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تقرير المقررة الخاصة المعنية بحرية الدين أو المعتقد، السيدة أسماء جهنجير

إضافة

البعثة إلى أذربيجان*

* يُعمم ملخص هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه فيرد في مرفق هذا الملخص ويُعمم باللغة التي قُدم بها فقط.

ملخص

خلال الفترة من ٢٦ شباط/فبراير إلى ٥ آذار/مارس ٢٠٠٦، اضطلعت المقررة الخاصة المعنية بحرية الدين أو المعتقد بزيارة إلى أذربيجان بهدف تقييم الوضع في ضوء التقارير بشأن القيود المفروضة على الحق في حرية الدين أو المعتقد والتقارير بشأن اضطهاد فئات دينية معينة.

وتشدّد المقررة الخاصة في تقريرها على أن أذربيجان بلد يتميز بشكل عام بمستوى رفيع من التسامح الديني والانسجام الديني الحقيقي، رغم وجود غالبية ساحقة من المسلمين في هذا البلد.

وتشير إلى أن أذربيجان تحترم بشكل عام الحق في حرية الدين أو المعتقد ولكن هذا الاحترام لا ينطبق في جميع المناطق بالتساوي. فقد لاحظت المقررة الخاصة بالفعل أن السلطات قد ظلت في بعض الحالات الخط الفاصل بين تيسير ممارسة الحريات الدينية والرقابة عليها. وبشكل خاص، أدّت بعض الحالات المتعلقة بالمظاهر المختلفة لهذه السيطرة إلى فرض قيود حقيقية على حق الطوائف الدينية في حرية الدين، تشمل صعوبات التسجيل، والقيود على المؤلفات الدينية، وأساليب تعيين رجال الدين والعقبات الأخرى التي تواجهها الطوائف الدينية غير المسجلة.

وفي حالات قليلة، تحوّلت السيطرة التي تمارسها السلطات إلى أشكال حقيقية من الاضطهاد للأسف. وفي هذا الصدد، تشعر المقررة الخاصة بقلق خاص إزاء إحجام بعض الطوائف الدينية عن لقاءها بسبب الخوف.

وبالإضافة إلى ذلك، أصيبت المقررة الخاصة بخيبة أمل عندما لاحظت أن مستوى التسامح بين الطوائف الدينية يواجه أحياناً تحدياً كبيراً في بعض مناطق البلد. وهذا التحدي ناشئ، في جملة أمور، عن ممارسات السلطات والدور السلبي لبعض وسائل الإعلام في وصم طوائف دينية معينة. وفي هذا الصدد، تشدّد المقررة الخاصة على مسؤولية وسائل الإعلام وتلفت الانتباه إلى أحكام القانون الدولي ذات الصلة التي تحظر أي نوع من التحريض على الكراهية الدينية، ومنها المادة ٢٠ من العهد الدولي الخاص بالحقوق المدنية والسياسية.

ومن أجل التصدي لهذه الشواغل وغيرها من الشواغل المتعلقة بحقوق الإنسان، تشدّد المقررة الخاصة على الأهمية الحاسمة لوجود آليات إدارية وقضائية فعالة ومستقلة ومحيدة. ولا يغيب عن بال المقررة الخاصة الصعوبات التي تواجهها أذربيجان خلال هذه الفترة الانتقالية، ولكنها تشجع الحكومة بشدة، شأنها شأن الجهات الأخرى الفاعلة في المجتمع، على العمل من أجل توطيد المؤسسات الضرورية لبناء مجتمع ديمقراطي.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION
OR BELIEF, ASMA JAHANGIR, ON HER MISSION TO AZERBAIJAN
(26 February to 5 March 2006)**

