizing the activity of an extremist organization" and ordered that he be kept in pretrial detention until 30 July 2018.

On the same day in Magadan, armed and masked police forces raided private homes and arrested three Jehovah's Witnesses. On 1 June 2018, the Magadan City Court charged the three men with "organizing the activity of an extremist organization" and ordered them to be kept in pretrial detention until 29 July 2018.

On 3 June 2018, at around 10 a.m. the police and members of Russia's Special Military Force raided two homes of Jehovah's Witnesses in Tomsk, Siberia. They detained around 30 individuals and escorted them to the Center for Counteracting Extremism. They also seized personal belongings from homes and vehicles. At the Center for Counteracting Extremism, investigators reportedly interrogated some of the Witnesses until 2 a.m. the following morning, and threatened to have one of them fired from his job. During the interrogation, at least one Jehovah's Witness was hospitalized. On 5 June 2018, the Oktyabrskiy District Court in Tomsk, charged one of the individuals with "organizing the activity of an extremist organization", and ordered him to be kept in pretrial detention until 4 August 2018.

On the same day, in Pskov, police forces raided multiple homes of Jehovah's Witnesses. Several individuals were taken to Pskov Regional Headquarters of the Federal Security Services for interrogation.

As of 11 June 2018, Russian authorities had brought criminal charges against over 40 individuals who are members of the Jehovah's Witnesses religious minority

On 12 June 2018, in Saratov, police raided and searched several homes of Jehovah's Witnesses and brought at least ten individuals to the police station for interrogation. During the search of one home, the authorities reportedly planted religious literature that had earlier been banned by the Courts. Two men were charged with "organizing the activity of an extremist organization". On 14 June 2018, the Frunzenskiy District Court of Saratov ruled to keep three of the men in pretrial detention until 12 August 2018.

As a result of the persecution, several hundred members of the Jehovah's Witnesses religious minority have reportedly fled the country.

We express serious concern at what appears to be a targeted campaign to restrict the right to freedom of religion or belief; the right to freedom of opinion and expression; and the right to freedom of peaceful assembly and of association; to those that only comply with state-registered religions and places of worship.

We express equal concern at the vague and overbroad definition of “extremism” and the conflation of religious expression with “extremism”, which represents an unlawful restriction on the legitimate exercise of the rights to freedom of expression, freedom of religion or belief and freedom of peaceful assembly and of association.

We also express concern at the arrest and detention of members of the Jehovah’s Witnesses religious minority on the basis of legislation on counter-extremism, and at the raids against their homes. We reiterate our concerns at the use of Article 282 of the Criminal Code (participating, organizing or financing an “extremist” organization) to persecute individuals for their peaceful worship.

These allegations appear to constitute, *prima facie*, a violation of articles 9, 14, 18, 19, 21, 22, 27 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation in 1973, which guarantee the universally-recognized rights not to be deprived arbitrarily of liberty, to due process and fair trial, to freedom of religion or belief, to freedom of opinion and expression and freedom of peaceful assembly and association.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and comment you may have on the above-mentioned allegations.
2. Please indicate how the arrest and detention of individual Jehovah’s Witnesses comply with the decision of the Supreme Court of April 2017 and with international human rights law.
3. Please provide information about the evidence used to justify the arrest and detention of the above-mentioned individuals.
4. Please provide information about pending criminal charges against individuals who are members of the Jehovah’s Witnesses religious minority.
5. Please indicate the legislative and policy framework that determines the types of religious information and the processes of their dissemination, and

explain how this framework is in line with the international human rights standards to which the Russian Federation is committed and which guarantee freedom of expression and the protection and promotion of the rights of members of religious minorities, such as the Jehovah's Witnesses, to profess and practice their own religion.

