



مجلس حقوق الإنسان

الدورة السابعة

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاصة المعنية بحرية الدين أو المعتقد، السيدة أسماء جاهانغير

إضافة

البعثة التي قامت بها إلى طاجيكستان*

* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير الوارد في مرفق هذه الوثيقة فيُعمم بالإنكليزية والروسية.

موجز

قامت المقرر الخاصة المعنية بحرية الدين أو المعتقد، السيدة أسماء جاهانغير، بزيارة إلى طاجيكستان في الفترة من 26 شباط/فبراير إلى 1 آذار/مارس 2007، بناء على دعوة من الحكومة. وتمت الزيارة عملاً بالولاية التي عُهد بها إليها لتقييم الحالة المتعلقة بحرية الدين أو المعتقد في البلد.

ويقدم الجزء الأول معلومات أساسية عن البعثة، ويتناول الجزء الثاني بإيجاز الحالة السياسية والتاريخية في طاجيكستان، مع الإشارة بوجه خاص إلى الحرب الأهلية (1992-1997) وما تلاها من عملية بناء السلم. وتعطي المقرر الخاصة في الجزء الثالث فكرة عامة عن المعايير القانونية الدولية الرئيسية المشار إليها في التقييم القطري. أما الجزء الرابع، فيتناول بإيجاز الإطار القانوني المحلي بشأن حرية الدين أو المعتقد ويتضمن أحكام الدستور والقانون الجنائي وقانون الأديان والمنظمات الدينية لعام 1994. وتوجد خطط في الوقت الحاضر للاستعاضة عن القانون الأخير بمشروع قانون عن حرية الضمير والرابطة الدينية وسيجري تبعاً لذلك النظر في التغييرات المحتملة حدوثها.

ويتضمن الجزء الخامس بيانات رئيسية عن حرية الدين أو المعتقد في طاجيكستان. وفيما يتعلق بالديموغرافية القائمة على أسس الأديان، يقدر أن ما يقرب من 95 في المائة من السكان يعتبرون أنفسهم من المسلمين، وهم أساساً من أتباع المذهب السني، بينما يهيمن المذهب الشيعي الإسماعيلي في المقاطعة غورنو - بلخشان المتمتعة بالحكم الذاتي. وأثار المسلمون بعض الشواغل بشأن الشروط القانونية الخاصة بتشييد المساجد وإقامة المدارس الدينية وأداء الحج. وتشمل الأقليات الدينية في طاجيكستان، البهائيين والمعدانيين وأتباع كنيسة غريس سونمن وهاري كريشنا وشهود يهوه واليهود واللوثريين وأتباع الكنيسة الرومانية الكاثوليكية والمسيحيين الروس والأرثوذكس وأتباع الكنيسة السبئية والزرادشتيين. وتم قتل عدة أفراد من الأقليات الدينية في السنوات الماضية. ووقعت هجمات عنيفة أيضاً على أماكن عبادتهم وحدثت مشاكل مع السلطات في محاولة للإبقاء عليها في وضع سليم. وزعم أن بعض السلطات المحلية حاولت استخدام عملية التسجيل لعرقله أنشطة الأقلية الدينية. ويتم تثبيط عمليات التنشير الصريحة وينص مشروع قانون عام 2006 على حظر الأعمال الرامية إلى تحويل المؤمنين بعقيدة ما إلى عقيدة أخرى. ويواجه كثير من الذين غيروا دينهم مشاكل في حياتهم اليومية، وأساساً على الصعيد الاجتماعي.

وتؤكد المقرر الخاصة في استنتاجاتها وتوصياتها على ضرورة وضع سياسات تنقيفية يكون الهدف منها دعم عملية تعزيز حقوق الإنسان وحمايتها واستئصال جذور التحيز التي تتنافى وحرية الدين أو المعتقد. ولا ينبغي أن يشكل التسجيل شرطاً مسبقاً لممارسة شخص ما لدينه كما لا ينبغي أن يتوقف أي إجراء للتسجيل على متطلبات رسمية أو فنية مكثفة. وفيما يتعلق بأملاك العبادة، تشدد المقرر الخاصة على أنه يتعين على السلطات أن تراعي الطابع المحدد لهذه الأماكن وأهميتها الخاصة بالنسبة للمؤمنين. وينتابها القلق أيضاً بشأن ضعف حالة النساء في المجتمع الطاجيكي، والتي تؤثر عليها كذلك جزئياً العوامل التقليدية أو تلك التي تندرج في عداد العوامل الدينية. ومن التدابير التي يمكن اتخاذها لبدء تغيير حالة خضوع المرأة المقبولة على نطاق واسع والقضاء على الأسباب التي تؤدي إلى تعدد الزوجات تنظيم حملات تنقيفية لمخاطبة الزعماء الدينيين وقادة المجتمعات المحلية. وعلاوة على ذلك، تشجع المقرر الخاصة الحكومة على الاعتراف بحق الأشخاص المستنكرين ضميرياً في الإعفاء من الخدمة العسكرية. وختاماً، تشدد على أنه يجب على الدول أن تضمن امتثال أي تدابير تتخذ لمكافحة أعمال الإرهاب لالتزاماتها بموجب القانون الدولي، ولا سيما القانون الدولي لحقوق الإنسان وقانون اللاجئين والقانون الإنساني الدولي. ويُعد وجود جهاز قضاء مستقل ومحيد ونزيه

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF, ASMA JAHANGIR

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I. INTRODUCTION

1. The Special Rapporteur on freedom of religion or belief, Asma Jahangir, carried out a mission to Tajikistan from 26 February to 1 March 2007, at the invitation of the Government. The visit was undertaken pursuant to her mandate to assess compliance with international standards on the right to freedom of religion or belief. Owing to an unfortunate emergency, she had to interrupt her visit in order to attend to a personal matter in her home country. For that reason, she was unable to travel as scheduled to Khujand and Isfara, although her team went there and received submissions from local authorities, individuals and organizations in the field. The Special Rapporteur would like to thank the Government for its understanding and constructive reaction to these circumstances.

