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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF
RELIGIOUS INTOLERANCE**

Addendum

Summary of cases transmitted to Governments and replies received*

* The present document is being circulated in the language of submission only as it greatly exceeds the page limitations currently imposed by the relevant General Assembly resolutions

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Introduction

1. This addendum to the report of the Special Rapporteur on freedom of religion or belief gives an account of communications transmitted by the Special Rapporteur between 12 November 2004 and 30 November 2005. It also contains the replies received from Governments to her communications by 30 January 2006, as well as observations of the Special Rapporteur where considered appropriate.
2. Owing to restrictions on the length of documents, the Special Rapporteur has been obliged to slightly reduce details of communications sent and received. As a result, replies from Governments could not be published in their entirety.

SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

Armenia

Communication sent on 9 June 2005

3. The Special Rapporteur had received information according to which, on 21 June 2004, Jehovah's Witness conscientious objector Mr. **Armen Grigoryan**, who refused military service after being called up, was summoned to the military recruitment office in Yerevan. Within 24 hours, he was taken out of Armenia against his will and transferred to a military unit across the border in Nagorno-Karabakh. He was beaten at a base in Martuni region of eastern Karabakh upon his refusal to swear the military oath and to sing the national anthem. He was later stripped and forced to stand in his underwear in front of about 1,800 soldiers and to tell them why he refused to do military service. He escaped from his unit and fled back to Armenia in August 2004. On 28 April 2005, he decided to give himself in and went with his lawyer to the police station in Yerevan. He was immediately arrested and taken to Stepanakert in Nagorno-Karabakh, where he was held in solitary confinement in an investigation cell at the time of the communication.
4. The Special Rapporteur was further informed that nineteen Jehovah's Witnesses were still in prison for refusing military service on grounds of conscience.
5. In addition, of the 24 young men who opted for the alternative labour service in 2004, 22 were Jehovah's Witnesses who believed assurances by officials that the service was of civil character. Many expressed concern about the terms of the service. For instance, Mr. **Vahe Grigoryan**, Mr. **Garazat Azatyan**, Mr. **Hayk Khachatryan** and Mr. **Garik Melkonyan**, who were assigned to the Vardenis psychiatric hospital, had to wear military-style uniforms, carry identity cards marked "Armed Forces of the Republic of Armenia", and were treated as soldiers. They were regularly visited by the military police and were given degrading work. Some have abandoned this alternative service and are therefore at risk of prosecution. On 6 May 2005, Mr. **Narek Alaverdyan** and Mr. **Arsen Sevoyan** were immediately arrested by the military police after they refused to continue their alternative service.

Response from Government dated 6 September 2005

6. The Government informed the Special Rapporteur that the issues related to and terms of the alternative service in Armenia are regulated by the Law “on Alternative Service”, which entered into force on 1 July 2004.

Article 3 of the Law provides that an alternative service is allowed for those citizens whose religion or religious belief is incompatible with performing regular military services in military units as well as holding or use of weapons.

According to the above-mentioned Law, there are two types of alternative services:

1. Alternative military service (although not taking place in military training premises and without requirement to hold and use weapons and military equipment;
2. Alternative labor service (outside military forces).

Article 4 of the Law stipulates that a citizen is sent to serve the alternative military service if he applies to the military recruitment office of his district no later than 1 March or 1 September before the next regular call-up—and if the district military office takes the correspondent decision to this end.

Article 8 of the Law stipulates that the district military recruitment commission discusses the application for an alternative service in its separate session. The applicant has to be informed about the date and time of the session before the session takes place. The recruitment commission takes a separate decision on each application.

Additional response dated 26 September 2005

7. The Government informed that the information about the 22 Jehovah’s Witnesses was false. These Jehovah’s Witnesses engaged in alternative service voluntarily, having first been familiarized with the Law and its individual provisions. The men have never worn military uniforms and the dress which persons who perform alternative service are required to wear is quite different from military uniform. On receipt of their clothing, the men wore it for four months and did not express any objection. They have never been treated as military personnel. They performed their service in civilian establishments, medical institutions and residential homes.

8. After parents of the Jehovah’s witnesses submitted a complaint to the Government expressing their dissatisfaction with the place and nature of the alternative service on 14 March 2005, several Government officials visited Sevan psychiatric hospital, Vardenis residential home and Gyumri psychiatric health center where the Jehovah’s witnesses undertook their alternative service. In all institutions the Government officials found that the alternative service the Jehovah’s witnesses were required to do was not arduous or degrading or in conflict with the labour organization and that their treatment was normal and humane. In the first months of their service the Jehovah’s Witnesses had performed their services as was required

and held good relations with the general staff. Their living conditions were normal, their accommodation comfortable and their food requirements were met.

