

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 and the Special Rapporteur on minority issues

Ref.: AL KOR 5/2023
(Please use this reference in your reply)

2 August 2023

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 and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 49/5, 52/9 and 52/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the obstruction of the construction of a Mosque by private individuals in Daehyon-dong, Daegu City as well as hate speech against the Muslim religious minority in the Republic of Korea.

According to the information received:

On 28 September 2020, the Buk-gu District Office approved and delivered a permit for the construction of a Mosque in a building in Daehyon-dong, Buk-gu, Daegu City at the request of the owners of the property.

Prior to the construction approval, the building had already been used as a place of worship by Muslims since December 2014 without any objections from local residents.

Following the Office's approval, the construction began on 18 October 2020. On 16 February 2021, the Buk-gu District Office received a complaint from local residents arguing that the construction of a Mosque would create "emotional instability, would violate property rights and would turn the place into a slum". On the same day, the Buk-gu District Office ordered the halt of the Mosque construction and asked the Muslim community to come to a peaceful agreement with the residents.

Protests were subsequently held, blocking the entrance of the construction site.

On 23 July 2021, protestors placed their cars in front of the entrance and displayed banners with discriminatory and hateful messages against Islam, Muslims, and mosques. Dozens of banners were reportedly displayed throughout the city and particularly in front of the construction site by protestors, some of which contained the following:

"Is the Taliban in Daehyeon-dong? Is this your country? Stop threatening our residents!";

"Muslims who kill people brutally and behead them, get out of this area now! Terrorists! Right now!"

"As in Europe, this area will turn into a slum and become a risk to public safety if it gets crowded with Muslims"; as well as

"Islam is an evil religion that kills people."

On 2 September 2021, the National Human Rights Commission of Korea recommended to the Buk-gu District Office to take measures to resume the construction of the Mosque.

The case was subsequently addressed through legal proceedings. On 1 December 2021, the Daegu District Court cancelled the order to halt construction given by the Buk-gu district Office. An appeal against this decision was filed on 22 April 2022 to the Daegu High Court. Finally, the case was brought to the Supreme Court of Korea which confirmed the decision taken in the first instance court, declaring the order to halt the construction illegal.

Despite this, protestors continued to obstruct the construction of the Mosque by blocking and holding events in front of the site entrance. These have reportedly included the placement of dismembered swine body parts in the immediate surroundings of the construction site, which has prevented construction workers from effectively carrying out their work.

While we do not wish to prejudice the accuracy of these allegations, we would like to express our serious concern regarding the ongoing obstruction of the construction of a place of worship, representing an obstacle to the effective enjoyment of freedom of thought, conscience, religion or belief.

We recall that under article 18(1) of the International Covenant on Civil and Political Rights, the right to freedom of religion or belief includes the right, "individually or in community with others and in public or private, to manifest [...] religion or belief in worship, observance, practice and teaching." The right to collective worship is also protected under article 21 of the same treaty. According to the Human Rights Committee "The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts.... including the building of places of worship" (see General Comment No. 22 paragraph 4).

Articles 19 and 21 of the ICCPR protect freedom of opinion and expression and peaceful assembly, including the right to host counterdemonstrations. The freedom of expression is subject only to legitimate restrictions set out in art. 19 (3) (respect for the rights of others), as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination, in accordance with article 20 ICCPR.

Should the allegations be confirmed, the messages conveyed during the demonstrations held to oppose the construction of the Mosque could possibly constitute advocacy of religious hatred that constitutes incitement to discrimination against a religious minority as per art. 20 of the ICCPR. Competent authorities should analyse and counter hate speech in line with 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), which clarifies States obligations and other stakeholders' responsibilities under articles 19 and 20 of the ICCPR.

We would also like to draw the attention towards resolution A/HRC/RES/16/18, which calls on State to foster a domestic environment of religious tolerance, peace and respect and combat denigration and negative religious stereotyping of persons through a broad range of actions and measures, including education, awareness-raising and inter-faith or inter-religious dialogue.

Finally, we would like to bring to the attention of your Excellency's Government the international standards regarding the protection of rights of persons belonging to minorities, in particular article 27 of the ICCPR that guarantees minorities, inter alia, the right to practise and profess their own religion.