2. In general, the Special Rapporteur was deeply impressed by the cooperation extended to her by the Government of Tajikistan. In Dushanbe, she met the Minister for Education and the Head of the Department of International Relations at the Ministry of Education, the Minister for Justice and the Deputy Minister for Justice, the Minister for Foreign Affairs and the Head of the Department of International Organizations, the State Counsellor of the President of the Tajik Republic on Social Development and Public Relations, the Deputy Interior Minister, the Prosecutor General, the Minister for Culture and the Deputy Minister for Culture and the Head of the Department of International Relations. Moreover, the Special Rapporteur is grateful that she was invited, at her request, by the Minister for Education to visit, on short notice, the City of Dushanbe Boarding School for Orphans No. 1. The Special Rapporteur also had consultations with the chairperson and several members of the Islamic Renaissance Party of Tajikistan. Furthermore, the team met with the Deputy Chairman of the Sughd Region and with the mayor of the city of Isfara.

3. The Special Rapporteur collected first-hand information and materials on the state of freedom of religion or belief in the country by, inter alia, meeting members of various religions. The interlocutors included religious leaders and members of Sunni and Shia Ismaili Islam, the Jewish community, the Baptist Church, the Church of Christian Adventists, the Russian Orthodox Church, the Roman Catholic Church, the Church of Christian Evangelists, the Christian Humanitarian Mission "League of the Bible", the Baha'i community, the Grace Sunmin Church, the Missionary Centre "Nadezhda", the Vozrojenie Church and the community God's Love. Furthermore, the Special Rapporteur met with lawyers and representatives of non-governmental organizations, such as the League of

Women Lawyers, “Society and Law”, the Human Rights Centre, the Bureau of Human Rights, the Aga Khan Development Network and the Open Society Institute. The team met with representatives of the United Nations Children’s Fund, the United Nations Development Fund for Women, the United Nations Population Fund, the Organization for Security and Cooperation in Europe (OSCE), the delegation of the European Commission to Tajikistan, the University for Peace and foreign embassies in Tajikistan.

4. The Special Rapporteur would like to thank the authorities for their invitation and full cooperation. Her visit was the second official mission carried out by a special procedures mandate holder to Tajikistan since the Special Rapporteur on the independence of judges and lawyers undertook a country visit in September 2005. The Special Rapporteur sincerely appreciates the outstanding logistical support of the United Nations Tajikistan Office of Peacebuilding provided to her before, during and after the mission. Furthermore, she is grateful that OSCE offered its field office in Khujand for meetings. Finally, she would like to express her gratitude for the information she received from international civil society groups and individual academics.

II. POLITICAL AND HISTORICAL CONTEXT

5. Under Soviet auspices, Tajikistan became an Autonomous Soviet Socialist Republic in 1924. Five years later, it gained the status of a full Soviet Socialist Republic, including the additional territory of Leninabad (now Sughd Region). Subsequent to the failed coup in Moscow and declarations of independence by other Central Asian States, Tajikistan proclaimed itself an independent republic on 9 September 1991.

6. In 1992, civil war broke out in Tajikistan between opposing regional and ideological groups. It is estimated that the war claimed between 50,000 and 100,000 lives and forced almost 1 million people to flee their homes. From 1994 to 1997, the United Nations Mission of Observers in Tajikistan monitored the ceasefire agreement between the Government of Tajikistan and the United Tajik Opposition, a coalition of Islamic leaders and secular politicians. Under the auspices of the United Nations, the Government and the United Tajik Opposition concluded the General Agreement on the Establishment of Peace and National Accord on 27 June 1997.

7. Following the signing of this general peace agreement, the Mission’s mandate was expanded to help monitor its implementation. The Mission accomplished its assigned tasks and its mandate was terminated on 15 May 2000. Subsequently, the United Nations Tajikistan Office of Peacebuilding was established. The Office has been devoting its activities to strengthening democratic institutions and capacities for conflict prevention, increasing respect for the rule of law at all levels and strengthening national mechanisms and building national capacities in human rights.

8. A national referendum in September 1999 approved a series of amendments to the Constitution of 6 November 1994, including the legalization of political parties based on religion. This permitted the religiously affiliated Islamic Renaissance Party of Tajikistan to participate in elections and ultimately to be represented in the national legislature of the country. The most recent constitutional amendments were adopted on 22 June 2003, following a plebiscite on the basis of which 56 amendments to the Constitution were approved.

III. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

9. The section below provides an overview of the main international legal standards referenced^[1] by the Special Rapporteur in carrying out her assessment of the situation regarding freedom of religion or belief in Tajikistan.

10. Article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights set out the basic elements of the right to freedom of religion or belief. This fundamental right includes the freedom to have or to adopt a religion or belief of one’s choice, and the freedom, either individually or in community with others and in public or private, to manifest one’s religion or belief in worship, observance, practice and teaching. Furthermore, article 2 of the Universal Declaration of Human Rights provides that everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, including religion. Relevant parts of the International Covenant on Civil and Political Rights include article 20, which requires States to prohibit advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence; article 26, which prohibits discrimination and guarantees to all persons equal and effective protection against discrimination on religious grounds; and article 27, which provides for the right of members of religious minorities to profess and practise their own religion. Moreover, the Special Rapporteur is guided by general comment No. 22 (1993) of the Human Rights Committee, which interprets the content of article 18 of the Covenant.