9. Towards the end of March and the beginning of April the Jehovah's Witnesses' attitude suddenly changed and they abandoned their service. Because the Government officials could not find a due cause for them to leave, the Jehovah's Witnesses must bear responsibility for the abandonment of service under the existing Alternative Service Act.

Observations

10. The Special Rapporteur is grateful for the Government's response. She would like to draw the Government's attention to Paragraph 5 of Resolution 1998/77 of the Commission on Human Rights, which emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment.

11. Moreover, she notes that the Human Rights Committee has encouraged States to ensure that the length of alternative service does not have a punitive character, in comparison to the duration of regular military service. (See *inter alia* CCPR/CO/83/GRC, paragraph 15). Noting Armenia's commitment regarding alternative service further to its accession to the Council of Europe, she encourages the Government to initiate a review the law from the perspective of its compliance with international standards and best practices.

Azerbaijan

Communication sent on 17 March 2005

12. The Special Rapporteur brought to the attention of the Government information she had received according to which, on 4 February 2005, the Supreme Court failed to protect the right of Mr. Mahir Bagirov to perform alternative service despite a provision in the constitution guaranteeing this right for those unable to serve in the army on grounds of conscience. Mr. Bagirov is a Jehovah's Witness on whose behalf a communication was sent on 27 October 2004 (See E/CN.4/2005/61/Add.1 at par. 18). The court reportedly argued that the lack of a law on alternative service meant that this right did not exist. Fears had been expressed that Mr. Bagirov would soon be arrested by the military police and brought to a military barracks where, as an alleged deserter, he could be at risk of being subjected to brutal treatment. Concerns had been expressed that Azerbaijan's army was not yet ready to allow young men to do alternative service.

13. The Special Rapporteur was also informed that Azerbaijan's senior religious affairs official in February 2005 had expressed accusations against the Protestant church in the local media. Rafik Aliev, head of the State Committee for Work with Religious Organisations, has accused the Seventh-day Adventist and Greater Grace Protestant churches of working illegally and threatened they could be shut down. In the latest of numerous unfounded allegations that Mr. Aliev has made in local media, he accused the Adventist and Greater Grace Protestant churches of, *inter alia*, conducting "illegal religious propaganda" and of disturbing "citizens residing near

places where prayers are held." It was reported that Mr. Aliev's committee was taking "tough measures in order to close the churches." Mr. Aliev used a similar approach in 2002 in order to close down Baku's Azeri-language Baptist church. According to the head of the Adventist Church in Azerbaijan, Pastor Yahya Zavrighko, the last time that Mr. Aliev complained about the Church in the media he confirmed that he had no facts of any violations committed. Concerns have been expressed that Rafik Aliev frequently makes such allegations against named religious communities which are never backed up with evidence.

14. The local media allegedly is frequently used to conduct campaigns against religious minorities. For instance, one Baku-based Protestant observed that repeated allegations in the media that Protestants and Jehovah's Witnesses were conducting illegal activity and would be shut down have created a climate of hostility in society.

Response from the Government dated 25 March 2005

15. The Government indicated that Mr. Mahir Baghirov filed a complaint with the Khatai District Court concerning the actions of the military official. He requested to consider call-up paper No. 1328 dated 27 May 2004 illegal and proposed to adopt a resolution to acknowledge his right to change military service to alternative service. This resolution would serve as a precedence since Mr. Baghirov had been called up according to the decision of the recruitment commission of the Khatai District Military Commissariat even though he had been the member of the religious community "Jehovah Witnesses" and was forced to serve despite his religious obligations barring any military activity.

16. Mr. Baghirov had passed the military training course of the Azerbaijan Medical University, swore to serve, and received the military rank of medical service lieutenant. He did not submit evidence that he had requested relevant bodies to relieve him of his military rank. Moreover, Mr. Baghirov received the call-up paper No. 1328 from the Khatai District Military Commissariat of the Ministry of Defence on 1 June 2004, obliging him to arrive at the military unit No. 161. The call-up paper was based on a Decree of the Minister of Defence of Azerbaijan No. 0305 dated 23 May 2004.

17. According to Article 76 of the Constitution, the defence of the native land is the duty of every citizen. The citizens must perform military service in accordance with the rules determined by the Law. If doing military service contradicts the convictions of citizens, it is possible to substitute military service for alternative service only in those cases determined by the Law. Furthermore, according to Article 2 of the Regulations for alternative service, those male citizens aged 18 to 25 who cannot do military service because of their confession must do alternative service instead in compliance with Article 9 of the Law on Armed Forces of the Republic of Azerbaijan. According to these Regulations, the only persons exempt from military service are those who have a professional relationship with the religious orders, such as priests and students in religious schools.