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Introduction

1. From 26 February to 5 March 2006, the Special Rapporteur on freedom of religion or belief carried out a visit to Azerbaijan in fulfilment of her mandate, at her request and at the invitation of the Government.
2. The Special Rapporteur had most of her meetings in Baku but also travelled to Nakichevan and Gandja where she met with local officials, political leaders and religious representatives as well as members of civil society.
3. During her visit, she held talks with the President of Azerbaijan, the Minister of Foreign Affairs, the Minister of Justice, the Minister of Education, the Deputy Minister of Interior, the Chair of the State Committee on the Work with Religious Associations, the Prosecutor General, the Chairman of the Supreme Court, the Ombudsman and other officials dealing with questions related to the mandate on freedom of religion or belief. She also had meetings with representatives of different political parties, including the Musavat Party, the Popular Front Party and the Democratic Party.
4. The Special Rapporteur also held talks with representatives of religious communities and religious organizations, including a representative of the Caucasus Muslim Board, the Community of European Jews, the Community of Mountain Jews, the Baku Caspian Eparchy of the Russian Orthodox Church, the Catholic Church, the Adventist Church, the Jehovah's Witness community, the Molokan Community, Hare Krishna, the "Love" Baptist Church, and the Bahá'í community.
5. The Special Rapporteur also spoke with representatives of civil society, including the Human Rights Centre and the Centre for Religion and Democracy.
6. In Nakichevan, the Special Rapporteur met with the Chairman of the parliament of Nakichevan autonomous republic and other officials, specifically those responsible for religious matters. She also met with representatives of the Muslim community and political parties.
7. In Gandja, the Special Rapporteur met with the Deputy Head of Executive Authorities and other officials, especially those responsible for religious matters. She also met representatives of the main religious communities present in the area. On her return to Baku, the Special Rapporteur visited an internally displaced persons (IDP) camp in Barda.
8. The Special Rapporteur wishes to thank the Azerbaijani authorities for their invitation and for the excellent cooperation they extended to her during her visit. The remarkable practical organization of official meetings, as well as the punctuality of her interlocutors, made her visit intense and very fruitful.
9. She is also grateful for the availability of the different religious representatives throughout her presence in Azerbaijan and for the information and opinions that were transparently shared with her.
10. Lastly, she would like to thank the United Nations Development Programme in Baku, which assisted in organizing all practical aspects and logistics related to the present visit in a highly professional way.

11. During her visit and in this report, the Special Rapporteur concentrated on the situation of freedom of religion or belief in Azerbaijan in the light of, inter alia, reports about the control exerted by the authorities over religious activities and reports about the persecution of certain religious minorities.

I. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

12. Azerbaijan is a State party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

13. Before the visit of the Special Rapporteur on freedom of religion or belief, the Special Representative of the Secretary-General on internally displaced persons visited the country in May 1998 and the Special Rapporteur on the question of torture in May 2000.

14. The Special Rapporteur would like to recall that, according to article 18 of the International Covenant on Civil and Political Rights (ICCPR):

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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.

The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

15. She would also like to emphasize that, in her analysis of the situation in Azerbaijan, she relies on the terms of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, general comment No. 22 (1993) of the Human Rights Committee on article 18 and other relevant provisions of ICCPR and other international conventions.

II. HISTORICAL AND POLITICAL BACKGROUND

16. Azerbaijan was part of the Union of Soviet Socialist Republics for 70 years before regaining its independence in 1991. The dispute with Armenia over the Nagorno-Karabakh region is one of the remnants of the collapse of the Soviet Union. The largely Armenian population of the region stated its intention to become a sovereign State separate from Azerbaijan in the early 1990s and was supported by Armenia. The armed conflict that followed continued until a ceasefire that was signed in 1994. However, in addition to Nagorno-Karabakh, 16 per cent of Azerbaijan's territory remains occupied by Armenian forces and there are some 760,000 internally displaced people in the country.

17. The Government of Azerbaijan consists of three branches, the legislative, executive and judicial branches. The last parliamentary elections, held in 2005, returned a unicameral parliament with 125 members, all of whom are elected from territorial districts. All branches of Government are under strong influence of the office of the President. The current President is Ilham Aliyev, who succeeded his father, Heydar Aliyev, who was the State's President for several successive terms until 2003.

III. RELIGION AND BELIEF IN AZERBAIJAN

18. Approximately 96 per cent of the population of Azerbaijan is of the Muslim faith. However, the Special Rapporteur has noted that an important portion of Azerbaijanis has a dispassionate attitude towards religion. This has led some observers to consider that the level of religiosity in Azerbaijan is not very high, an atmosphere that is probably influenced by historical reasons and the secular character of the State of Azerbaijan.

19. This relaxed attitude towards religion is also favourable to a climate of religious harmony and tolerance. Although intolerance and sometimes hatred vis-à-vis small, recent and unknown religious communities, which is fuelled by some sections of the media, emerges occasionally and in some places, the majority of the population of Azerbaijan is tolerant when it comes to religion, and inter-religious violence is uncommon.

20. The Muslim community is 70 per cent Shia and 30 per cent Sunni but the sectarian differences between the two groups have rarely caused tension.

21. The main institutional body for the Muslim community is the Caucasus Muslim Board (CMB). In the early 1980s, Haji Allahshukur Hummatoglu Pashazade was appointed Sheikhlislam, Head of the Muslim Board. With the break-up of the Soviet Union, the Muslim Board became known as the Supreme Religious Council of the Caucasus Peoples. Subsequently, Sheikhlislam continued to carry out his functions under CMB, the main body regulating celestial affairs of Muslims. CMB has a semi-autonomous status and deals with the appointment of imams, prior approval for the registration of Muslim communities, building of mosques, matters connected with pilgrimage and other religious concerns.

