

# Who is and who is not a FoRB prisoner?

**By Willy Fautré, *Human Rights Without Frontiers***

HRWF (03.08.2016) - Much confusion often prevails around the concept of freedom of religion or belief (FoRB) and the identification of groups, persons and cases qualifying for the protection under related international instruments. Clarification is also needed to qualify the status of religious prisoners, FoRB defenders and FoRB prisoners (1).

## **FoRB Rights and Activities**

According to Article 18 of the ICCPR, FoRB includes the freedom to have or to change religion or belief, the freedom to share one's religion or beliefs, the freedom of association, the freedom of worship and assembly, as well as conscientious objection to military service (UN Human Rights Committee General Comment 22 Para. 11 on the ICCPR).

In this regard, a number of situations are clearly covered by the aforementioned international standards: a Baha'i or an Ahmadi identifying himself as such in Iran or Pakistan, a Muslim or a Hindu converting to Christianity in Morocco or India, an Evangelical Protestant trying to share his beliefs in public or in private in Uzbekistan, Said Nursi Muslims or Pentecostal Protestants meeting in a private home or public place for worship or for any sort of religious purposes whether their group is registered by the state or not, or a Jehovah's Witness refusing to perform military service in South Korea or Eritrea. In such situations, all those people are victims of FoRB violations.

According to the 1981 UN Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), Article 6, the right to freedom of thought, conscience, religion or belief includes, inter alia, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Anyone who would be arrested and deprived of his freedom for one of these activities could without any doubt be considered a FoRB prisoner.

Some believers and clerics may resist their government's attempts to restrict or violate their freedom of religion or belief by petitioning the authorities, filing complaints with international institutions... These activities are also part of their freedom of religion or belief. If they are repressed by the authorities, they are victims of FoRB violations as protected by the aforementioned instruments.

## **FoRB Defenders as Human Rights Defenders**

There is no specific definition of who is or can claim to be a human rights defender. The UN Declaration on human rights defenders refers to "individuals, groups and associations ... contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals."

In accordance with this broad categorization, they can be any person or group of persons working to promote human rights, ranging from intergovernmental organizations based in the world's largest cities to individuals working within their local communities. Defenders can be of any gender or age, from any part of the world and from all sorts of professional or other backgrounds. In particular, it is important to note that human rights defenders are not only found within NGOs and intergovernmental organizations.

FoRB defenders can be said to fall under a subdivision of the category of human rights defenders.

A number of non-state actors may occasionally or regularly defend the rights of believers, clerics and religious associations whether they are one of them or not.

Some human rights organizations put FoRB on their agenda among other topics. Some lawyers defend prisoners arrested for evangelizing in the public space. Some journalists and bloggers write about FoRB violations. They are all FoRB defenders. If they happen to be arrested and/or imprisoned, it is in their capacity of human rights defenders but they cannot be called or claimed to be FoRB prisoners.

### **Believers and Clerics as Non-violent Social or Political Activists**

In the 1970s and 1980s, a number of Catholic priests in Latin America engaged in non-violent social activities were arrested or victims of extra-judiciary killing.

During WWII, clerics were engaged in non-violent resistance movements against the German occupying forces.

In Northern Ireland, priests and pastors were involved in political activities in a violent context until the 1998 Good Friday Agreement.

In Thailand, Buddhist priests were arrested and beaten by the police for demonstrating against the government.

In China, Uyghur Muslims want their historical lands to gain independence, and Tibetan Buddhist monks regularly protest against the annexation and occupation of their country by China since the 1950s.

In Tajikistan, the Islamic Renaissance Party was banned and their members were sentenced to long prison sentences. Some of their political meetings were taking place in mosques, which is forbidden by law.

In Azerbaijan, imams organized demonstrations to denounce the corruption of the regime and to claim democracy, and ended up in prison.

State repression against those activists cannot be labelled religious persecution or violation of religious freedom as some state institutions and NGOs defending religious freedom do because their actions, though legitimate and honorable as they may be, they are not protected by Article 18 of the ICCPR and Article 9 of the European Convention of Human Rights, but by other articles of the same instruments. Therefore, such prisoners

could be characterized as political prisoners, victims of politically motivated imprisonment, Christian prisoners, Muslim prisoners... but not FoRB prisoners.

### **FoRB and Other Religion-related Prisoners in Azerbaijan**

In February 2015, two female Jehovah's Witnesses Valida Jabrayilova and Irina Zakharchenko, were arrested and kept in detention for "illegally distributing religious literature without state permission." A criminal case was opened against them on the basis of Criminal Code Article 167-2.2.1 ("Production, sale and distribution of religious literature, religious items and other informational materials of religious nature with the aim of import, sale and distribution without appropriate authorisation... when conducted by an organised group"). Their pre-trial detention was prolonged several times and they were only released one year later.

In 2015, five Sunni Muslims who are followers of the Turkish theologian Said Nursi were sentenced to prison terms ranging from one year and a half to more than five years in prison for gathering with others in private home to read and discuss the teachings of the religious scholar who never advocated violence and attempted throughout his life to conciliate religion, modernity and politics.

In 2015, three Sunni Muslims connected to the Lezghi mosque (2) in the Old City were arrested and sentenced to prison terms of six to fifteen months for selling religious material without authorisation. They were prosecuted on the basis of Criminal Code Article 167-2.1 ("Production, sale and distribution of religious literature, religious items and other informational materials of religious nature with the aim of import, sale and distribution without appropriate authorisation").

*Human Rights Without Frontiers* all included these victims in its list of FoRB prisoners.

In November-December 2015, about 60 Shia Muslims belonging to the Muslim Unity Movement were arrested in Nardaran, a fundamentalist district outside Baku, because of allegedly plotting to overthrow the government and storing weapons and ammunition. Seven people were killed in the crackdown, including two policemen. Trials started in 2016.

A number of state American and European institutions and NGOs defending religious freedom consider that they are in prison as victims of FoRB violations but none of them seems to have investigated the nature of the Muslim Unity Movement. Is it a religious entity, a political movement or a civil society organization? *Human Rights Without Frontiers* has tried to answer this question before possibly including these prisoners in its FoRB Prisoners List but has been unable to characterize the nature of the Muslim Unity Movement despite consulting scholars in Baku and experts outside Azerbaijan. Nobody could provide the charter of the movement, its objective and its program. US expert Paul Goble said to Contact.az on 25 July 2016 "The Islamic Unity Movement is in favor of non-violent changes and the spread of democratic values". Though, two policemen were killed during the crackdown.

As of 1<sup>st</sup> August 2016, *Human Rights Without Frontiers* cannot say if the arrested people, including their leader Taleh Bagirov, have been detained on the grounds of freedom of religion or belief as protected by Article 9 of the European Convention and Article 18 of the International Covenant Civil and Political Rights, or for other reasons. *Human Rights Without Frontiers* has therefore not included these people in its List of FoRB prisoners (3), considering that they most probably belong to another category of prisoners.

In conclusion, it is of utmost importance to know the nature of some movements and the activities of their members to be able to either qualify or disqualify specific incidents as FoRB violations and some persons or groups as victims of such violations.

- (1) FoRB prisoners are people who have been arrested and jailed for exercising their legitimate right to freedom of religion or belief as guaranteed by international instruments.
- (2) Lezghis are an ethnic group divided between supporters of and opponents to the government.
- (3) See <http://hrwf.eu/forb/forb-and-blasphemy-prisoners-list>