18. Moreover, according to the same Regulations, the citizens who cannot do military service because of their confession should submit a written request to the call-up commission at least 2 months prior to the call-up for active service. Mr. Z. Baghirov

was called up for military service on 27 May 2004, whereas he submitted a written request on 29 April 2004.

19. In accordance with Article 78 of the Civil Procedure Code, evidence should be submitted by the concerned persons to court of first instance. Mr. Baghirov had not submitted any evidence of his cleric activities since 2002 to the first instance court. During the examination of the case in the court of appeal, Mr. Z. Baghirov and his representative could not explain the reasons why they had not submitted this evidence to the first instance court.

20. The panel of judges noticed that the head of the "Jehovah Witnesses" community, L.A. Moroz, described Mr. Z. Baghirov, in the application No. 20 dated 29 May 2004, as a member of the community and not as a cleric. Thus, the allegation that Mr. Baghirov was a cleric was neither in the application of 29 May 2004 nor in that of 9 September 2004

21. Accordingly, the Court considered that there were unsubstantial grounds to prove that Mr. Baghirov was an active cleric of the "Jehovah Witnesses" community since 2002. The decision was confirmed by the Supreme Court of Azerbaijan.

Additional response from the Government dated 19 April 2005

22. The Government informed the Special Rapporteur that the Officials of the State Committee for Work with Religious Organizations periodically give interviews to mass media on the religious situation in the country, that the data provided by the Chairman of the State Committee was based on concrete facts and guided by the relevant legislation of Azerbaijan and that, at the same time, this information serves the right of citizens to receive information.

23. The Government indicated that "The Seventh Day Adventists" and the Jehovah Witnesses had been warned not to distribute illegal religious propaganda and that this warning did not contradict the relevant national legislation. The local religious communities including "The Seventh Day Adventists" accepted the complaints expressed to them and notified that they would try not to commit any violations. This issue had been discussed with Victor Vitko, Secretary General of the Eurasia section of the International Association of Religious Minorities.

24. The registration of the Grace Church was eliminated in 2002 in accordance with the relevant court verdict. Representatives of the OSCE, UN and Council of Europe participating at the court hearings did not have any objections concerning this case because there was sufficient evidence to eliminate registration. In its work, the State Committee for Work with Religious Organizations acts in compliance with the existing legislation of the Republic of Azerbaijan.

Observations

25. The Special Rapporteur is grateful for the detailed response regarding Mr. Mahir Baghirov. However, she would like to refer the Government's attention to Article 1 of Resolution 1998/77 of the Commission on Human Rights, which draws

attention to the right of everyone to have conscientious objections to military service. This right is not, and should not be, limited to clerics and students of religious schools. She encourages the Government to review its legislation on alternative service, in accordance with international standards and best practices.

26. She will address the question of conscientious objection as well as other situations raised by the above communication in the report that will be submitted further to the visit that she carried out in Azerbaijan from 26 February to 5 March 2006 at the invitation of the Government.

Bangladesh

Urgent appeal sent on 10 March 2005 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

27. The Special Rapporteurs were informed that, on Friday 11 March 2005, the leaders of Islamist groups had threatened to attack the members of the Ahmadiyya Muslim Jamaat religious community, in the city of Bogra. Concerns had been expressed that this attack was an attempt by Islamist groups to pressure the government to declare Bangladesh's Ahmadis "non-Muslims". This attack would reportedly be the result of a hate campaign led by the Islamists in Bogra and the nearby regions of Rajshahi, Natore and Gaibandha over the previous week. Concern was further expressed that this planned attack followed a pattern of similar attacks on Ahmadi places of worship in the districts of Chittagong, Patuakhali, Narayanganj, Brahmanbaria, Nakhla para and Dhaka over the year.

28. The Special Rapporteurs recalled that previous communications in relation to this issue had been sent to the Government on 15 March 2004, on 27 August 2004 and 10 November 2004 to which the Government had responded by letters dated 24 May 2004 and 16 November 2004 (See E/CN.4/2005/61/Add.1 at par. 20-27).

29. In this regard, although the local authorities had reportedly taken measures to ensure the safety of the Ahmadis in the past, the Special Rapporteurs requested to be informed about the measures that had been taken by the Government in order to prevent further violations of the rights of the Ahmadiyya community.