11. The legal framework of the mandate also includes other human rights treaties containing provisions relevant to freedom of religion or belief, including article 13 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 2, 14 and 30 of the Convention on the Rights of the Child; and article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

12. The Special Rapporteur is also guided by other relevant declarations as well as guidelines produced by various United Nations bodies. The most important of these instruments for the mandate is the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by the General Assembly in 1981 in its resolution 36/55. Furthermore, the mandate is guided by relevant resolutions of the Commission on Human Rights and its successor, the Human Rights Council.

IV. LEGAL FRAMEWORK ON FREEDOM OF RELIGION OR BELIEF

13. According to article 10, paragraph 3, of the Constitution of Tajikistan, international legal instruments ratified by Tajikistan form an integral part of the national legal system. In the event of a conflict, the norms contained in the international legal instruments apply. Since its declaration of independence in 1991, Tajikistan has ratified seven core international human rights instruments: the Convention on the Rights of the Child (ratified in 1993) and its two Optional Protocols (ratified in 2002); the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1993); the International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1995); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 1995); the International Covenant on Economic, Social and Cultural Rights (ratified in 1999); the International Covenant on Civil and Political Rights and its Optional Protocol (ratified in 1999); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ratified in 2003). Tajikistan has not entered any reservations to these human rights treaties.

14. The right to freedom of thought, conscience and religion is embodied in the Constitution. Under article 26 of the Constitution, everyone has the right, independently, to determine their attitude to religion, to profess either individually or in community with others any religion or none, and to take part in religious services, ceremonies and rites. According to article 8 of the Constitution, public life in Tajikistan is developing on the basis of political and ideological pluralism. No single ideology, including religious ones, may be established as the State ideology. Religious organizations are separate from the State and may not interfere in affairs of State. The establishment and activity of public associations and political parties that encourage racism, nationalism, social and religious enmity and hatred as well as advocate the forcible overthrow of the constitutional State structures and the formation of armed groups are prohibited.

15. Furthermore, the Religion and Religious Organizations Act, adopted on 1 December 1994, spells out the constitutional provisions in more detail. Article 3 of the Act prohibits coercion in any way in respect of the determination of attitudes towards religion, profession of a religion or refusal to profess any, participation or non-participation in religious services, rites or ceremonies or in religious instruction. According to article 5, the State is to encourage mutual tolerance and respect among citizens, whether or not they profess a religion, and among religious organizations of different denominations as well as their members, and suppresses “religious fanaticism and extremism”. Children may be taught religious doctrine and receive a religious education from the age of 7 with the written consent of their parents or guardians, and from the age of 16 and with their consent, in their free time after school. Registered religious organizations are entitled to set up educational institutions, however persons teaching religious education must have the authorization of a clerical directorate. Religious organizations are recognized as legal persons from the moment of registration of their articles of association (statutes). The registration of religious organizations is governed by article 14 of the Act, which requires that at least 10 citizens aged 18 or over submit an application accompanied by the statute to the local authorities in the place where the organization is to be established. The religious associations and administrations, central mosques, monasteries and seminaries established by religious organizations submit their approved statutes to the State Body for Religious Affairs for registration, a controlling, informational, consulting and expert centre which, inter alia, oversees adherence to the provisions of the articles of association of religious organizations and the current legislation on matters of religion (art. 29). Until the end of 2006, this body was known as the State Committee on Religious Affairs, whose functions subsequently have been transferred to the Ministry of Culture.

16. According to article 159 of the Criminal Code, the establishment of religious organizations whose activities may cause harm to an individual's health or otherwise harm an individual's rights is liable to criminal prosecution. Article 189 of the Criminal Code establishes penalties for acts intended to incite ethnic, racial, regional or religious enmity. According to article 307, public calls for violent change to the constitutional order of Tajikistan and the organization of activities of “extremist organizations” are punishable by law. The dissemination of literature or publications containing propaganda for, inter alia, religious discrimination or intolerance is prohibited by the Press and Other Media Act. Furthermore, the Terrorism Act of 11 November 1999 cites as an example of terrorist activity any attempt on the life of a representative of a national, ethnic or religious group of the population. The Extremism Act of 8 December 2003 defines extremism as “the manifestation by legal or physical entities of the expression of extreme forms of actions, calling for destabilization, a change to the constitutional order of the country, seizure of power or appropriation of its authority, the incitement of racial, ethnic, social and religious enmity”. The Act furthermore deals with the liability of religious organizations for extremist activities. They include activities of legal or physical entities to plan, organize, prepare and commit acts aiming to incite racial, ethnic or religious enmity; and propaganda of exclusion, the superiority or inferiority of a citizen on the grounds of his or her relationship to religion, social, racial, ethnic, religious or linguistic affiliation (art. 3).

17. In early 2006, a draft law on freedom of conscience and religious association was prepared by the State Committee on Religious Affairs with a view to replace the 1994 Religion and Religious Organizations Act. The text of the draft law has been widely criticized by various religious communities in Tajikistan. Furthermore, the Advisory Panel of Experts on Freedom of Religion or Belief of the Office for Democratic Institutions and Human Rights provided comments on the draft law in order to help the authorities bring the draft law into line with OSCE commitments and international standards pertaining to religion or belief.^[2] The Special Rapporteur on freedom of religion or belief sent an allegation letter to the Government of Tajikistan on 18 May 2006 (A/HRC/4/21/Add.1, para. 286), noting concerns that the draft law, if adopted in its current state, could lead to limits on the rights of religious communities. For example, article 16 of the draft law stipulates that all non-registered religious activity is prohibited. The draft law also provides that the founders of religious organizations and unions must submit signatures from 200 citizens in support of the establishment of a religious association. Other draft articles include the condition that any religious organization or union must have at least 20 founding members, allow religious education only for children who are older than 7 years old and furthermore only allow one mosque for villages that have a population of between 200 and 2,000 people. During her country visit, the Special Rapporteur was informed by several government officials that the draft law was currently being worked on and that the comments received would be taken into account during the reworking process before a text was presented to Parliament.

