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Human rights situations that require the Council's attention

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Indian Movement "Tupaj Amaru", International-Lawyers.Org, Union of Arab Jurists, United Towns Agency for North-South Cooperation, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[02 June 2019]

* Issued as received, in the language(s) of submission only.



Myanmar: Broken promises of peace amidst the crumbling of democratic institutions and escalating inter-religious hostilities

Introduction

Since the outbreak of unprecedented violence against the Rohingya and other ethnic minorities, and despite compelling evidence of genocide and crimes against humanity perpetrated at the hands of Myanmar military forces, hate speech, discrimination and blatant violations of the most fundamental rights continue unabated in Myanmar. Hopes that the Nobel Peace Prize Laureate Aung San Suu Kyi would radically transform the country into a colourful multi-ethnic, multi-cultural democratic and peace-loving country have regrettably faded away. Amidst the proliferation of hate speech and religious intolerance, coupled with public and private wrongdoers getting away with murder, we lament the crumbling of democratic institutions and the erosion of faith in them. We further express dismay at restrictions to freedom of worship for Muslims and the worrisome increase in inter-religious hostilities that could lead to more bloodshed in Myanmar.

Hate speech against minorities continues

On 5 May 2019, at a rally held in front of the Yangon City Hall, Mr. U Aung Kyaw Hsan, a pro-nationalist writer, affirmed during his speech that he would ravage the members of minority religions. More precisely, he said “Let me gently remind that if the religions of the guests (meaning non-Buddhist people) assault the religion of the hosts (the Buddhists), we will have to ravage the whole tree including its branches, trunk and stem. We will also have to unearth that tree from its root. As the Head of State said, guests should behave only like guests. But if they try to destroy or belittle the Buddhist religion, which exists peacefully, we will have to smoulder them”. According to the Burma Human Rights Network,¹ in the same speech, Mr. U Aung Kyaw Hsan also used threatening words against the members of minority religions by saying that they will end up in violent death if they blaspheme or even just “blaspheme in their mind” Theravada Buddhism. According to him, Buddhism has been a traditional religion for the people of Myanmar since the Pyu era, 85% of the of the country’s population is Buddhist and Buddhism was declared State religion in 1960.

We are profoundly alarmed by the highly offensive language and hate-inciting speech against religious minorities in Myanmar. This speech runs not only against basic principles of international human rights law, but it also constitutes a grave breach of the fundamental principles underlying the Constitution of Myanmar adopted by all its citizens, including the Buddhist majority. Even though article 361 of the Constitution of Myanmar recognizes a special position of Buddhism as the faith professed by the great majority of its citizens, article 362 also recognizes Christianity, Islam, Hinduism and Animism as religions existing in the Union. Any act intended or likely to promote feelings of hatred, enmity or discord between racial or religious communities is prohibited under article 364, which also states that a law may be promulgated to punish such activity. In light of this constitutional provision and the abovementioned facts, we note with deep concern that hate messages are spread across the country with total impunity. We strongly believe that the “special position of Buddhism” as referred to in the Constitution does not allow for violence and discrimination against adherents to other religions. But what legal implications does the “special position of Buddhism” carry? How many times has hate speech against religious minorities been condemned and sanctioned by criminal tribunals in the last three years? Why is Aun San Suu Kyi so silent in the face of religious hate speech and does not call to account political party officials?

¹ <http://www.bhrn.org.uk/en/press-release/1081-call-for-action-against-those-vows-to-ravage-minority-religions.html>.

Unacceptable restrictions on freedom of worship

In the Chauk Township located in the Magway Region in Central Myanmar, the trustees of the Myoma and Mingalar Jemaah mosques - which were set on fire during riots in 2006 - requested to the Chief Minister of the Magway Region to authorize the resumption of Muslim worship in the mosques. In October 2017, the Regional Government decided to grant permission to resume worship in the mosques, but it did not allow for the renovation of the sites. However, the Chauk Township Administration delayed the implementation of the decision taken by the Magway Regional Government and refused to remove the “restricted area” signs placed outside the mosques. The trustees of the mosques appealed this year upon other local administrative departments to implement the decision taken by the Magway Government, an attempt which remained largely fruitless. Subsequently, the Chauk Township authorities planned to hold a public vote to decide whether permission to resume Muslim worship in the two mosques should be granted. Public officials went therefore to the residences of 700 families surrounding the Myoma and Mingalar Jemaah mosques to collect their votes on the matter. Afterwards, the authorities declared that the proposal was rejected by the residents as 427 households voted against the resumption of Muslim worship in the two mosques.

We are deeply concerned about the restrictions on freedom of worship that adherents to Islam are facing throughout Myanmar, notably in Chauk Township and Rakhine State. Even though the fact of conducting a public vote may seem the most democratic way of taking decisions, we remind all local, regional and central authorities in Myanmar that a public vote - even if it was organized in strict compliance with the relevant legal provisions - may never justify the violation of any fundamental right enshrined in an international human rights treaty. Therefore, a minority shall never be denied the right to practice its faith in its sacred places unless the conditions of legality, necessity and proportionality of the restriction are fulfilled. In the present case, it appears clear that the refusal is not justified by any public imperative. Under these circumstances, over 1,300 Muslims living in Chauk Township are unlawfully deprived of their right to collective worship in their sacred buildings. We further express dismay at this decision because it has stirred up tensions and fomented inter-religious strife in an already extremely fragile setting.

Lack of accountability

We fully share the views expressed by the UN Independent International Fact-Finding Mission on Myanmar as articulated in the Office of the High Commissioner for Human Rights (OHCHR) press release published on 14 May 2019. As already voiced jointly by us during the 40th session of the Human Rights Council and Myanmar’s CEDAW review, a combination of discrimination and hate speech along with political and social side-lining of minorities seem to be endemic in Myanmar. No credible measures have so far been taken to ensure accountability, full reparation for victims and a transitional process towards inclusive societies and institutions, which make the repatriation of Rohingya and the prospect of lasting peace in Myanmar a mere illusion. No conviction has been rendered so far, which demonstrates once again the inability of domestic institutions to deliver justice and the compelling need to refer the case to the International Criminal Court (ICC).

Recommendations

We urgently recommend the following:

Effectively prosecute all hate speech against religious and ethnic minorities, punish the perpetrators with commensurate sanctions

Clarify the legal implications of the expression “special status of Buddhism” as referred to in the Constitution, ensure that its interpretation and application is consistent with international human rights standards so as not to encroach on the rights of religious minorities

The Head of the Government of Myanmar and other high-ranking public officials shall publicly condemn religious and hate speech, and thereby issue a warning that every single case will be criminally prosecuted and sanctioned without any exception

The Myanmar government shall immediately put an end to the violation of the freedom of worship for Muslims living in Chauk Township by granting them permission to resume worship in the mosques and proceed with their renovation

Spiritual leaders of all different religions and beliefs in Myanmar shall promote religious tolerance and interfaith dialogue among political leaders and the faithful

The international community shall interrupt all financial and economic relations and any other form of support to Myanmar's military to isolate its commanders and bring them before the ICC to answer charges of war crimes, crimes against humanity and genocide.

Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.