Response from the Government dated 27 May 2005

30. The Government provided additional information to a communication of 10 November 2004 (see E/CN.4/2005/61/add.1, para. 26).

31. On 29 October 2004 at about 1.30pm, the members of Ahmadiyya Community performed their Juma prayer in the new mosque in Bhadughar area of Brahmanbaria town. Sunni Muslims, including teachers and students of local Madrasa and other Muslims of that area reacted by throwing brickbats to the members of Ahmadiyya community and broke the windows of 4 to 5 houses belonging to Ahmadiyya. About 10 to 12 members of Ahmadiyya community were injured in that incident. The Police rushed to the place and a criminal procedure under section (u/s) 143/448/323/324/427 of Bangladesh Penal Code was engaged against 110 unidentified persons. Members of both communities also held talks but

there prevailed religious tensions between them. Although the local Police Station has been ordered to remain alert and vigilant, the situation is now peaceful.

32. Regarding Narayangonj, the organization "AMRA Dhaka Bashi (we are residents of Dhaka)" demanded that the Ahmadiyya Mosque be opened to all for performing prayer. The Ahmadiyya community rejected their demand and sought for security for the mosque and for them. Narayangonj district police administration deployed more than 200 Armed Police personnel including Bangladesh Rifles (BDR) to ensure security of the Ahmadiyya Mosque and Community.

33. Regarding Nakhla Para, on 21 November 2003, Sunni Muslims organized a procession from Rahim Metal Mosque, Nakhla Para, Tejgaon, Dhaka after juma prayer, against so-called anti-Islamic activities of the Ahmadiyya community. The police did not allow the members of the procession to proceed towards Ahmadiyya Mosque and dispersed them, including with tear gas shells. The police initiated case No. 79 under section (u/s) 147/148/149/186/332/333/353/427/109 Bangladesh Penal Code (BPC) and case No.80 section (u/s) 147/148/149/186/332/333/353/427/109 Bangladesh Penal Code against the demonstrators including Moulana Mahmudul Hassan Mumtazi.

Communication sent on 5 July 2005

34. On 24 June 2005, about two dozen bombs exploded at East Kandipara, an Ahmadiyya-inhabited area in Brahmanbaria. Simultaneously two Ahmadiyya mosques, one in the same area and one at Bhadughar, were set on fire. Two members of Ahmadiyya Muslim Jamaat sustained injuries and were treated at Brahmanbaria Sadar Hospital. At the time of the communication, the police had not arrested anyone involved in the attacks.

35. The Special Rapporteur recalled that previous communications in relation to this issue had been sent to the Government on 15 March 2004, on 27 August 2004, on 10 November 2004 and on 10 March 2005 to which the Government had responded by letters dated 24 May 2004 and 16 November 2004.

Responses from the Government dated 11 July 2005 and 3 January 2006

36. By letter of 11 July 2005, the Government acknowledged receipt of the above communication.

37. By letter of 3 January 2006, it informed that the matter had been fully investigated. On 24 June 2005 unidentified individuals set fire to the Ahmadiyya place of worship at Kanderpara. The fire caused damage to a portion of the place of worship. Subsequently a number of crackers went off in the neighbouring residential area of the Ahmadiyya. Two members of the Ahmadiyya Muslim Jamaat sustained minor injuries and were treated at Brahmanbaria District Hospital. On the same night, unidentified individuals set off four more crackers in the Ahmadiyya community area in Bhadughar.

38. The police have arrested eight suspects on suspicion of involvement in the events and have produced them before the court. The local police were initially in

charge of the investigations. However, in view of the seriousness the Government attaches to the matters, responsibility for the investigation and the prosecution has been transferred to Criminal Investigation Department (CID) of the police department.

Communication sent on 3 November 2005

39. On 18 October 2005, a number of unidentified persons broke into a Kali Mandir (Hindu Temple) in the Chagarachi District. They kidnapped the Priest, **Shri Gopal Chandra Barman**. They also stole a number of idols from the Kali Mandir, including a Visnu idol and a Gopal idol. On 21 October 2005, Shri Gopal Chandra Barman's body was found, bound with rope, in the nearby Haridhoa River. The Priest had been stabbed to death.

Response from the Government dated 11 November 2005

40. The Government acknowledged receipt of the above communication.

Observations

41. The Special Rapporteur is grateful for the Government's response to the communications sent on 5 July 2005. However, taking into account the serious character of the situation faced by the Ahmadiyya community in Bangladesh, she regrets that she has still not received a reply to her previous communication dated 10 March 2005.