22. Concerns were expressed regarding CMB's role in selecting imams. Some groups and a political party's representative interpreted it as a denial to the religious right of Muslims to select their own imam. They also pointed out that while CMB was itself not politically neutral, as it openly supported the ruling party, other imams were not free to support any of the political parties belonging to the opposition.

23. Besides Muslims, the most important religious communities are the Russian Orthodox Church and the Jewish community which is composed of three separate groups: "Mountain Jews" (descendants of refugees in the North) who account for approximately 11,000, the Ashkenazi (descendants of immigrants) who account for approximately 4,300 and a third small group of a few hundred Georgian Jews.

24. These three religious communities maintain an excellent relationship and have traditionally kept a close and continued contact. A number of interlocutors pointed out that Sheikhlislam, the head of the CMB, is hardly seen without his two "brothers" of the Jewish and Orthodox faith.

25. Other examples of interfaith engagement and good will were also brought to the attention of the Special Rapporteur. During the inauguration ceremony of a synagogue in the centre of Baku in March 2003, Sheikhlislam, the Bishop of Baku and other religious leaders participated along with high-ranking officials and dignitaries. The Sheikhlislam also donated funds for the building of the synagogue. Similarly, the visit of Pope John Paul II was enthusiastically welcomed by the three religious communities.

26. In addition to the three main communities that are often referred to as the "traditional" religions, there are a number of small religious communities or communities of belief that either have been established in the country for a long period of time such as the Molokans or groups that have established in Azerbaijan more recently, such as the Catholic community, the Bahá'í, Hare Krishna, the Seventh Day Adventists, Baptists, Lutherans, Jehovah's Witnesses and other Christian minorities. Although these groups exist throughout the territory of Azerbaijan, they are mainly located in Baku. They are often criticized by a portion of the population of Azerbaijani that accuses them of having been imported and financed from abroad.

27. The Special Rapporteur was assured by interlocutors at the official level that no distinction was made between so-called "traditional" and "non-traditional" religious groups. At the same time representatives of some political parties and a few religious leaders expressed their discomfort at the "unethical" propaganda of "non-traditional" groups against Islam.

IV. LEGAL FRAMEWORK

28. Azerbaijan is a secular State. According to article 18 of the Constitution, "religion shall be separated from the State in the Republic of Azerbaijan". The law "On freedom of faith" (see paragraph 31 below) further emphasizes that, in the Republic, religion and religious associations shall be separated from the State, which prohibits, inter alia, religious associations from taking part in political activities (art. 5). This law also provides that the system of education is separated from religion (art. 6).

29. This secularity can be observed in a number of aspects of Azerbaijani society and appears to be a value that has been strongly assimilated by Azerbaijani citizens. Moreover, despite the overwhelming majority of one single religion, the principle that no religion is given a pre-eminent status seems to be recognized by the majority and applied in practice.

30. The Constitution of Azerbaijan guarantees freedom of religion as well as the right to have no religion. According to its article 48:

(1) Everyone enjoys the freedom of conscience.

(2) Everyone has the right to define his/her attitude to religion, to profess, individually or together with others, any religion or to profess no religion, to express and spread one's beliefs concerning religion.

(3) Everyone is free to carry out religious rituals, however this should not violate public order and contradict public morals.

(4) Religious beliefs and convictions do not excuse infringements of the law.

31. The law of the Republic of Azerbaijan "On freedom of faith" adopted in 1992 also ensures the right of any human being to determine and express his/her views on religion and to exercise this right. It constitutes the main legal framework dealing with questions related to the religion, such as the registration of religious associations, places of worship and property rights, or literature.

32. The State Committee for Work with Religious Associations (SCWRA) was created by a presidential decree of 21 June 2001. Its purpose is to ensure the necessary conditions for the enjoyment of the rights guaranteed by article 48 of the Constitution and to supervise all matters related to freedom of religion and registration of religious associations (article 2 of the Decree of 21 June 2001).

33. SCWRA constitutes, to many, the institutionalization of the control exercised by the Government on religious groups and communities of belief and its actions or inactions are often at the origin of the difficulties faced by certain religious communities. While many of these communities and their leaders seem to be satisfied with their relationship with SCWRA, it was sometimes reported that problems have arisen because of the personality of the local official responsible from SCWRA.

34. There were also reports of tension between SCWRA and CMB, which created tensions within the Muslim community.

V. FREEDOM OF RELIGION OR BELIEF IN AZERBAIJAN

A. Overview

35. A number of religious leaders explained that respect for freedom of religion or belief dramatically improved after independence. Although the Government wants to promote this freedom, it also fears that extremist groups may take advantage of it, giving rise to intolerance

and polarization. The authorities seem particularly concerned at being challenged by regional and international extremist religious groups. These threats therefore allegedly justify their various initiatives, such as the registration of religious groups and the monitoring of importation of material by them. However, at the same time, these initiatives often seem to cross the boundary from benign streamlining to interference in the freedom of religion or belief of individuals and communities.