V. RESPECT FOR FREEDOM OF RELIGION OR

BELIEF

A. Overview

18. The Constitution declares that Tajikistan is a secular State and that no religious ideology may be established as the State ideology. Religious organizations are separate from the State and may not interfere in the affairs of State. While religious organizations and their employees are prohibited from engaging in political activities or standing for election to legislative bodies, the 1999 amendments to article 28 of the Constitution introduced the right for citizens to participate in the creation of political parties, including parties of democratic, religious and atheistic character, and to voluntarily affiliate with or leave them.

19. In terms of the religious demography of Tajikistan, an estimated 95 per cent of the population of around 7,320,000 citizens consider themselves Muslims, although the degree of religious observance varies widely. The vast majority of Muslims (about 90 per cent) follow Sunni Islam; however, the Pamiri population of the autonomous province of Gorno-Badakhshan are mainly members of Shia Ismaili Islam. The Minister for Culture indicated that there were currently 255 grand mosques and officially 2,842 regular mosques, while emphasizing that nobody could exclude the possibility that some active mosques had not yet submitted their registration. According to estimates by non-governmental sources, there are between 4,000 and 5,000 mosques operating in Tajikistan.

20. About 3 per cent of the whole population in Tajikistan is Christian, mainly Russian Orthodox. Other registered organizations included Baha'is, Baptists, the Grace Summin Church, Hare Krishnas, Jehovah's Witnesses, Jews, Lutherans, Roman Catholics, Seventh-day Adventists and Zoroastrians. Each of these groups was estimated to total less than 1 per cent of the population. Currently there are 86 non-Islamic religious organizations registered, 35 of which are based in Dushanbe.

21. By and large, the Government respects the freedom of all religious communities and individuals, although they face challenges, mainly concerning the situation of the Muslim community and acts of intolerance and other forms of discrimination with regard to religious minorities, as detailed below. Specific mention will be made of the issues of registration, proselytism, places of worship, the situation of women, conscientious objectors and counterterrorism measures.

B. Situation of the Muslim community

22. Most of the Special Rapporteur's interlocutors from the Muslim community talked positively about their situation with regard to freedom of religion or belief. It was repeatedly stressed that Tajikistan was the only Central Asian country where a religiously affiliated party was allowed to operate and be represented in the national legislature.

23. Some issues of concern were indicated to the Special Rapporteur, however, especially with regard to places of worship. Article 14 of the Religion and Religious Organizations Act stipulates that grand mosques are set up in districts or towns with populations of no less than 15,000 people. The draft law on freedom of conscience and religious association would require 20,000 people in the rural area, 30,000 people in towns (excluding the city of Dushanbe) and 50,000 people in the city of Dushanbe in order to form a grand mosque. According to the draft law, the formation of a local mosque would require 200 to 2,000 people and further mosques would only be allowed if the population in a settlement exceeds 2,000. Concerns have been raised that, if a mosque has already been established and is visited by believers, its closure would interfere with the right to freedom of religion.

24. Allegations of the destruction of mosques in the Frunze district and closures of mosques in the Jabaraul district have already been the object of communications sent by the Special Rapporteur (A/58/296, para. 92). After the Special Rapporteur's visit, she received reports that a representative of the Dushanbe city prosecutor's office had subsequently announced that 13 of the 148 unregistered mosques in Dushanbe would be demolished, another 28 would be allowed to operate after registering with authorities and the rest would be closed down. The city authorities in Dushanbe created a commission that ran checks on the city's mosques both for their legal status and to establish whether the buildings met planning and public health requirements.

25. With regard to pilgrimages, the authorities informed the Special Rapporteur that there was no national quota on the maximum numbers of pilgrims and that anybody who wanted to do so and had enough money could go on *hajj*. According to the local authorities, a total of 10,000 inhabitants of Isfara have participated in the *hajj* since 1995. Muslim representatives also confirmed that there used to be a shortage of available *hajj* places during the early years after independence but that this issue no longer posed a problem. Other reports indicated a steady decrease in pilgrims in absolute numbers for the whole of Tajikistan: from approximately 5,000 (in 2004), to 4,072 (in 2005) and to 3,450 individuals (in 2006).

26. Both religious and secular schools require approval by the Ministry of Education. Such a licence for schools and vocational schools is valid for five years, after which another application is necessary. The revocation of licences is also possible before the end of the five-year period, for example, after a school inspection. In Tajikistan, there are currently nine intermediate *madrassas* and one Islamic university; specialists are either instructed there or study abroad. However, there also have been reports of graduates of the Islamic university in Dushanbe encountering problems in having their diplomas recognized and consequently in finding jobs.

27. Current legislation also provides that children under 18 years cannot attend mosques for Friday prayers because they have to attend school at that time. The Special Rapporteur has received reports that, just after her visit, the local authorities in Dushanbe decided to send police into a number of mosques to look for children who should have been at school. One such police raid, at Dushanbe's main mosque on 16 March 2007, allegedly ended in scuffles as members of the congregation tried to stop police from taking away children who had come to attend the midday Friday prayers. Eventually, the children managed to break free and the crowd turned into an impromptu demonstration.