42. The Special Rapporteur therefore urges the Government to take concrete measures to eliminate acts of religious intolerance towards the Ahmadiyya community in accordance with article 8(a) of the 2005/40 Resolution of the Commission on Human Rights and would like to receive detailed information about the content of these measures as soon as possible.

Belarus

Communication sent on 17 March 2005

43. The Special Rapporteur brought to the attention of the Government information she had received according to which, on 16 February 2005, **Pastor Vyacheslav Goncharenko** of the Minsk-based New Life Church was facing prosecution again for organizing worship without state permission. Indeed, following their inspection of Sunday worship on 23 January 2005, local police announced the charges on 25 January, and an initial district court hearing took place on 10 February 2005. A second hearing was reportedly set for 1 March 2005. It was reported that identical charges were brought against the pastor in late 2004. Fears had been expressed that the latest charges could have been part of official moves to close down the church under Belarusian law. Reports further indicated that New Life administrator **Vasily Yurevich** was fined 3,200,000 Belarusian roubles on 28 December 2004 for similarly organizing "illegal" worship. Mr. Yurevich lodged a formal protest when the public procuracy refused to take up an appeal against the fine.

44. The Special Rapporteur was also informed that following the deadline for compulsory state re-registration on 16 November 2004, under the law on religions, it was uncertain what would happen to a number of religious communities who were either still in the process of re-registering or who had been refused re-registration. Without state re-registration, it was reportedly legally impossible for religious communities to meet for worship, or to engage in other religious activities. It was further reported that the State monitors, restricts and prevents the activity of religious communities in several other ways. Registered religious organizations could not, for instance, engage in activities outside the place where they were registered and violations of the law could result in a religious community being formally liquidated.

45. The following situations were also brought to the attention of the Special Rapporteur:

- The 40-strong Word of Truth Church was the second member of the Full Gospel Association to be denied re-registration under the 2002 Belarusian law on religion. The Church was meeting unhindered at private homes in Dzerzhinsk (Minsk region) as no court order had been issued for its liquidation. According to the church's pastor Nikolai Kozel, Word of Truth tried to re-register at an alternative address after being expelled from its rented premises. In addition to the absence of approved premises, the church was reportedly subsequently denied re-registration on the grounds that its application was late, even though it was alleged that they had submitted it before the 16 November 2004 deadline.

- The third Full Gospel Association congregation to be refused re-registration was the 35-strong Church of Jesus Christ in Kozenki village which was hoping to register as a new religious organization. After simultaneously submitting documents to the Mozyr district executive committee in which the same address was stipulated for re-registration of the church and the adoption of two children, officials reportedly responded that the children could not be placed at an address where there would be church services. As the deadline for re-registration expired during these deliberations, the authorities then suggested that the church disband and register anew at a different address, while the issue of adoption was "practically resolved."

- On 24 January 2005, the Belarusian Supreme Court upheld a 21 December 2004 ruling by the Minsk City Court, stating that the Minsk Society for Krishna Consciousness had rightly been refused re-registration under the 2002 law. Similar to the New Life Church mentioned above, the Minsk Krishna Consciousness Society did not have the State approval required by the 2002 religion law to use its own premises for worship, and was refused re-registration as a result. On 3 November 2004, the Minsk's Central District Court also issued an official warning after a police officer observed Krishna devotees praying at their temple without state permission.

- Two other Krishna Consciousness communities in Bobruisk (Mogilev region) and Mogilev could not re-register and register respectively. The state authorities allegedly kept changing the reasons for not re-registering

the Bobruisk group, first having claimed that the legal address was not in order, then the charter, and finally that the application was submitted too late. The authorities also insisted that the Mogilev group seeking initial registration must first pass an expert analysis and would not accept confirmation from the Minsk Society that it belonged to the same religious confession. The Bobruisk community could apply for registration as a new religious organization. Since the applicants had described themselves as "Vaishnavis" rather than Krishna devotees, the Mogilev group was reportedly deemed to be liable for expert analysis, although the 2002 religion law stipulates that this is the case only for religious confessions new to Belarus. These terms are allegedly synonymous.

-The authorities in Brest had returned re-registration applications to six autonomous Baptist churches in the region. Moreover, the banks where two of the six had accounts closed these accounts at the request of the authorities. The six congregations had refused to accept a provision in the 2002 religion law stipulating that a religious organization may function only within the borders of the territory upon which it is registered. This was reportedly confirmed by Vasili Marchenko, the Brest regional religious affairs official. Maintaining that a similar restriction exists for all legal personalities in Belarus, Mr. Marchenko specified that the territory in question constituted the limits of a town or city if that was where an organization was registered or the several neighbouring small settlements or villages where founding members live.