36. During the visit, interlocutors of the Special Rapporteur underlined or complained about the excessive level of control exercised by the authorities over the activities of religious communities. The high level of control varies according to the region. Some minority religious groups indeed pointed out that the level of religious freedom they enjoyed in Baku was not available to them in other parts of the country.

37. In Nakichevan, for instance, the authorities themselves claimed that a high level of control was beneficial for religions and necessary to assist religious communities in their activities. At the same time, the Special Rapporteur notes and deplores that certain interlocutors from religious communities who she wanted to meet in Nakichevan refused to see her because of fear of persecution. In the opinion of the Special Rapporteur, this constitutes a worrying indication that the Government is not able to adequately guarantee freedom of religion.

38. In Gandja, the Special Rapporteur noted that the atmosphere was tense and religious minorities were clearly under pressure from some Muslim religious leaders and the representative of SCWRA.

39. Although she maintains her opinion about the general degree of religious tolerance and harmony in the country, the Special Rapporteur noted that a certain degree of religious intolerance among certain portions of the population but also among the authorities and the media, in particular towards newer religious communities, has also played a role in cases of religious persecution that have been reported to the Special Rapporteur. Religious intolerance is often the result of ignorance and misconceptions about certain religious groups. A widely felt sentiment among the population, in this respect, is that radicalization of any religion comes from abroad. This explains the cautious approach taken by Azerbaijan authorities regarding any form of religious influence from abroad, whether in the form of literature or person.

40. Finally, there is an inadequate level of knowledge regarding the principles of human rights in general, including the different aspects of the right to freedom of religion or belief. In this regard, the confusion between the system of registration of religious associations and the right to manifest one's religion is often the source of human rights violations. A number of interlocutors considered that the interruption of religious celebrations in private houses by the authorities was justified by the absence of registration of the groups or individuals concerned and therefore did not constitute human rights violations.

B. Acts of religious intolerance and other forms of persecution of religious minorities

41. Small religious communities, in particular those that are deemed to have connections with foreign countries, are usually not well accepted by certain portions of the population. The

Special Rapporteur noted that some media often play a negative role in stigmatizing certain communities by portraying them in a denigrating manner. This observation raised even more concern because an important part of the media is controlled by the Government.

42. The reported acts of religious intolerance or other forms of persecution were committed by non-State actors or by law enforcement officials. In many cases, these acts took the form of raids conducted by police officers, often accompanied by representatives of SCWRA and TV crews, on private homes where religious gatherings were taking place. Pictures of these raids are then shown by TV for several days.

43. In June 2005, a community of Jehovah's Witnesses was the object of a raid conducted by police officers accompanied by reporters from a TV channel. The police remained at the premises for three hours and prevented the participants from leaving while TV reporters recorded the scene on camera. A number of the community's belongings were broken and religious literature was confiscated. Some members of the community were brought to the police station where they were interrogated about their activities. It is alleged that some of them were beaten or threatened with conversion to Islam. The members arrested were released after a few hours and, thanks to intensive efforts of their community, the literature confiscated was returned after a few months. Their statements were reportedly taken out of context and broadcast on television, painting them as unpatriotic people, whose religion limited their ability to defend their country. Witnesses to the incident were shocked at the high-handedness of the representative of SCWRA, who according to them, "behaved worse than the police".

44. The Jehovah's Witness community has been the victim of a few similar incidents. It was alleged that in some cases their members were fined, including by courts, for having gathered and prayed in private houses.

45. The followers of the Seventh Day Adventist Church reported that a regional TV channel launched a campaign against them for over two weeks. Further to this campaign, certain Muslim leaders gave public statements, asking the people to "cleanse" Gandja of the followers of the Seventh Day Adventists. An imam allegedly called for "jihad" against the followers of the Seventh Day Adventist Church. His call led to some violence, as crowds threw stones, damaging their place of worship.

46. Followers of the Baptist Church were victims of another campaign, which ran for two weeks at a television channel, accusing them of "enemies of Islam". A similar TV campaign was broadcast against the Evangelical Church.

47. In Nakichevan, the situation of religious communities is slightly different from the one on the mainland. The Special Rapporteur received a number of reports disclosing acts of persecutions of small religious communities by the authorities. She received reports of harassment, intimidation and expulsion of individuals and groups by the authorities in Nakichevan.

48. It was reported that two Wahabi Muslim groups were on two different occasions “chased out” of Nakichevan by the police. The authorities in Nakichevan did not deny that these groups were ordered to leave the province, but justified their action on the grounds that these were foreigners with links to militant religious groups. Nevertheless, their expulsion was reportedly not carried out in accordance with the law.