C. Acts of intolerance and other forms of discrimination with regard to religious minorities

28. In past years, several members of religious minorities have been murdered and there are indications that these acts were committed because of the victims' religious affiliations. In 2004, the head of the local division of the Union of Baptist Christian Evangelicals in Isfara was shot dead in front of his house. Furthermore, in 1999 and 2001, three Baha'i followers were assassinated in Dushanbe.

29. There also have been violent attacks on places of worship of different religious minorities. On 18 August 2006, unidentified persons started a fire in the Dushanbe synagogue and, on 13 September 2006, two youths hurled a Molotov cocktail into the synagogue courtyard. The authorities allegedly refused to provide protection for the site and indicated that it was the Jewish community's responsibility to pay for security. Russian Orthodox churches were also attacked in 2000 and 2006. A Seventh-Day Adventists' church has also been attacked. When the Grace Sunmin church in Dushanbe was bombed in October 2000, seven people were killed and many more injured. Several Muslim students were arrested for this attack and they reportedly confessed to the bombing, indicating that they opposed foreign missionaries converting Tajik Muslims to Christianity.[3]

30. Following conversion from Islam to another faith, many converts face problems in everyday life, predominantly on the social level. They encounter problems within their families and in their neighbourhood, which is sometimes characterized by pressure from community and religious leaders to no longer talk to the so-called "apostates". For the individual, converting may imply jeopardizing his or her whole network of family, friends and neighbours, and thus the risk of a kind of "social suicide". Furthermore, especially when people of different faiths are involved, wedding ceremonies and questions linked to the upbringing of children can pose social problems. In some cases, even the place of burial and the burial rites involved can be contentious issues.

31. Some interlocutors have raised concerns that the draft law on freedom of conscience and religious association would give priority to the Muslim community in explicitly recognizing the particular role of Islam in the social and spiritual life of the people of Tajikistan. Moreover, they pointed to the possibility that the draft law would give legislative support for the suppression of religious minorities. The proposed definition of religious worship as "forms of religious activities based on the body of ideas and actions deriving from customs and professed at a domestic level" may ultimately lead to an exclusion of minority religions in Tajikistan or of those whose spiritual origins come from foreign countries.

D. Registration

32. Some local authorities have allegedly tried to use the registration process to hinder the activities of religious minorities. In the city of Tursunzade, the local community of Jehovah's Witnesses has repeatedly been denied local registration as a legal entity. Obtaining all necessary official documents for registration is cumbersome and in some cases authorities reportedly obstruct this process.

33. Unlike current legislation, article 16 of the draft law on freedom of conscience and religious association would forbid the activity of unregistered religious associations. Since the notion of "religious activity" may be construed broadly, this could lead to the prohibition of all manifestations of religion or belief in worship, observance, practice and teaching. Members of religious minorities voiced concerns that the new legal framework might also entail the re-registration of their communities, even if such a requirement would not be written into law explicitly. Article 18 of the draft law, which requires the signatures of 200 citizens supporting the establishment of a local religious association and those of 600 citizens for a centralized religious association, would make registration difficult for religious minorities, especially in rural areas. For their registration, small religious groups might ultimately depend on obtaining the approval and signatures of people from different faiths.

E. Proselytism

34. The local authorities claimed that proselytism is authorized, but that religious pamphlets should be handed out in the respective places of worship. Pamphlets distributed in the streets may be confiscated because, according to the local authorities, "extremists" usually take such an approach. Islamic publications would need the approval of the Council of Ulemas and of the licensing authority. Furthermore, there are reports that the State Committee on Religious Affairs has required certain religious minorities to wait for permission before importing any literature into Tajikistan or even to submit, in advance, samples of literature they wished to import.

35. Members of religious minorities highlighted the problem that missionary work could, in practice, and usually at the request from local authorities, only be performed within the churches and not on the streets. Owing to the increased scrutiny of public activities, most religious minorities adopt a low-key attitude and work in privacy because otherwise they would encounter problems. The Special Rapporteur sent an allegation letter (E/CN.4/2004/63, para. 96) concerning a Baptist in Khujand who was fined five times the minimum wage for talking to passers-by about God and threatened with property confiscation if he failed to pay the fine. The fine was imposed even though the 1994 Religion and Religious Organizations Act did not prohibit street evangelization.

36. Moreover, the Special Rapporteur received allegations that police in Kairokkum briefly detained and verbally abused two Jehovah's Witnesses on 4 November 2006 for talking to people about the Bible. Subsequently, the department head of the security service allegedly justified their detention with their lack of identification documents and the lack of permission from the local administration to preach in Kairokkum, when in fact the State registration of Jehovah's Witnesses permits them to carry out their activity throughout Tajikistan.

37. The legal framework concerning proselytism and missionary work might significantly change if the draft law on freedom of

conscience and religious association is adopted in its initial wording. Article 7 of the draft law provides that actions directed at converting believers of one confession to others are prohibited, as is any other charitable or missionary activity that exerts intellectual, mental or other pressure on citizens in proselyte aims. A virtual ban on foreign leaders of religious associations, as envisaged in the draft law, would adversely affect the smaller religious minority groups that have only foreign priests serving in Tajikistan.

F. Places of worship

38. In addition to the above-mentioned violent attacks on churches and on the synagogue, both the Muslim communities (see paragraphs 23 and 24 above) and religious minorities face challenges from the authorities with regard to their places of worship. The case of the synagogue in Dushanbe was the object of an allegation letter sent by the Special Rapporteur on 1 March 2006 (A/HRC/4/21/Add.1, para. 279). According to the information received, on 7 February 2006, the authorities in Dushanbe began the demolition of the city synagogue, which was also the only functioning synagogue in the country. The authorities have offered the Jewish congregation a plot of land on the edge of Dushanbe to build a new synagogue. However, they have not provided any compensation and the congregation does not have the funds to build a new one.