Response from the Government dated 18 July 2005

46. The Government stressed that eight Full Gospel Christian communities have been re-registered to date. The Government informed that it was decided not to re-register the Full Gospel New Life Church because it did not have a legal address. In the application, the legal address was cited as a farm building. A Commission inspected the building and found it to be in a poor state of repair. Furthermore, many of the provisions of the religious community's charter did not conform to current legislation; for this reason two of the organizers of the religious meetings held at the aforementioned address were fined under administrative law. With a view to resolving the issue, the organizer of the New Life Church was invited on two occasions to re-register the community using a new legal address. To date, the State authorities are unaware that the religious community has taken any such decision.

47. The Government informed that Full Gospel Word of Truth Church in Dzerzhinsk is the only one of 11 Full Gospel churches that has not completed official re-registration formalities. This is because it lacks a legal address. Article 17 of the Freedom of Conscience and Religious Organizations Act provides that a religious community must submit an application accompanied by a document confirming the organization's right to occupy the premises cited in the Charter. In this case the application did not contain such a document and it also lacked required reports by official bodies authorized to conduct public health and town planning inspections. Accordingly, the application could not be forwarded to the Minsk Provincial Executive Committee for re-registration.

48. The Government informed that the Full Gospel Church of Jesus Christ in Kozenki also does not have a legal address. The declared address for re-registration is a family home to five children. As such, the agency of tutorship and guardianship refused permission for the premises to be used as the legal address of the religious community, considering that it would be detrimental to the children's living conditions. The organizers have not filed another application for re-registration with the authorities, specifying another legal address.

49. The Brobuisk Krishna Consciousness Society has, according to the local authorities, essentially ceased its activities. The International Society for Krishna Consciousness applied for re-registration. The membership of this community includes none of the leaders or organizers of the previously registered religious community and its title and legal address have changed. These changes were not made in accordance with the correct procedure and re-registration was therefore denied for lack of legal continuity. The way out of the impasse was to wind up the former legal entity that had ceased its activities and register a new community under the proper procedure. The Mogilev Society for Krishna Consciousness was denied registration for procedural shortcomings during the application process. The Minsk Society for Krishna Consciousness was denied re-registration because the address it submitted as its legal address was a residential address, which is not allowed. The Minsk Society for Krishna Consciousness appealed the initial decision but the initial judgment of the authorities was upheld in appeal. Because this society continued to hold religious services nonetheless administrative proceedings were brought against them.

50. With regard to the re-registration of evangelical Baptist churches, six Baptist communities in the cities of Brest, Kamenets and Bereza and the villages of Chernavchitsy and Ostromechevo in Brest district have been re-registered after they complied with registration procedures.

Observations

51. The Special Rapporteur is grateful for the Government's response and draws its attention to Resolution 2005/40 of the Commission on Human Rights, in which the Commission urged States, "[t]o review, whenever relevant, existing registration practices in order to ensure the right of all persons to manifest their religion or belief, alone or in community with others and in public or in private" (Paragraph 4(c)). In this regard, the Special Rapporteur wishes to emphasize that the right to freedom of religion is not limited to members of registered religious communities. As she noted in her previous report to the Commission on Human Rights, referring to the OSCE/ODIHR Guidelines for Review of Legislation pertaining to Religion or Belief, "registration should not be compulsory, i.e. it should not be a precondition for practicing one's religion, but only for the acquisition of a legal personality and related benefits" (E/CN.4/2005/61, para. 58).

52. Moreover, the Special Rapporteur takes this opportunity to remind the Government of the views of the Human Rights Committee of 23 August 2005 on communication No. 1207/2003 (Malakhovsky and Pikul v. Belarus, CCPR/C/84/D/1207/2003) in which the Committee found a violation of Article 18 of the International Covenant on Civil and Political Rights, following the refusal to register Minsk Vaishnava community as a religious association. In its decision the

Human Rights Committee made a distinction between the requirement for suitable premises for the purpose of carrying out religious rituals on the one hand and as a precondition for registration on the other hand (paragraphs 7.5 and 7.6). The Committee noted "that the State party has not advanced any argument as to why it is necessary for the purposes of article 18, paragraph 3 [ICCPR], for a religious association, in order to be registered, to have an approved legal address which not only meets the standards required for the administrative seat of the association but also those necessary for premises used for purposes of religious ceremonies, rituals, and other group undertakings. Appropriate premises for such use could be obtained subsequent to registration. [...] Also taking into account the consequences of refusal of registration, namely the impossibility of carrying out such activities as establishing educational institutions and inviting foreign religious dignitaries to visit the country, the Committee concludes that the refusal to register amounts to a limitation of the authors' right to manifest their religion under article 18, paragraph 1 that is disproportionate and so does not meet the requirements of article 18, paragraph 3. The authors' rights under article 18, paragraph 1 have therefore been violated".

