

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 minority issues and the Special Rapporteur on freedom of religion or belief

REFERENCE:
AL IDN 6/2018

12 October 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 minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/6 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Ms. Meiliana**, member of an ethnic Chinese Buddhist minority, who has been convicted of blasphemy and sentenced to 18 months in prison for complaining about the volume of a Muslim call to prayer from a local mosque, and the related attacks against Chinese and Buddhist places of worship.

According to the information received:

On 22 June 2016, Ms. Meiliana, an ethnic Chinese woman of Buddhist faith, residing in Tanjungbalai, North Sumatra, complained about the volume of the call to a Muslim prayer ("adzan") from a local mosque located near her house. A week later, Ms. Meiliana was told by someone associated with the mosque to move away from that neighbourhood. Despite her apologies to the Muslims at the mosque and attempts to clarify the misunderstanding that she wanted to ban the adzan, she was accused of blasphemy.

Following her complaint, Ms. Meiliana's house was stoned and burned down by mobs. Persons associated with her, including children, were at the house at the time of the attacks and needed to be evacuated to Medan. For security reasons, Ms. Meiliana was sent to Tanjungbalai police station and later transferred to Tanjungbalai District Police Station.

Ms. Meiliana's complaint has also triggered anti-Chinese sentiments that triggered riots in Tanjungbalai, which resulted in the destruction of various Chinese and Buddhist places of worship, including the monastery known as the Huat Cukeng Temple, located next to Ms. Meiliana's house. Some Chinese individuals were threatened and beaten by mobs, and others had to flee Tanjungbalai to neighboring countries for fear of attacks.

On 31 July 2016, as a result of a meeting held in the National Unity Unit of Tanjungbalai with members of the Chinese minority, the Chief Police and the City

Government of Tanjungbalai promised assistance to clean up the debris of the destroyed places of worship. Furthermore, around 20 perpetrators were arrested for their participation in the riots in Tanjungbalai. They were allegedly charged with looting, malicious destruction of property and/or inciting violence, and sentenced to one to four months imprisonment.

On 22 August 2016, Ms. Meiliana left Tanjungbalai Police Station and moved to Medan, where she is still living for fear to return to Tanjungbalai. In addition, she has reportedly been diagnosed with severe trauma disorder, anxiety disorder and severe depression, and has required extensive treatment and care as a result of the trauma suffered.

On 21 January 2017, Ms. Meiliana signed a letter of apology to the people of Tanjungbalai. Nevertheless, three days later, the Islamic Scholar Council of the Republic of Indonesia Region of North Sumatera issued a Fatwa affirming that Ms. Meliana was guilty of blasphemy against Islam in Tanjungbalai in accordance with Decree No. 001/KF/MUI-SU/2017.

On 30 May 2018, the Tanjungbalai District Attorney Office in Asahan issued a Detention Order against Ms. Meiliana for 20 days imprisonment. On 26 June 2018, the trial began. On 13 August 2018, the verdict was announced, whereby Ms. Meiliana was convicted for blasphemy under Articles 156 and 156a of the Criminal Code and sentenced to one and a half years in imprisonment.

After the court ruling, the Ministry of Religious Affairs expressed concern about the blasphemy charge against Ms. Meiliana and issued a circular, dated 24 August 2018, which referred to Instruction 101, dated from 1978, which contains detailed guidelines on the use of loudspeakers addressed to religious organizations.

On 5 October 2018, Ms. Meiliana lodged an appeal of the decision. She is yet to be informed about a date for the appellate hearing. She remains detained in a prison in Medan.

Without prejudging the accuracy of these allegations, we would like to express our concern about the blasphemy charges and conviction of Ms. Meiliana which take place on the basis of repressive legislation that is incompatible with Indonesia's obligations under international human rights law. We reiterate that blasphemy laws represent unlawful restrictions to the right to freedom of expression. In this connection, we express concern at the Fatwa issued by the Islamic Scholar Council. We also express serious concern at the mob attacks against Ms. Meiliana's house, as well as other attacks against Chinese and Buddhist individuals and places of worship in Tanjungbalai.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations.
2. Please provide detailed information on the arrest and detention of Ms. Meiliana, and explain how this is compatible with Indonesia's obligations under international human rights law.
3. Please provide information on any investigation, prosecution and/or punishment that have been carried out in relation to the mob attacks and the number of persons held accountable for the aforementioned violations.
4. Please indicate any remedial action taken vis à vis Ms. Meiliana and the individuals affected by the mob attacks.
5. Please provide detailed information about the measures taken to guarantee the safety and security of the Buddhist and Chinese minorities in the country, and to prevent the recurrence of religious intolerance-related attacks.
6. Please provide information on steps taken to repeal blasphemy law in Indonesia.

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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Fernand de Varennes
Special Rapporteur on minority issues

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the fundamental rights in accordance with the principles as set forth in Articles 18, 19, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government ratified on 23 February 2006.

In this respect, we would like to recall that Article 18 of the ICCPR ensures the right of everyone to have and manifest a religion of one's choice. The freedom of religion or belief is part of the *forum internum*; it is a non-derogable right that allows no limitations under international law. Any State policy of such coercive nature that clearly discriminates religious minorities or any individual based on his or her religion or belief therefore violates international human rights law. The repeal of blasphemy laws has been called for by the Special Rapporteur on freedom of religion or belief, and is a recommendation of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility and violence. In addition, the Human Rights Committee has stated in paragraph 48 of its General Comments 34 that prohibitions or displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the ICCPR, except in the specific circumstances envisaged in article 20 (2) of the Covenant. Individuals belonging to religious minority groups are disproportionately charged with "blasphemy", for practicing their faith.

We furthermore refer your Excellency's Government to article 19 of the ICCPR, which provides that "everyone shall have the right to hold opinions without interference" as well as that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." This right includes not only the exchange of information that is favorable, but also that which may shock or offend.

Moreover, this obligation also requires the State "to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities" (see Human Rights Committee General Comment No. 34, para. 7).

We further refer to Article 20 of the ICCPR, which states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. While Article 2 (2) of the said Covenant obligates states parties to take necessary steps to give effect to the rights recognized in the Covenant, Article 4 (2) of the 1981 UN Declaration on the Elimination of all forms of Intolerance and of Discrimination Based on Religion calls upon states to take all appropriate measures to combat intolerance on the grounds of religion or belief.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the concerned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights, acceded by your Excellency's Government on 23 February 2006.

Moreover, the Commission on Human Rights Resolution 2005/40 urges States to ensure that no one within their jurisdiction is deprived of the right to liberty and security of the person and subjected to arbitrary arrest or detention on account of religion or belief.

We also would like to refer to Article 26 of the ICCPR, which stresses that all persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on grounds such as religion.

We deem it appropriate to make reference to the Human Rights Council Resolution 16/18, which has deplored any advocacy of discrimination or violence on the basis of religion or belief. In addition, the Human Rights Committee, in its General Comment 22, stated that the fact that a religion is not the official or traditional in the State shall not result in the impairment of the enjoyment of any rights ensured in the ICCPR. The Committee also raised concern of any tendency to discriminate against any religion or belief for any reason, including when they represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

In this connection, we also deem it appropriate to make reference to international standards regarding the protection of the rights of persons belonging to religious minorities, in particular to Article 27 of the ICCPR, which guarantees minorities, *inter alia*, the right to profess and practice their own religion.

The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes 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 (Article 1), recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination (Article 2) and requires States 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).