

Mandates of the Special Rapporteur on freedom of religion or belief; 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 the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL KGZ 4/2021
(Please use this reference in your reply)

10 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; 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 the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 40/10, 43/4, 43/8 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the ongoing criminal investigation against the Religious Centre of Jehovah's Witnesses in Kyrgyzstan and the continued harassment and discrimination against this religious minority.

According to the information received:

In December 2019, the Kyrgyz State Committee for National Security (GKNB) opened a criminal investigation against members of the Jehovah's Witnesses religious minority and their Religious Centre in Bishkek under article 313 (2) of the Criminal Code for "incitement to racial, ethnic, national, religious or interregional hatred". The Religious Centre was not given notice of this investigation.

On 25 March 2021, Bishkek police officers executed a search warrant of the Religious Centre's premises and adjoining residences, based on received allegations about "the presence of signs of extremism and incitement to religious hatred". During this operation, the police officers seized physical files, electronic devices and personal property, which were returned a few days later.

On 7 July 2021, the Ombudsman's office requested the General Prosecutor's Office to undertake a legal assessment of the police search warrant and to obtain information and comments from the State Committee for National Security, and the latter responded that the search was conducted legally.

On 1 October 2021, the Deputy Ombudsman of the Kyrgyz Republic informed the Religious Centre that the State Committee was still pursuing the criminal investigation. On 21 October 2021, the Religious Centre representatives sent a letter to the President of Kyrgyzstan appealing for the termination of the investigation and associated harassment and later, on 10 November 2021, they met with the Head of the Citizens' Appeal Department of the Office of the President of the Kyrgyz Republic to express their concerns.

On 24 November 2021, a second letter was sent to the President of Kyrgyzstan.

At the same time, on 23 November 2021, in addition to the ongoing criminal investigation, the General Prosecutor's Office opened a civil case against the Religious Centre, to declare thirteen Jehovah's Witnesses' written publications and six videos as "extremist". The State Committee for National Security and the State Commission on Religious Affairs were parties in this case.

On 2 December 2021, the Pervomayskiy District Court examined the case and decided to dismiss it "without consideration" by claiming that it could not be considered under the procedure chosen by the Prosecutor General.

It is worth-noting that the civil case documentation included a letter by the State Committee for National Security addressed to the Prosecutor General containing stigmatizing claims regarding Jehovah's Witnesses and their faith, by portraying their teachings as "primitive" and as "misinterpreting the Bible", claiming that the Religious Centre's followers "at various times and in various countries have been accused of rape, child kidnapping, murder, incitement to murder and suicide, fraud, theft, racism, extortion, bodily harm, prostitution" and calling for the prohibition of their religious organisation's materials to prevent "damage to national security" and "aggravation of the religious and social situation" in the country.

While we do not wish to prejudge the accuracy of the alleged facts mentioned above, we wish to express our serious concern at what appears to be an arbitrary, ongoing criminal investigation against the Religious Centre of the Jehovah's Witnesses in Kyrgyzstan and at what appears to be acts of intimidation and harassment of its members through police raids and searches in the Centre's premises in the capital Bishkek. We also express our concern at the stigmatisation of the activities of the Jehovah's Witnesses, including through legal actions aiming at suppressing their right to peacefully manifest, practice and teach their religion or belief and their freedom to prepare and distribute religious texts or publications. In particular, we are concerned at the characterization of such peaceful religious activities as "extremist" and as "incitement to religious hatred", which may further deepen existing societal misconceptions and prejudice towards this religious minority, and would result in violations of the rights of its members.

In this regard, we wish to remind your Excellency's Government of its obligations under international human rights, and in particular with regard to the provisions of the International Covenant on Civil and Political Rights (ICCPR) providing for the principle of non-discrimination on any grounds (Article 2 and 16), guaranteeing the rights to freedom of thought, conscience, religion or belief (Article 18), freedom of opinion and expression (Article 19), as well as the rights of persons belonging to minorities (Article 27). We wish to underscore that the freedom to manifest one's religion or belief encompasses a broad range of acts and can be exercised either individually or in community with others, and in public or private. It includes, among other things, the preparation and distribution of religious texts or publications.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the factual and legal grounds for the criminal investigation undertaken against the Religious Centre of the Jehovah's Witnesses; in particular, please indicate the evidentiary and legal basis for accusing the Centre and its members of "extremism" and "incitement to religious hatred";
3. Please explain the legal and factual grounds for the police search of the Centre's premises and adjoining residences on 25 March 2021, the temporary confiscation of materials and property, and provide information on the legality of such operation.
4. Please provide information and examples on how national courts interpret the term "extremism" when considering cases of minority religions and minority religious organisations, and how this interpretation is compatible with the international norms and standards on freedom of religion or belief and on freedom of opinion and expression.
5. Please indicate the measures undertaken by your Excellency's Government to ensure the protection and promotion of the rights of all religious minorities, including of the members of the Jehovah's Witnesses' faith, and to effectively address stigmatization and discrimination against them.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Fernand de Varennes
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freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation above.

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), to which Kyrgyzstan is state party since 7 October 1994, and in particular articles 2, 18, 19, 26 and 27, which provide for the principle of non-discrimination, the right to freedom of thought, conscience, religion or belief, the right to freedom of opinion and expression, as well as the rights of persons belonging to minorities.

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 "[t]he freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship [...] the display of symbols [...] 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).

In addition, we wish also to recall that while the manifestation of religion or belief may be restricted as per Article 18(3) of the ICCPR, to protect public safety, order, health, morals and the fundamental rights and freedoms of others, any such limitation must fulfil a number of obligatory criteria of legality, proportionality and necessity, including being non-discriminatory in intent or effect and constitute the least restrictive measure.

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".

In its General Comment No. 34 on the right to freedom of opinion and expression, the Human Rights Committee has found that restrictions of the right to freedom of opinion and expression that a government seeks to justify on grounds of national security and counter-terrorism should adhere to the principle of proportionality, be designed and implemented in a way that respects the universality of human rights and the principle of non-discrimination, and should not be used to prosecute human rights defenders (CCPR/C/GC/34). The Committee also noted that the right to freedom of expression includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others,

subject to the provisions in article 19, paragraph 3, and article 20, and includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse (Ibid. para.11).

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.

We would like to respectfully remind your Government of 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), which in its Article 2 (1): "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In Article 4 (1), the General Assembly further states that: "All States shall 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 [...]" Furthermore, we would like to refer your Government to Article 4(2) according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter. According articles 6 (d) and (e), the right to freedom of thought, conscience, religion or belief includes also the freedom "to write, issue and disseminate relevant publications in these areas", and the freedom "to teach a religion or belief in places suitable for these purposes" and read in conjunction with the principles contained in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4), any statement or expressed opinion should fulfil the six part threshold test of context, content and form, speaker, intent, extent of the speech act, and likelihood/imminence, in order to be considered as a criminal offence.

Furthermore, we would like to recall that the General Assembly, in its resolution 63/181 paragraph 9 (j) urges States "To ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of fulfilling their official duties, respect all religions or beliefs and do not discriminate for reasons based on religion or belief, and that all necessary and appropriate education or training is provided."

With respect to the use to counter terrorism and extremism justifications to restrict the legitimate exercise of freedom of expression, 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 must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not

a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members. We consequently urge the government to maintain a definition of extremism and terrorism consistent with the core legal meanings adopted by States and commends the definition of terrorism developed by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for your consideration (A/HRC/16/51).

We also recall 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, 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 practice their own religion, or to use their own language”.

We wish to refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in General Assembly resolution 47/135, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them.

Furthermore, 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” (A/HRC/25/66).