Belgique

Communication envoyée le 18 juillet 2005

53. La Rapporteuse spéciale a attiré l'attention du Gouvernement belge sur l'information selon laquelle, en Mars 2005, l'Observatoire fédéral des sectes aurait livré un état des lieux du « monde sectaire » à la Chambre des Représentants dans le cadre des réunions du groupe parlementaire sur les sectes, dont le mandat serait de définir les nouvelles politiques à adopter en ce qui concerne les sectes.

54. Au cours des cinq dernières années, en réponse aux demandes du public, l'Observatoire aurait étudié un total de 533 groupements dont une large majorité, soit 439 groupements, n'était toutefois pas mentionnée dans la liste des 189 mouvements sectaires établie par la Commission parlementaire d'enquête sur les sectes, et publié en 1997. Le précédent Rapporteur spécial avait transmis une communication au Gouvernement à ce sujet et une réponse avait été reçue (Rapport du Rapporteur spécial sur l'intolérance religieuse, E/CN.4/1999/58, 11 janvier 1999, par. 41 à 43).

55. Des craintes ont été exprimées par rapport aux méthodes d'enquête utilisées par l'Observatoire qui n'auraient pas changées depuis 1996. Entre autres, les réunions ne seraient pas public, les témoins entendus resteraient dans l'anonymat et les groupes considérés comme suspect ne seraient pas entendus. De plus, il existerait toujours une confusion entre « sectes », « mouvements sectaires » et « mouvements sectaires nuisibles ».

56. Des craintes ont également été exprimées face aux risques d'une telle stigmatisation de certains groupes religieux qui pourrait encourager l'intolérance religieuse au sein du public.

57. La Rapporteuse spéciale a demandé au Gouvernement Belge de lui indiquer si ces faits étaient exacts, si les groupes visés pouvaient faire appel contre la "catégorisation" dont il faisait l'objet et s'il y avait eu de telles plaintes. La

Rapporteuse a également demandé au Gouvernement de lui transmettre l'information pertinente concernant les méthodes utilisées par l'Observatoire ainsi que les critères selon lesquels un groupement sous étude est considéré comme « secte », « mouvements sectaire » ou bien « mouvement sectaire nuisible ». Finalement, elle a demandé des informations sur les conséquences d'une catégorisation comme « mouvement sectaire nuisible ».

Réponse datée du 14 septembre 2005

58. Le Gouvernement Belge a répondu que la liste publiée par le parlement ne consiste pas en une "liste de mouvements sectaires" mais plutôt en un tableau synoptique reprenant les appellations des mouvements cités lors de la Commission parlementaire d'enquête.

59. Le tableau synoptique contient un avant-propos aux termes desquels "Le présent tableau résulte des informations recueillies par la commission, tout au long de ses travaux. Les noms qui y sont repris ont été fournis sous leur seule responsabilité soit par des services officiels (gendarmerie, police judiciaire, Sûreté de l'État, Service général du renseignement et de la sécurité, parquets) interrogés en ce sens, soit par des témoins directs ou indirects, entendus sous serment ».

60. Cette énumération ne constitue donc ni une prise de position, ni un jugement de valeur de la part de la Commission. Ainsi, le fait pour un mouvement d'y figurer, même si c'est à l'initiative d'une instance officielle, ne signifie pas que pour la Commission, il soit une secte, et a fortiori qu'il soit dangereux. Comme le tableau le montre, la Commission n'a pas pu procéder à une vérification de l'ensemble des informations recueillies ni en contrôler l'exactitude. Pour les mêmes raisons, dans la mesure où ce tableau n'est pas exhaustif, le fait de ne pas y figurer ne constitue pas davantage une appréciation sur l'innocuité d'un mouvement. L'examen de ces mouvements doit être approfondi et le tableau doit être actualisé en permanence.

61. Pour ce qui est de l'analyse du présent tableau, le lecteur se référera utilement à la partie du rapport consacrée aux définitions, ainsi qu'aux éléments de témoignages, publics ou à huis clos.