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 information and comment you may have on the above-mentioned allegations.
2. Please provide precise information as to the measures taken by your Excellency's government to ensure that ongoing construction work of the Mosque is not unduly obstructed, while respecting the right to freedom of expression and peaceful assembly.
3. Please provide precise information about measures taken by your Excellency's Government to ensure that the rights of the Muslim community in Daehyon-dong to freedom of religion or belief and as members of a religious minority are respected and protected in accordance with the international human rights obligations under the International Covenant on Civil and Political Rights pertaining to the Republic of Korea.
4. Please provide information on the measures undertaken to foster a domestic environment of tolerance, peace and respect towards religious or belief minorities in the Republic of Korea to combat denigration and negative religious stereotyping.

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.

Nazila Ghanea
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
Special Rapporteur on minority issues

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 described above.

We refer to the ICCPR ratified by the Republic of Korea on 10 April 1990. Article 18 of the ICCPR states that that "Everyone shall have the right to freedom of thought, conscience and religion. These rights shall include freedom [...] either individual 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 has noted in General Comment No. 22 paragraph 3 that article 18 of the ICCPR "Does not permit any limitations whatsoever on the freedom of thought and conscience [...]". Article 18 (2) states "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." Article 18 (3) provides the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Thus, peaceful expression of one's thought and conscience cannot be restricted unless it has fulfilled stringent tests of legality, proportionality and necessity.

We also recall that the Human Rights Committee has also noted that the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. Accordingly, 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 (CCPR/C/21/Rev.1/Add.4, paragraph 4). Further, 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) highlights in article 6 that the right to freedom of thought, conscience, religion or belief includes the freedom, "to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes".

In relation to your Excellency's Government obligations pursuant to the ICCPR, we recall General Comment No. 22: Freedom of Thought, Conscience or Religion (art. 18), adopted by the Human Rights Committee on 30 July 1993. In particular, we bring attention to the conclusion that even when one religion is declared a State religion and is practiced by the "the majority of the population," this does not justify "any discrimination against adherents to other religions or non-believers" (CCPR/C/21/Rev.1/Add.4, para 9).

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject

only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant.

We remind your Excellency's Government as per article 20 (2) of the ICCPR, States are under an obligation to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

In relation to universal equality free from discrimination, article 26 of the ICCPR 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, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". In the context of State obligations to protect such rights for minorities, article 27 provides 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 practise their own religion, or to use their own language.

In relation to your Excellency's obligations pursuant to article 27 of the ICCPR, we further recall General Comment No. 23: 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, therefore, 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).

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. States "must act appropriately and rapidly to protect the rights and security of persons belonging to religious minorities under threat, and prosecute anyone who commits, supports or incites violence against them" (A/HRC/25/66, para 53). We further highlight the recommendation that "States should ensure that all cases of intimidation, harassment, persecution and other serious human rights violations against persons belonging to religious minorities, including through the use of Internet tools and platforms, are thoroughly and immediately investigated, and that the perpetrators are punished" (A/HRC/25/66, para 57). In particular, we bring attention to conclusion that "negative portrayal of religious minorities in the media or in official or political discourse has a significant influence on how they may be perceived by the population in general, and should be addressed" as well as the corresponding recommendations that in cases where "such discourse amounts to hate speech or incitement to religious hatred, appropriate legal penalties should be enforced, in conformity with international standards" (A/HRC/25/66,

para 59). Finally, 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).

We would also like to highlight resolution 16/18 (A/HRC/RES/16/18) on “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief” which calls on States to take a number of actions to foster a domestic environment of religious tolerance, peace and respect. These actions include encouraging projects in the fields of education, health, conflict prevention, employment, integration and media education; creating an appropriate mechanism within Governments to, inter alia, identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation; encouraging the efforts of leaders to discuss within their communities the causes of discrimination, and evolving strategies to counter these causes; speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence; understanding the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, national, regional and international levels through, inter alia, education and awareness-building; recognizing that the open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels, can play a positive role in combating religious hatred, incitement and violence. The resolution also calls upon States to adopt measures and policies to promote the full respect for and protection of places of worship and religious sites.