

Mandates of the Special Rapporteur on minority issues; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on freedom of religion or belief

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(Please use this reference in your reply)

15 November 2022

Excellency,

We have the honor to address you in our capacities as Special Rapporteur on minority issues; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on freedom of religion or belief, and pursuant to Human Rights Council resolutions 43/8, 41/12 and 49/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **obstruction of and discrimination against Muslim and Christian-owned minority businesses in the states of Karnataka and Uttar Pradesh in India.**

According to the information received:

In March-April 2022, multiple calls by Hindu organizations were made to boycott Muslim and some Christian-owned businesses in the states of Karnataka and Uttar Pradesh in India. Some of these calls for the economic boycott of Muslim minority have been supported by state representatives and respective state governments.

Beginning in March 2022, Muslim vendors were not allowed to run their shops and stalls on several temple premises in Karnataka. Following protests by members of the Muslim minority in response to the decision of the Karnataka High Court to uphold a governmental ban on Muslim girls wearing the hijab in educational institutions, Hindutva organizations have been submitting memorandums to temple authorities, municipal officials, and town councils, calling for a ban on Muslims setting up shops and stalls at their premises. Muslims have reportedly been running stalls at these fairs for many years, however, Hindutva organizations had objected to their participation after many Muslims closed their shops to protest the Karnataka High Court verdict upholding the state's ban on wearing hijab at schools and colleges. Reportedly, banners have been put up outside some of these temples urging them not to lease stalls to Muslims.

The boycott practice first started in Marikamba temple in Shivamogga and was later followed by other temples in Dakshina Kannada, Hassan, Tumukur, Chikkamagalur and other districts. On 20 April 2022, the organizers of the festival at the Mahalingeshwara temple in Dakshina Kannada did not allow Muslims to place any kind of stall. Similarly, no Muslims were allowed to bid for stalls at the Hose Marigudi shrine in Udupi, which ended on 23 March 2022, or at the Kote Marikamba temple festival in Shimoga, which began on 22 March 2022 and continued for five days.

The issue was raised in the Karnataka State Assembly on 23 March 2022 by Congress Member of the Legislative Assembly UT Khader. The Karnataka

State government made a statement in defence of the bans by citing Rule 31, sub-rule 12, of the Karnataka Religious Institutions and Charitable Endowment Act (HCRE) 2002, which prohibits the leasing of land or buildings near temples to non-Hindus. Karnataka law minister J.C. Madhuswamy on 23 March 2022 cited the provision of the HCRE Act, which reads: “Land, building, site near to the temple/institutions and any other asset of the temple/institutions should not be given on lease to non-Hindus” and thus informed the State Assembly that non-Hindus are not allowed to do business in and around the premises of Hindu temples. He defended the banners that have been put up around the temples urging them not to lease stalls to Muslims, saying that the banners were put up in response to these rules.

The law minister noted that if Muslim traders were being obstructed from doing business outside temple premises, then the government will take action, however, he noted that non-Hindu vendors have to “follow the rules” within temple premises. Karnataka chief minister Basavaraj Bommai stated that the decision on whom to sub-lease stalls to lied with the individual who originally leased the property.

Civil liberties organizations in Karnataka have made statements to the effect that the Karnataka state assembly’s defence of the bans on Muslim vendors constitutes a deliberate misinterpretation of Rule 31, sub-rule 12 of the HCRE Act. They have stated that Rule 31 only deals with long-term leases of immovable property owned by a temple (up to 30 years for land, and five years for shops and buildings); it does not deal with the short-term licenses which would be used to allot stalls or spaces to vendors during a festival, and that therefore, the matter in question here is not of leasing out immovable property but allocation of such short-term licenses for temporary instalment that can be dismantled. They have also noted, beyond the question of whether the temple actions are justified by the rule 31, the broader question is the constitutionality of the rule itself. Both economic boycott and calling for economic boycott is, according to them, a violation of the constitutional provision of non-discrimination enacted in Article 15 of the Constitution of India. Article 15 of the Constitution explicitly prohibits discrimination on grounds of religion. Article 15(2) further proclaims that no citizen be subject to any ‘restriction’ with regard to ‘access to shops’, ‘maintained wholly or partly out of State funds or dedicated to the use of the general public’.