6. Please explain in detail how the prosecution of Jehovah's Witnesses for "extremism" comports with the concept of "violent extremism" embedded in the United Nations Security Council, General Assembly and Human Rights Council resolutions and the definitional scope of "violent extremism" of paragraph 5 of the UN General Secretary's Plan of Action to Prevent Violent Extremism referred to in Annex, as well as how it complies with the international human rights norms and standards, in particular, with article 18 of ICCPR.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to appeal to your Excellency's Government to take all necessary steps to secure the rights set forth in articles 9, 18, 19, 21, 22 and 27 of the International Covenant on Civil and Political Rights, ratified by the Russian Federation on 16 October 1973, guaranteeing the rights not to be arbitrarily deprived of liberty, the rights to freedom of religion, freedom of expression, freedom of peaceful assembly and freedom of association, and the protection and promotion of the rights of person belonging to ethnic, religious or linguistic minorities, respectively.

The right of the Jehovah's Witnesses to religious practices and manifestations is provided by article 18 (1) of the ICCPR that stresses "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include 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." Human Rights Committee General Comment No. 22 further explains that "The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to [...] the building of places of worship [...] In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications." (CCPR/C/21/Rev.1/Add.4, para. 4)

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) in its Article 6 (d) provided that the right to freedom of thought, conscience, religion or belief includes the freedom, "To write, issue and disseminate relevant publications in these areas".

We moreover refer to article 19 of the ICCPR, which guarantees the right of everyone to freedom of opinion and expression, which includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

With respect to the banning of religious material, we reiterate the principle enunciated by Human Rights Council Resolution 12/16, calling on States to refrain from imposing restrictions which are not consistent with article 19(3), including practices such as the banning or closing of publications and the abuse of administrative measures and censorship. The same Resolution, referring to the right to freedom of thought, conscience or religion as an intrinsically linked right to freedom of opinion and expression, calls on States to take all necessary measures to put an end to violations of these rights and to create conditions to prevent their recurrence.

With respect to the use to counter terrorism and extremism justifications to restrict the legitimate exercise of rights, we would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism and extremism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

We would like to stress that counter terrorism and extremism legislation with penal sanctions cannot be misused against individuals peacefully exercising their rights to freedom of expression, as well as freedom of religion or belief and freedom of peaceful association and assembly. These rights enjoy international legal protection, and the message of international law is clear and simple: Non-violent exercise of these rights cannot be made a criminal offence in any society governed by rule of law and abiding by human rights principles and obligations. Countering terrorism and extremism should not be used as an excuse to suppress peaceful religious minority groups and their members.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

Furthermore, we would like to draw attention of your Excellency's Government to paragraph 5 of the UN General Secretary's Plan of Action to Prevent Violent Extremism (A/70/674), which provides for the the definitional scope of violent extremism through affirming that in its resolution 2178 (2014), the Security Council makes explicit the link between violent extremism and terrorism, underscores the importance of measures being in line with international norms and recognizes the need for prevention: "violent extremism, which can be conducive to terrorism", requires collective efforts, "including preventing radicalization, recruitment and mobilization of individuals into terrorist groups and becoming foreign terrorist fighters". In that resolution, the Council "calls upon Member States to enhance efforts to counter this kind of violent extremism", recognizing that "international cooperation and any measures taken by Member States to prevent and combat terrorism must comply fully with the Charter of the United Nations". Definitions of "terrorism" and "violent extremism" are the prerogative of Member States and must be consistent with their obligations under international law, in particular international human rights law.

We would like to further refer to Human Rights Council resolution 24/5 in which the Council "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including

migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions of the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law” (OP2, emphasis added).

We would like to further refer to your Excellency’s Government to the international standards in relation to the protection of the rights to persons belonging to religious minorities. Article 27 of the ICCPR establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, “to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

Furthermore, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities), establishes in article 1 the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end, and in article 2.1 that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination and in article 2.4 that persons belonging to minorities have the right to establish and maintain their own associations. Moreover, States are required to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).

We also would like to draw your Excellency’s Government attention to the recommendations of the sixth session of the Forum on Minority Issues on “Guaranteeing the rights of religious minorities” (2013); in particular Recommendation 17, which calls on States to ensure that “there is no discriminatory treatment in regard to the legal and administrative recognition of all religious and belief groups. Any registration and administrative procedures, including those relating to the property and the functioning of places of worship and other religious-based institutions, should be conducted according to non-discrimination standards. International standards do not allow non-recognition of religious or belief groups to result in denial of their rights. Such standards require an inclusive approach to be taken”.