49. Other religious communities alleged that they could not freely associate with their own communities in Nakichevan. Those visiting the province from outside had to get permission before joining religious ceremonies. Incidents of detention of those visiting have also been reported.

50. Representatives of SCWRA in Nakichevan told the Special Rapporteur that they were not aware of the cases that had been reported to her. However, they maintained that they wanted to keep close control of religious communities operating in the region.

C. Registration

51. According to article 11 of the law “On freedom of faith”, in order to constitute a legal entity, religious associations have to be registered. The registration process that was earlier entrusted to the Ministry of Justice is now under the competence of SCWRA. In 2001, the Government ordered a re-registration of all religious associations. The registration enables religious communities to function as a legal entity but is not a precondition to exercise one’s right to freedom of religion or belief.

52. At the time of the visit there were 342 registered religious associations, of which 32 were non-Muslims. Besides these associations, an approximate number of 1,500 religious communities function in Azerbaijan without registration. According to the authorities, the main reason why religious communities may have been refused registration was related to the religious message itself.

53. While non-Muslim groups can directly apply for registration to SCWRA, Muslim communities have to first receive a letter of approval from CMB. According to CMB, very few Muslim groups had not received their approval. The Special Rapporteur was told that these exceptional cases involved security concerns although no further details were provided. There were no details regarding the time frame in which CMB approves or rejects an application. There were complaints that CMB simply keeps some requests for pre-registration approval indefinitely pending.

54. Some religious communities have faced difficulties in obtaining registration by SCWRA for different reasons. In most cases registration was denied because the message spread by the community was considered insulting towards other religions. The Love Baptist Church’s registration was cancelled in court. The Church reapplied for registration many times but was refused registration on all separate instances. Members of the Church have told the Special Rapporteur that the head of SCWRA declared that he was personally opposed to this registration.

55. SCWRA in Gandja processed the registration of a number of religions and denied having refused registration to anyone. However, they admitted that they had not responded to the registration application of the Jesus Christ Church and implied that they had no intention of responding.

56. In some cases, the absence of registration has been interpreted as justified since the community concerned was considered to be a “dangerous” group and sometimes accused of provoking acts of violence or other forms of religious intolerance against the population. For example, the followers of the Abrahimi community were denied registration allegedly on the grounds that its teachings were insulting to the mainstream Islamic faith.

D. Censorship

57. The control of religious groups or other communities of belief, in particular those which have a foreign link, is often carried out through a meticulous scrutiny of their literature. In most cases such literature comes from abroad and, according to the authorities, constitutes a means to disseminate religious propaganda that is either critical or insulting of other religions, goes against the interests of the State, or even incites to acts of terrorism. While the authorities are reluctant to use the word “censorship”, they consider such control as necessary and justified. The Special Rapporteur was told in this respect that religious propaganda is not part of the right to manifest one’s religion as protected by relevant international instruments.

58. Regarding the import of religious literature, almost every religious group complained of unnecessary delay and harassment by custom officials. Several incidents of corruption and arbitrariness by customs officials were reported to the Special Rapporteur.

59. Regarding the content of religious literature, SCWRA gave some indication of the amount of religious material they receive for approval. In 2005, they reviewed 354 books and other publications and prohibited the import of 89 of them. One consignment of religious material related to a publication imported by a Protestant group, while others were imported by various Islamic groups.

60. The Jesus Christ Church also complained of being denied delivery of a consignment of Bibles ordered by them. SCWRA reportedly gave them five copies out of the whole consignment and confiscated the rest, though they were all identical copies.

61. SCWRA gave some examples of preaching in the books that they confiscated. A book issued by a Saudi ministry, in cooperation with a charitable organization, had the following message: “It means that the one, who violates it secretly or openly, should know that he/she becomes disbeliever and should expect the possibility of killing or imprisonment.” Another book issued by the same source included the teaching of prayer by Dr. Abdulla bin Ahmed Al-Zeid warning that anyone who voluntarily worshipped anyone but Allah entered proselytism, which was a grave sin. Those sinners, it said, “can be killed and his/her property can be confiscated”. The majority of such books, SCWRA alleged, were received from Saudi Arabia, the Islamic Republic of Iran and Turkey.

E. Conscientious objection

62. Before and during her visit to Azerbaijan, the Special Rapporteur received a number of reports related to the difficulties faced by conscientious objectors. In most cases the alleged victims are members of the Jehovah's Witness community who have refused to perform military service due to their religious convictions.

63. The Special Rapporteur is aware of the commitment made by Azerbaijan when it became a member of the Council of Europe and notes that there have been some proposals for the establishment of alternative service. Moreover, she notes that, according to article 76 of the Constitution, "if serving in the armed forces runs counter to a person's convictions then active military service can be replaced by an alternative service in the cases specified by the law".