There have also been calls for the banning of the sale of meat and halal products during Hindu festivals, followed by such bans issued by some local authorities. On 8 April 2022, in Bengaluru was issued a prohibition on the sale of meat across the city on Ram Navami. Additionally, the mayor of the district of Ghaziabad in Uttar Pradesh issued an order to ban the sale of raw meat during Navaratri, effective from 2 April 2022 to 10 April 2022. As raw sale meat businesses are largely Muslim owned, this is seen to constitute another obstruction / form of economic boycott of Muslim-owned businesses.

The home minister of Karnataka blamed publicly the Muslim community’s protest against the high court’s hijab verdict as leading to the boycotts and stated that the government would not take action against the boycotts.

We express serious concern over what is reported as and appears to be an infringement on the economic, as well as civil and political rights and freedoms of the Muslim and Christian religious minorities in India. Economic boycott in Karnataka and bans on sale of raw meat in Karnataka and Uttar Pradesh disproportionately impacting on Muslim businesses appear to present a violation of prohibition of discrimination and of particular concern is the fact that the above restrictions were directly and indirectly targeted at religious minority groups in India – Muslims and Christians. In addition, the boycott and sales ban measures appear to be a retaliation for Muslim community's free expression of opinion and peaceful exercise of their right to peaceful assembly in protesting against the Karnataka High Court's ruling to uphold a governmental ban on Muslim girls wearing the hijab in educational institutions. Such retaliatory measures appear to aim at curtailing the freedom of a minority group to express its views and opinions.

These allegations are particularly concerning in consideration of the current social context of India. Special Procedures mandate holders have expressed concern over the increase of anti-Muslim popular campaigns, which have stocked a wave of Islamophobic sentiment across the country and exacerbated violence and discrimination against Muslim individuals and communities (see IND 7/2022). The subject of the current communication has to be seen in connection with broader patterns of discrimination and intolerance targeting and harassing members of religious minorities. In a previous communication sent to your Excellency's Government (IND 4/2022), Special Procedures mandate holders raised concerns regarding the order allowing Pre-University Colleges (PUCs) to prohibit women and girls students from wearing hijab in Karnataka. UN experts stated that the ban and the following verdict of the Karnataka High Court could set a detrimental precedent for other states in the country and has the potential to exclude large numbers of Muslim women and girls from education and to further marginalise the religious minority in the country.

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

As it is our responsibility, under the mandates provided to us by the UN Human Rights Council, to seek to clarify all cases and situations brought to our attention, we would be grateful for your comments on the following matters:

1. Please provide any additional information or comments in relation to the above-mentioned allegations.
2. Please provide clarifications on how the alleged developments, if confirmed, are compatible with your Excellency's Government's obligations under the provisions cited in the annex below and, if necessary, how it plans to remediate any inconsistencies with international human rights standards.
3. In particular, please provide clarifications on how the alleged policies and actions of your Excellency's Government with regard to the banning of non-Hindus from doing business on temple premises pursuant to Rule 13, sub-rule 12 of the Hindu Religious Institutions and

Charitable Endowments (HCRE) Act, 2002 is consistent with Article 2(1), Article 18, Article 26, Article 27 and Article 20(2) of the International Covenant on Civil and Political Rights and Article 2(2), Article 6 and Article 15 of the International Covenant on Economic, Social and Cultural Rights.

4. Please provide clarifications on how the alleged policies and actions of your Excellency's Government with regard to the banning of the sale of meat and halal products by local authorities in Karnataka and Uttar Pradesh, overwhelmingly impacting Muslim-owned businesses, is consistent with Article 6 and Article 15 of the International Covenant on Economic, Social and Cultural Rights and Article 18, 26 and Article 27 of the International Covenant on Civil and Political Rights.
5. Please provide clarifications on what constitutional, legislative and policy safeguards have been put in place by your Excellency's Government to protect against all forms of religious and cultural discrimination against the Muslim and Christian minorities in Karnataka and Uttar Pradesh.

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.

Fernand de Varennes
Special Rapporteur on minority issues

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Nazila Ghanea
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 draw the attention of your Excellency's Government to its legal obligations under the international treaties it has ratified and to broader international human rights standards.