39. In its response dated 10 March 2006 (A/HRC/4/21/Add.1, paras. 280-285), the Government indicated that the synagogue of the Jewish community in Dushanbe was an ordinary adobe residential building dating from the 1930s with no historical or architectural value. The Government maintained that the Dushanbe city administration had reached an agreement with the Jewish community to allocate a plot of land in a suburb of Dushanbe. However, the Jewish community allegedly had taken no specific steps to draw up plans for the construction of the synagogue and decided to inform the media about the issue.

40. The Special Rapporteur was informed that, to date, the Jewish community's bathhouse for ritual purification (*mikvah*), an office and a classroom had been destroyed, whereas the 100-year-old synagogue building was still intact. Approximately 20,000 Jews used to live in Tajikistan before the civil war; there are currently some 350 Jews left in Dushanbe. Members of the Jewish community denied that there was a full agreement on the destruction and on the designation of an alternative site. Moreover, they flagged the importance of their synagogue as a cultural centre and humanitarian canteen at its current location. They stressed the fact that the plot of land offered would not be within walking distance of the old site, which would impose a burden, especially on the old and poorer members of the Jewish community. In addition, they voiced their fear that the destruction of the synagogue building was imminent.

41. Another case involving problems of a religious community with regard to their place of worship was the premises of the Grace Sunmin Mission Centre in Dushanbe. The controversy relates to the details of the contract by which the Sunmin community bought a building in which to establish their church, a humanitarian centre and a school. Since 2002, the Grace Sunmin community has allegedly been facing administrative and legal pressure to hand back the building. The case is ongoing.

G. Situation of women

42. The Government of Tajikistan acknowledged in its initial report to the Human Rights Committee that a significant constraint on women's ability to exercise their rights under Tajik law was the fact that gender stereotypes and religious and traditional customs continued to exert a powerful influence in society (CCPR/C/TJK/2004/1, para. 47). Furthermore, it has been reported that traditional stereotypes of the role of women in society are strengthening, especially in the rural areas of Tajikistan, as evidenced by practices such as polygamy, customary marriages and early marriages arranged by family members. A large number of women live in monogamous unions based only on a religious ceremony, which has no legal value. In polygamous unions, which are not uncommon, second or subsequent wives do not have any rights to property, inheritance or maintenance. Religious leaders are reportedly complicit in many cases, for example, by celebrating weddings despite the fact that polygamy and the marriage of underage girls are illegal and prohibited by law. The legal age of marriage in Tajikistan has been lowered to 17 years. In rural areas, many girls do not have passports and use birth certificates for identification purposes. The access of girls to schools has decreased, partly owing to the preference of sending boys to higher schools.

43. In 2004, the Central Council of Ulemas adopted a recommendation that women should not participate in Friday mosque prayers and should rather pray at home, since their presence in the mosque could distract men from performing their religious duties. Subsequently, members of the Government either made statements in favour of banning women from mosques or indicated that such a decision was an internal matter of the religious community concerned. The Islamic Renaissance Party of Tajikistan objected to the decision of the Council, arguing that it violated the constitutional guarantee of equal rights for women. The Special Rapporteur was informed that a limited number of mosques had separate entrances and special places for women to pray.

44. All of the Special Rapporteur's interlocutors emphasized that a robe cloaking the whole body and head was not the traditional dress in Tajikistan but had been imported from abroad. The Ministry of Education adopted a special decision on the introduction of a uniform for schoolchildren, but the authorities stressed that nobody was prevented from obtaining a school certificate for wearing a headscarf. With regard to requirements for photos on domestic or international identification documents, the authorities emphasized that the former ban on women wearing headscarves in such photos had been lifted in 2000, though the entire face had to be visible in the photograph. According to other reports, in 2004, officials refused to issue passports to approximately 100 women in Isfara who did not want to be photographed without a headscarf.

H. Conscientious objection

45. Neither the Constitution nor any other domestic legislation recognize the right to conscientious objection to compulsory military service. The draft law on freedom of conscience and religious association would even go further in prescribing that nobody be allowed to deviate from implementing obligations established by law on the grounds of personal religious beliefs. This would imply

that conscientious religious practices must ultimately give way to general duties imposed by legislation. However, international human rights standards provide that freedom to manifest one's religion or belief 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.

46. Furthermore, in a recent case, the Human Rights Committee observed that, while the right to manifest one's religion or belief did not as such imply the right to refuse all obligations imposed by law, it provided certain protection, consistent with article 18, paragraph 3, of the International Covenant on Civil and Political Rights, against being forced to act against a genuinely held religious belief. The Committee also recalled its general view, expressed in general comment No. 22, that to compel a person to use lethal force, although such use would seriously conflict with the requirements of his conscience or religious belief, fell within the ambit of article 18.^[4]

I. Counter-terrorism measures

47. Tajikistan has banned as terrorist groups, *inter alia*, Hizb-ut Tahrir, Bay-at and the Islamic Movement of Uzbekistan. In 2006, the Tajik Supreme Court added 10 organizations and political groups to the country's official terrorist list, including al-Qaida, Harakati Tablighot, Jamiyati Tablighot, the Islamic Party of Turkestan, Sozmoni Tabligh and Tojikistoni Ozod.