64. However, currently in Azerbaijan, in particular with a view to the situation with Armenia, there does not seem to be the political will to accept the principle of an alternative service. This principle is vigorously opposed by official governmental bodies that organize military service.

65. The position of the judiciary, including the Supreme Court of Azerbaijan, is that since there is no law on alternative service there is no right to conscientious objection, a position that may be disputed in international law.

66. The Special Rapporteur had already addressed cases of conscientious objection in her previous communication report to the Commission on Human Rights (see E/CN.4/2006/5/Add.1, paragraphs 12 to 26).

F. Places of worship and religious sites

67. The Special Rapporteur has received detailed information on the problems allegedly faced by members of the Juma Mosque Community in Baku and their imam Ilgar Ibrahimoglu.¹ At the official level, she was regularly told that these problems were provoked by the political activities of Ilgar Ibrahimoglu and were not related to religion.

68. The congregation of the Juma Mosque refused to be registered with SCWRA on the ground that they previously registered in 1993. The authorities had the premises vacated in January 2004 and after protracted litigation the mosque was turned over to the Icheri Sheher Historical and Architectural National Reserve. It was then closed for renovation.

69. The imam of the Juma Mosque was replaced by CMB. Government sources admit that this was done because of the imam's active support of the opposition parties. He was also convicted and sentenced to a five-year suspended sentence for facts related to his participation in post-election demonstration in October 2003, at a trial which independent observers confirm did not respect the principles of fair trial. Owing to this suspended sentence, Ilgar Ibrahimoglu has been prevented from travelling abroad on many occasions.

70. The main concern, however, remained with the members of the Juma Mosque community who have been deprived of their place of worship in Baku. The authorities have justified the closure of the mosque by citing necessary renovation works. Moreover, the Juma Mosque constitutes an historical building that also has a cultural value for the State of Azerbaijan and it was reported that after renovation the mosque would no longer serve as a place of worship but as a museum or other cultural place. The Special Rapporteur was not informed whether the members of the community were offered an alternative place of worship by the Government.

71. The Special Rapporteur has also expressed concerns about reports related to the alleged destruction of certain monuments in Djulfa, Nakichevan; a concern that had already been conveyed to the Government of Azerbaijan by her predecessor.² However, she was unable to ascertain the extent to which the monuments are used in relation to the manifestation of the right to freedom of religion or belief.

72. Interlocutors at the official level have insisted that such allegations should be looked at from a more global approach and proposed that an independent international inquiry be conducted in Djulfa as well as regarding other similar incidents in the region.

G. Immigration policy

73. Article 1 of the law “On freedom of faith” of 1992 prohibits foreigners and persons without citizenship from conducting “religious propaganda”. To the extent that “propaganda” refers to an element of the right to manifest one’s religion, namely the propagation of religion, it appears that this provision provide for restrictive rights to foreigners, which may not be compatible with international human rights law.

74. Moreover, it was reported to the Special Rapporteur that the Government had a selective immigration policy regarding foreign preachers. The Government generally discourages immigration of foreign missionaries and there were reports of deportation of foreign preachers but a selective few are tolerated or even officially permitted to preach in the country.

H. Freedom of religion or belief of persons deprived of their liberty

75. The Special Rapporteur visited a detention centre in Baku (one colony). Out of 990 prisoners, 23 were Orthodox Christians and the rest were Muslims. According to the prison authorities only 20 per cent of the prison population were “active” in their practice of religion.

76. The Special Rapporteur interviewed a number of prisoners; they had complaints concerning other issues, but were satisfied with the freedom of religion or belief they enjoyed in the prison. The prison authorities were open to suggestions for further improvements.

I. Education and other issues related to freedom of religion

77. The authorities have seriously taken up the task of introducing a curriculum in schools on the teachings of religions. The objective of the project would be to promote the ideals of a pluralistic society. The Education Ministry is taking the lead in this undertaking.

78. A number of women associated with an NGO met the Special Rapporteur on the issue of being denied the right to wear headscarves while being photographed for the national identity cards and passports. The Special Rapporteur was told by these women that they had contested the authorities' decision to deny them this right and had accordingly obtained some court orders. The court orders were not made available to the Special Rapporteur and she was unable to obtain them from other sources. She was, however, told by the Registrar of the Supreme Court that no such petition had reached the court to date.

VI. CONCLUSIONS

79. The Special Rapporteur considers that Azerbaijan is a country where there is a high level of religious tolerance and, despite an overwhelming majority of persons of the same religion, there is real religious harmony. Moreover, although there are some instances of undue limitations or violations, the Government generally respects freedom of religion or belief.

80. Azerbaijan can play a leading role in building a model of its own because it has the most valuable raw material available to achieve this purpose: the good will and accommodating nature of its people towards spiritual beliefs.