We recall that the **Universal Declaration of Human Rights** is a foundational standard-setting document of the United Nations system, and recognizes in Article 1 that "all human beings are born free and equal in dignity and rights." We also highlight Article 2 that states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." We further recall Article 18 which protects "the right to freedom of thought, conscience and religion" and Article 19 which expresses "the right to freedom of opinion and expression".

We would like to recall your Excellency's Government's obligation under the **International Covenant on Civil and Political Rights (ICCPR)** ratified by India on 10 April 1979. **Article 2(1)** of the Covenant provides that each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, **religion**, political or other opinion, national or social origin, property, birth or other status. Under **Article 2(3)(a)** of the Covenant State Parties are obliged to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. **Article 17** of the Covenant protects everyone from unlawful attacks on his honour and reputation and adds that everyone has the right to the protection of the law against such interference or attacks. Every state party to the Convention is obliged under **Article 20 (2)** to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Thereafter, **Article 26** of the Covenant provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Finally, **Article 27** of the Covenant stipulates that the state parties where ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied 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.

In relation to your Excellency's Government obligations pursuant to the ICCPR, we recall **General comment No. 18: Non-discrimination**, adopted by the Human Rights Committee on 10 November 1989. In particular, we bring attention to the conclusion that "[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute **a basic and general principle** relating to the protection of human rights" (para 1).

In relation to your Excellency's Government obligations pursuant to Article 27 of the ICCPR, we further recall **General Comment No. 23: The rights of minorities (Art. 27)**, adopted by the Human Rights Committee on 8 April 1994. In particular, we bring attention to the conclusion that, in protecting the rights of minorities covered under Article 27, "a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation" and thus "[p]ositive measures of protection are [...] required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party" (CCPR/C/21/Rev.1/Add.5, para 6.1).

Moreover, we would like to remind your Excellency's Government that article 18 of the ICCPR guarantees the right of freedom of thought, conscience, and religion: "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." The Human Rights Committee stressed in General Comment No. 22, paragraph 2 that it "views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community".

We would further like to recall your Excellency's Government's obligation under the **International Covenant on Economic, Social and Cultural Rights** acceded to by India on 10 April 1979. State Parties to the Covenant are obliged under **Article 2(2)** to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Importantly, **Article 6** of the Covenant obliges the state parties to recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right. Under the same Article, the state parties should take steps to achieve the full realization of this right shall include policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

In relation to obligations pursuant to Article 2(2) the ICESCR, we recall **General Comment 20: Non-discrimination in economic, social and cultural rights**, adopted by the Committee on Economic, Social and Cultural Rights in May 2009. This document enumerates prohibited grounds of discrimination, including religious discrimination, and elaborates that States have an obligation to "adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds," such as in the leasing and selling of private property (E/C.12/GC/20, paras 11, 22)

In addition to the above cited international law, we would like to bring your Excellency's Government attention to other international standards, best practices, and recommendations which are relevant to the issues raised.

We would like to direct your Excellency's attention to the **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic**

Minorities, adopted by consensus by the General Assembly (UNGA) on 18 December 1992. Article 1 of this declaration highlights “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.” We would also like to remind your Excellency’s government of Article 2.2 asserts that members of minority communities “have the right to participate effectively in cultural, religious, social, economic and public life” and Article 3.2 which affirms that “No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.” Additionally, we recall Article 4.5 that declares, “States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.”

We further recall the **Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief**, adopted by consensus by the UNGA on 25 November 1981 (A/RES/36/55). We call your Excellency’s Government attention to Article 1.2 which declares that no person “shall be subject to coercion which would impair his freedom to have a religion or belief of his choice”. According to 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.” Art. 2.2 stresses that “... [t]he expression intolerance and discrimination based on religion or belief means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis”. Moreover, Article 4.1 calls on 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”. Article 4.2 stresses that: "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”.

We further highlight the **Universal Declaration on Cultural Diversity**, adopted by UNESCO’s General Conference on 2 November 2001. In particular, we call your Excellency’s Government attention to Article 4, which states that the “defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity [and] implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples”.