48. The Office of the Prosecutor General informed the Special Rapporteur that, between 2004 and 2006, the preliminary investigative bodies of Tajikistan opened 193 criminal cases relating to 293 individuals on the basis of allegations of inciting ethnic, racial, regional or religious enmity (article 189 of the Criminal Code) and public calls for a violent change to the constitutional order or the organization of activities for "extremist organizations" (art. 307). Of these, following completion of the preliminary investigation, 119 criminal cases relating to 209 individuals were sent for trial.

49. Many of the suspects received lengthy prison sentences, such as a member of the Islamic Renaissance Party of Tajikistan who was sentenced on 22 December 2006 by the Khujand city court to nine years' imprisonment for inciting religious hatred, whereas his party fellows claim that he was convicted for praying for all Muslims, including Muslims of Afghanistan and Palestine. In 2006, the regional court in Sughd sentenced six members of the Islamic Movement of Uzbekistan to prison terms ranging from 9 to 19 years on charges of organizing a criminal group, terrorism, hostage-taking, illegal carrying, possession and acquisition of weapons. Some appellate courts have re-sentenced Hizb-ut Tahrir members to significantly longer prison terms in comparison to the sentence at first instance. Furthermore, the overall acquittal rate in criminal cases in Tajikistan is very low; only 72 of 4,209 people were acquitted in the first half of 2005 (E/CN.4/2006/52/Add.4, para. 42).

50. A number of the Special Rapporteur's interlocutors stressed that certain religious groups and leaders used religion as an instrument of fear. Their veiled or open threats prevented people from speaking out openly. People chose to remain silent in the face of peer pressure and the threat of being jeered at by mobs of religious fanatics. In their opinion, such rigid views and politicization of religion should be tackled at the grassroots level by protecting those who challenge such bigoted forces and through substantive information campaigns that target teachers as well as students. They also pointed at outside influence in encouraging radical religious groups. As an example, they referred to reports that wives of imprisoned Hizb-ut Tahrir members received between 150 and 200 United States dollars per month from abroad.

VI. CONCLUSIONS AND RECOMMENDATIONS

51. **The Government should actively protect and promote the freedom of religion or belief of both the Muslim communities and the various religious minorities in Tajikistan. The recommendations by the Special Rapporteur refer specifically to the issues of registration, proselytism, the situation of women, places of worship, conscientious objection and counterterrorism measures.**

52. **The Special Rapporteur wishes to reiterate that the right to freedom of religion is not limited to members of registered religious communities (see also E/CN.4/2005/61, paras. 56-58). Registration should not be a precondition for practising one's religion, although it is appropriate to require registration for the acquisition of a legal personality and related benefits. In the latter case, registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the length of time a particular religious group has existed. Furthermore, registration should not depend on reviews of the substantive content of the belief, the structure and the clergy. Finally, no religious group should be empowered to decide on the registration of another religious group. Consequently, a domestic provision prohibiting all unregistered religious activity would not be in conformity with international human rights standards. Re-registration requirements that operate retroactively or fail to protect vested interests should also be questioned and an adequate transition period should be envisaged concerning the application of new registration rules.**

53. **The Special Rapporteur cautions against the adoption of legal provisions that would prohibit actions directed at converting believers of one confession to others as well as any other charitable or missionary activity that exerts intellectual, mental or other pressure on citizens in proselyte aims. In this regard, the Special Rapporteur would like to refer to the section on missionary activities and propagation of one's religion in her 2005 report to the General Assembly (A/60/399, paras. 59-68), in which she stated that missionary activity was accepted as a legitimate expression of religion or belief and therefore enjoyed the protection afforded by article 18 of the International Covenant on Civil and Political Rights and other relevant international instruments. Missionary activity could not be considered a violation of the freedom of religion and belief of others if all involved parties were adults able to reason on their own and if there was no relation of dependency or hierarchy between the missionaries and the objects of the missionary activities.**

54. **The Special Rapporteur is concerned about the vulnerable situation of women in Tajik society, which is also partly influenced by traditional or perceived religious factors. She associates herself with the concluding comments of the**

Committee on the Elimination of Discrimination against Women adopted on 26 January 2007[5] and with the concluding observations of the Committee on Economic, Social and Cultural Rights adopted on 23 November 2006.[6] The Government should be encouraged to review legal and administrative regulations in order to prevent religious unions from taking place without verification that a civil marriage has been registered first. The Government should also strengthen its efforts to eliminate the causes that lead to polygamous unions and develop strategies targeted at parents and religious leaders to prevent such unions. One of the possible measures to initiate change in the widely accepted subordination of women and stereotypical roles applied to both sexes could be awareness-raising and educational campaigns that address, inter alia, religious and community leaders. Most importantly, women themselves have to be empowered. With regard to the headscarf issue, the Special Rapporteur would like to refer to the section on religious symbols in her 2006 report to the Commission on Human Rights in which she emphasized that the fundamental objective should be to safeguard both the positive freedom of religion or belief as manifested in observance and practice by voluntarily wearing or displaying religious symbols and the negative freedom from being forced to wear or display religious symbols (E/CN.4/2006/5, para. 60).

55. The Special Rapporteur would like to stress that, when taking administrative decisions, the authorities need to take into account the specific character of places of worship and their particular significance for believers. This is particularly relevant in the case of the country's sole synagogue, which has been in use for decades and is currently earmarked for demolition, to make way for the construction of a palace of nations and a national park. Furthermore, mosques, churches and other places of worship need to be fully respected and protected by the authorities. The Special Rapporteur would like to remind the Government of article 6 (a) of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief which states 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". Furthermore, in its resolution 2005/40, the Commission on Human Rights urged States to exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and religious expressions are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction. Finally, in its resolution 55/254 on protection of religious sites, the General Assembly encouraged all States to promote a culture of tolerance and respect for the diversity of religions and for religious sites, which represent an important aspect of the collective heritage of humankind.