81. The Special Rapporteur is not in a position to make an exhaustive detailed assessment of each reported incident regarding freedom of religion or belief in every region of the country. However, since she was already closely following the situation in Azerbaijan, this visit has enabled her to make an objective assessment of the situation concerning the right to freedom of religion or belief.

82. The most striking feature of Azerbaijan regarding issues relevant to the mandate is the balanced attitude shown by the Azerbaijanis towards religion. The main consequence of this attitude is an undisputable degree of tolerance of the population in general, which certainly constitutes an essential ingredient of the freedom of religion or belief in a society.

83. At the normative level, the Constitution contains the main guarantees of the right to freedom of religion or belief and the secular character of the State provides a further guarantee to this right.

84. The corresponding legislative framework is generally in line with human rights norms but the interpretation of certain of its provisions may raise concerns in terms of the right to freedom of religion. Moreover, the Government has created - and in some cases re-established - specific mechanisms to deal with religion-related matters. These mechanisms do not fully respect the principles of freedom of religion, including in certain instances because of their ignorance of these principles.

85. The general respect for the right to freedom of religion or belief is not uniformly observed in all regions of Azerbaijan. The Special Rapporteur has indeed noticed that, in some cases, the concerned authorities may have blurred the thin line that distinguishes facilitation of religious freedoms from control. In particular, certain situations related to the different aspects of this control have resulted in actual limitations of the right to freedom of religion or religious communities: difficulties in registration, restriction on religious literature, methods of appointment of clergy or obstacles for non-registered religious communities.

86. To address these concerns as well as other related human rights, the Special Rapporteur emphasizes that the existence of effective independent and impartial administrative and judicial mechanisms is of crucial importance. While she is aware of the difficulties that Azerbaijan has faced during this transition period, the Special Rapporteur strongly encourages the Government, as well as the other actors in the society, to work towards the strengthening of institutions, which are essential in the construction of a democratic society.

Acts of religious intolerance and other forms of persecution of religious minorities

87. In a few cases, the control exercised by the authorities has unfortunately transformed in real forms of persecution. The Government should rapidly take the appropriate measures so that such incidents do not reoccur in the future. In this regard, the Special Rapporteur is particularly concerned that, because of fear, some religious communities were reluctant to talk to her.

88. Moreover, she was disappointed to note that the level of tolerance between religious communities is sometimes significantly challenged. This challenge is, inter alia, the result of the actions carried out by the relevant mechanisms and by the negative role played by some media in stigmatizing certain religious communities. In this respect, the Special Rapporteur would like to stress the responsibility of the media and draw attention to the relevant provisions of international law that prohibit any form of incitement to religious hatred, such as article 20 of the International Covenant on Civil and Political Rights.

Registration

89. The Special Rapporteur considers that a certain margin of appreciation is left to the States in the adoption of regulations related to the conditions of registration of religious associations. The registration procedures however, have, to be followed impartially and objectively by the authorities concerned and cannot be affected by personal and partial opinions. Moreover, they should comply with the minimum safeguards that the Special Rapporteur has referred to in her last report to the Commission on Human Rights (see E/CN.4/2005/61, paras. 55 to 58). In particular, registration procedures should be facilitative and quick and not depend on extensive formal requirements in terms of the number of members or the period of time since the group was established. It should not depend on reviews of the substantive content of the belief, the structure, or the clergy. Besides the different aspects of the registration procedure, the Special Rapporteur insists that registration should not be compulsory, i.e. it should not be a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits. In this regard, the Special Rapporteur often heard that obstacles faced by religious communities in their exercise of the right to freedom of religion or belief, such as the right to worship, were justified by their absence of registration.

Religious literature

90. The control exercised by SCWRA on the content of religious literature, in particular that which is imported from abroad, is very tight. The Special Rapporteur considers that the authorities have not demonstrated that their meticulous scrutiny of religious books was necessary to protect public safety, order, health, or morals and that they exercised this control in a reasonable manner. On the contrary, certain instances of control may have constituted undue limitations to the right to manifest one's religion or belief.

91. Moreover, the Special Rapporteur believes that the right to freedom of expression as protected by international standards provides a certain latitude for religious communities in the drafting and dissemination of their literature, even in cases where they do not agree with other religions, provided that they do not raise to the level of incitement to religious hatred as prohibited by article 20 of the Covenant.