We would further like to remind your Excellency’s government of the Human Rights Council **Resolution 49/5 on Freedom of religion or belief**, adopted on 31 March 2022 (A/HRC/RES/49/5). We recall Article 2 which emphasizes that “freedom of religion or belief and freedom of expression are interdependent, interrelated and mutually reinforcing, and stresses the role that these rights can play in the fight against all forms of intolerance and discrimination based on religion or belief.” We also would like to bring attention to Article 3(c), which calls attention to “[i]ncidents of religious hatred, discrimination, intolerance and violence, which may be manifested by derogatory stereotyping, negative profiling and the stigmatization of individuals on the basis of their religion or belief” and Article 3(d) which highlights

that such incidents are “both in law and in practice [...] violations of the fundamental right to freedom of religion or belief, including of the individual right to publicly express one’s spiritual and religious beliefs, taking into account the relevant articles of the International Covenant on Civil and Political Rights and other international instruments.” Additionally, Article 4 expressly “[c]ondemns all forms of violence, intolerance and discrimination based on or in the name of religion or belief and violations of the freedom of thought, conscience, religion or belief” as well as “any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audiovisual or electronic media or any other means”. Moreover, Article 8 “[s]trongly encourages government representatives and leaders in all sectors of society and respective communities to speak out against acts of intolerance and violence based on religion or belief.”

We remind your Excellency’s Government of the outcome of India’s participation in the third cycle of the **UN Human Rights Council’s Universal Periodic Review (UPR)** process in 2017. In particular, we recall the recommendations which were accepted by your Excellency’s Government¹, such as the recommendation to “ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities,” the recommendation to “continue to develop laws and make efforts to ensure freedom of religion and belief” and the recommendation to “continue its efforts to protect religious freedom and the rights of minority groups based on [India’s] Constitution and other relevant laws” (A/HRC/36/10, paras 161.72, 161.132, 161.144).

We recall the **Recommendations of the Forum on Minority Issues at its third session, on minorities and effective participation in economic life**, held in December 2010. We highlight the Forum’s recommendation that Governments “should eliminate de jure and de facto discrimination affecting participation in economic life for minorities” (A/HRC/16/46, para 16). We also recall the recommendation that Governments take steps to ensure that small businesses owned by persons belonging to minorities “have equal protection before the law” and that “business support agencies or business-related policy reforms should take steps to ensure equal access for minority business owners and **accommodation of cultural or religious particularities**” (A/HRC/16/46, para 34).

We further bring your Excellency’s Government attention to the **Recommendations of the Forum on Minority Issues at its sixth session: Guaranteeing the rights of religious minorities**, held in November 2013. In particular, we recall the recommendation that “States should adopt domestic anti-discrimination legislation that includes provisions that **prohibit direct and indirect discrimination** against persons belonging to religious minorities” (A/HRC/25/66, para 19). Moreover, we recall the recommendation that “[i]n multi-faith societies, efforts to build a climate of trust, understanding, acceptance, and interfaith cooperation and exchange should be established” (A/HRC/25/66, para 65).

At last, we would like to recall India’s **National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21** in the twenty-seventh session by the Working Group on the Universal Periodic Review. Item 6 of the document states, “at the second review, India committed to continuing its efforts towards socioeconomic development and poverty eradication. It agreed to provide more resources for the enjoyment of economic and social rights,

¹ A/HRC/36/10/Add.1.

and to make efforts towards ensuring that such rights are available to all, especially vulnerable groups like women, children, poor people and minorities.” We would also like to remind your Excellency’s government of Item 8 stating “India believes that inclusive and equitable development is the key to securing a life of dignity, security, empowerment and freedom for all...Acknowledging the need for sustainable development, and the potential conflict between competitive growth and inclusive growth, India directs its policies towards enabling economic growth consistent with the imperative of ensuring that the benefits of such growth reaches all sections” and Item 59 which highlights “Recognizing the importance of religious freedom for the safe and secure enjoyment of human rights and life with dignity for all, India remains committed to protecting its secular, multi-ethnic, multi-religious, pluralistic character, and combating instances of religious intolerance, violence and discrimination...” Moreover, we turn your excellency’s government’s attention to Item 76 which states “India committed to promoting the right to equal opportunity for work and at work” and Item 147 which indicates “The National and State Commissions for Minorities continue to monitor complaints from minority communities regarding issues of discrimination and disadvantage faced by them.”