56. The Special Rapporteur is concerned that the Government of Tajikistan does not recognize the right to conscientious objection to compulsory military service. She would like to reiterate the recommendation of the Human Rights Committee that the Government take all necessary measures to recognize the right of conscientious objectors to be exempted from military service.[7] In line with the Human Rights Committee's general comment No. 22 (1993), when this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. Furthermore, the Special Rapporteur encourages the Government to ensure that no legislation is adopted which overstates the permissible limitations on the freedom to manifest one's religion or belief, especially with regard to the issue of conscientious objection to compulsory military service.

57. The Special Rapporteur is conscious of the fact that the obligation of a State to protect and promote human rights require it to take effective measures to combat terrorism. However, she would like to underline that the State must ensure that any measure taken to combat acts of terrorism complies with its obligations under international law, in particular international human rights, refugee and humanitarian law. Some anti-terrorism measures could include elements, or have unintended consequences, that undermine the respect for fundamental human rights.

58. Since Tajikistan does not have an independent national institution for the promotion and protection of human rights, the Special Rapporteur encourages the Government to establish such a national human rights institution in accordance with the Paris Principles (General Assembly resolution, 48/134, annex). She also reiterates the concerns expressed by the Special Representative of the Secretary-General on the situation of human rights defenders about reports that State institutions dealing with human rights are not keen to extend their responsibility to providing human rights protection (E/CN.4/2006/95/Add. 5, para. 1563). Furthermore, she reiterates the recommendation of the Special Rapporteur on the independence of judges and lawyers that the competency of the Constitutional Court to consider individual complaints be enshrined in the Constitution and that the individual complaints procedures be extended to all violations of constitutional rights by acts of public authority (E/CN.4/2006/52/Add. 4, para. 94). An independent, neutral and impartial judiciary and prompt access to a lawyer are vital to safeguarding freedom of religion or belief.

59. The Government should be encouraged to respect the right to freedom of religion or belief of all individuals and religious communities, particularly when adopting specific legislation and policies. The Special Rapporteur trusts that the Government is engaged in seeking the most appropriate approach to dealing with these complex issues, and she hopes that the Government will adopt creative means to address these pressing matters.

60. Children literally represent the future of each country. Almost half the population of Tajikistan is under 18 years of age; it is estimated that one fifth of the schools in Tajikistan were destroyed during the civil war of the 1990s. Providing quality education is crucial for the development of society. In general, there is an urgent need to promote, through education, the protection and respect for freedom of religion or belief in order to strengthen peace, understanding and tolerance among individuals, groups and nations, and with a view to developing respect for pluralism.

61. In this regard, the Special Rapporteur would like to draw the Government's attention to the final document of the International Consultative Conference on School Education in relation to Freedom of Religion or Belief, Tolerance and Non-discrimination, held in Madrid from 23 to 25 November 2001 (E/CN.4/2002/73, appendix). The final document

adopted by consensus, could serve as a useful guide for educational policies aimed at strengthening the promotion and protection of human rights, eradicating prejudices and conceptions incompatible with freedom of religion or belief and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief and of the right not to receive religious instruction inconsistent with one's own conviction. Recently, there have been promising initiatives in Tajikistan to train teachers, students and civil society members on the issues of religious identity, Islam and peacebuilding. Such efforts could eventually lead to a better understanding of freedom of religion and of the role of religion in identity, conflict and conflict resolution.

62. In general, human rights are not going to flourish without overall freedom in society. As reiterated by the Vienna Declaration and Programme of Action, all human rights are universal, indivisible, interdependent and interrelated. People should not be afraid of expressing ideas frankly, raising their concerns to the authorities or bringing cases to court. Self-censorship may have adverse effects on the enjoyment of all human rights and fundamental freedoms. Furthermore, sustained interfaith dialogue, possibly including members of civil society and women, might prevent misunderstandings and eliminate some forms of intolerance or discrimination based on religion or belief. In addition, human rights education could promote understanding, tolerance and peace between all religious groups and might ultimately contribute to the effective promotion of religious tolerance. Such an approach might be a promising avenue for preventing incitement to discrimination, hostility or violence.

[1] For further information on the international legal standards referred to by the Special Rapporteur in the implementation of the mandate, see her previous reports to the Commission on Human Rights (E/CN.4/2005/61, paras. 15-20 and E/CN.4/2006/5, annex). The Special Rapporteur has also illustrated the international legal standards with pertinent excerpts of the mandateholders' findings since 1986 in an online digest, which is available on the website of the Office of the United Nations High Commissioner for Human Rights at www.ohchr.org/english/issues/religion/standards.htm.

[2] Comments on the draft law of Tajikistan on freedom of conscience and on religious associations, prepared by the Advisory Council on Freedom of Religion or Belief, Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, Opinion-Nr.: REL - TAJ/063/2006 (Adv Council on FoRB), 28 April 2006, are available from the website www.legislationline.org.

[3] On these allegations, see also the views of the Human Rights Committee under art. 5, para. 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, communication No. 1042/2001, *Mustafakul Boimurodov v. Tajikistan* (CCPR/C/85/D/1042/2001).

[4] Views of the Human Rights Committee under art. 5, para. 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, communications Nos. 1321/2004 and 1322/2004, *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea* (CCPR/C/88/D/1321-1322/2004), para. 8.3.

[5] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 38 (A/62/38)*, paras. 37, 52 and 53.

[6] *Official Records of the Economic and Social Council, 2007, Supplement No. 2 (E/2007/22)*, para. 458.

[7] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 40 (A/60/40)*, para. 92 (20).