VII. RECOMMENDATIONS

92. **The Government should primarily ensure that all individuals who may have been the victim of violations of their right to freedom of religion or belief or of other human rights because of their religion or belief receive appropriate redress, including through a judicial procedure. It should also ensure that the perpetrators of acts that have caused such violations are prosecuted according to applicable criminal procedures. Such measures should also be systematically enforced for any future acts of religious intolerance or other forms of persecutions of members of religious communities in accordance with the criminal laws of the country.**

93. **In particular, the Special Rapporteur urges the Government to give special attention to any form of religious intolerance towards religious minorities and take the appropriate measures to address and prosecute all forms of incitement to religious hatred in accordance with article 20 of the International Covenant on Civil and Political Rights and other relevant human rights provisions, including when these acts are perpetrated by the media.**

94. **Concerning the prerogatives that are exercised by the relevant State mechanisms with regard to religious groups and communities, the Government should generally reassess the level of control on the activities of those groups and communities in order to reach the right balance between a necessary regulation of religious activities in the society and the exercise of the right to freedom of religion or belief of all individuals living under Azerbaijan jurisdiction.**

95. **Concerning SCWRA, the Government should, as a priority, organize a system of training for persons who work directly or indirectly with the Committee on human rights in general and the right to freedom of religion or belief in particular. Moreover, it should define clear guidelines and objective criteria concerning the activities of staff members of SCWRA.**

96. **Regarding the registration of religious associations, the Government should first take the necessary measures so that the principle according to which registration does not constitute a precondition to the exercise of the right to freedom of religion, including the right to manifest one's own religion individually or in a group, is widely disseminated among the population as well as to the appropriate law enforcement agencies.**

97. **Moreover, the procedure of registration of religious associations should be more transparent, including regarding the timeframe of the process. In case of refusal of registration, the relevant institutions have an obligation to formally transmit to the**

community or group concerned the exact reasons for the refusal. Furthermore, the Government should ensure that these groups or communities have unimpeded access to the competent courts for a judicial review of the refusal.

98. The problem of religious material that propagates the perpetration of illegal activities should be addressed under the relevant laws in force in the country, and not be the object of scrutiny carried out in an arbitrary manner by the members of SCWRA. When the content of religious material is found by SCWRA to raise a concern in terms of its legality, the issue should be brought to the courts for a judicial review in accordance with applicable human rights and fair-trial standards.

99. The Government should ensure that religious communities are not unduly deprived of their places of worship. In cases where such deprivation is justified by lawful reasons and after judicial review, it provide the community concerned with a suitable alternative place of worship.

100. Concerning issues related to the clergy, the Special Rapporteur considers that the selection of imams should be made in a more transparent manner and that the Muslim communities concerned should be consulted in the selection process.

101. Regarding the right to conscientious objection, the Special Rapporteur urges the Government to honour its commitment made before the Council of Europe and to adopt legislation on alternative service in pursuance to the provisions of its own Constitution, which guarantees such a right.

102. With regard to the particular situation in Nakichevan, the Special Rapporteur is of the opinion that the local authorities should be further sensitized to human rights norms and democratic rules of Government. In particular, the Government should support the organization of training sessions in human rights and the right to freedom of religion or belief for all members of the local Government by relevant non-governmental or international organizations.

103. The Special Rapporteur was particularly encouraged by the interfaith engagement of religious leaders in Azerbaijan. She urges them to continue in this direction and to associate the other religious communities of the country in this initiative. Moreover, members of the civil society and women should also be associated with the dialogue so that it also takes a secular approach.

104. The Special Rapporteur encourages the creation of a dialogue or other form of interaction between representatives of religious minorities and editors or heads of electronic and print media in order to clarify misunderstandings and misconceptions about the purposes and beliefs of the communities concerned and to initiate a spirit of tolerance towards these communities among the population. Non-governmental organizations should assist and support religious minorities in arranging such dialogues.

105. The efforts to produce a curriculum for schools on the teaching of religions can be extremely useful in order to further strengthen the general level of religious tolerance that exists in Azerbaijan. It should be fully supported by all parts of the Government and shared with other countries that are looking for a model curriculum.

106. Finally, and in order to implement a number of these recommendations, the Special Rapporteur stresses the need for the Government to take all appropriate steps to strengthen the independence and neutrality of the judiciary.

Notes

¹ Ilgar Ibrahimoglu was referred to in several previous communications of the Special Rapporteur to Azerbaijan (E/CN.4/2005/61/Add.1, paras. 10 to 17, A/59/366, paras. 8 to 11), inter alia, related to the Juma Mosque. He was also the subject of a communication of the Special Representatives of the Secretary-General on the situation of human rights defenders on 28 September 2004.

² On 8 May 2003, the Special Rapporteur transmitted to the Government of Azerbaijan information on the systematic destruction of thousands of “*Khatchkars*” (stone crosses 1 metre wide by 2.5 metres long decorated with Christian symbols) in the Djulfa cemetery since 9 November 2002. Other “*Khatchkars*” were allegedly removed by truck to unknown destinations. Similar destruction is reported to have taken place in November 1998 (see A/58/296, para. 16).