62. Le Gouvernement a souligné également que le Centre d'Information et d'Avis sur les Organisations Sectaires Nuisibles (CIAOSN) n'est pas un service d'enquête, mais un centre d'information et d'avis. Il a pour vocation de fournir au public de l'information sur le phénomène des organisations sectaires nuisibles et d'émettre des avis et recommandations aux autorités publiques en la matière. La documentation du CIAOSN est exclusivement composée de sources publiques. Elle est librement accessible à tous, personnes comme organisations. Cette documentation se compose d'une bibliothèque spécialisée d'environ 4000 ouvrages et revues scientifiques, de revues de presse, de l'ensemble des rapports d'autorités publiques disponibles, des statuts des associations ainsi que de la jurisprudence disponible en la matière. Lors de la procédure d'avis, les groupes concernés sont entendus, dans la mesure où ils disposent d'une représentation en Belgique.

63. Si les réunions du CIAOSN ne sont pas publiques, les avis et recommandations le sont, sauf si une objection à la publicité est motivée par l'autorité

à qui l'avis ou la recommandation est adressée. Le CIAOSN n'entend pas de témoins mais reçoit des demandes d'information émanant de particuliers ou d'organisations relativement à la problématique sectaire. Le CIAOSN ne demande jamais, en guise de préalable aux traitements des demandes, que les demandeurs s'identifient formellement. Lorsque les demandeurs s'identifient, leur anonymat est préservé afin de garantir leur droit constitutionnel au respect de leur vie privée.

64. En réponse aux demandes d'information, le CIAOSN s'en tient strictement à la diffusion des informations de sources ouvertes en sa possession. Il invite les demandeurs à se forger leur propre opinion sur cette base et à lui faire part des éventuelles erreurs factuelles qui lui auraient échappé. Lorsque des controverses existent par rapport à un mouvement, elles sont exposées. Lorsque des risques sont attestés par les sources disponibles, ces risques sont également mentionnés.

65. En réponse à la question de la Rapporteuse en ce qui a trait à un appel possible contre la «catégorisation» des groupes visés, le Gouvernement a indiqué que toute personne physique ou morale ayant subi un dommage du fait des activités menées par le CIAOSN dans l'accomplissement de ses missions peut en obtenir réparation devant les tribunaux de l'ordre judiciaire par une action en responsabilité civile contre l'État belge. À ce jour aucune action semblable n'a été intentée.

66. Concernant les méthodes utilisées par l'Observatoire ainsi que les critères selon lesquels un groupement sous étude sera considéré comme "secte", "mouvements sectaire" ou bien "mouvement sectaire nuisible", le Gouvernement a informé la Rapporteuse spéciale que le CIAOSN rassemble toute l'information publique disponible sur le phénomène des organisations sectaires nuisibles. Sur cette base, il rédige des notes de synthèse permettant au public de s'orienter dans la documentation. Ces notes sont toujours référencées.

67. La définition de l'organisation sectaire nuisible est contenue à l'article 2 de la loi du 2 juin 1998 portant création d'un Centre d'Information et d'Avis sur les organisations sectaire nuisibles et d'une Cellule administrative de Coordination de la lutte contre les organisations sectaires nuisibles :

"Art. 2. Pour l'application de la présente loi, on entend par organisation sectaire nuisible, tout groupement à vocation philosophique ou religieuse, ou se prétendant tel, qui, dans son organisation ou sa pratique, se livre à des activités illégales dommageables, nuit aux individus ou à la société ou porte atteinte à la dignité humaine.

68. Le caractère nuisible d'un groupement sectaire est examiné sur base des principes contenus dans la Constitution, les lois, décrets et ordonnances et les conventions internationales de sauvegarde des droits de l'homme ratifiées par la Belgique. "

69. Le Gouvernement a précisé que la mission du CIAOSN n'est pas de catégoriser des mouvements mais est définie à l'article 6 § ter de la même loi, qui dispose :

"Art. 6. § ter. Le Centre est chargé des missions suivantes :

- 1) étudier le phénomène des organisations sectaires nuisibles en (Belgique ainsi que leurs liens internationaux);
- 2) organiser un Centre de Documentation accessible au public;
- 3) assurer l'accueil et l'information du public et informer toute personne qui en fait la demande sur ses droits et obligations et sur les moyens de faire valoir ses droits;
- 4) formuler soit d'initiative, soit à la demande de toute autorité publique des avis et des recommandations sur le phénomène des organisations sectaires nuisibles et en particulier sur la politique en matière de lutte contre ces organisations."

70. À ce jour, une seule demande d'avis d'une autorité publique a posé explicitement la question de savoir si un mouvement correspondait à la définition d'organisation sectaire nuisible. La réponse du CIAOSN fut négative.

71. Quant aux conséquences d'une catégorisation éventuelle, le Gouvernement a fait remarquer que les avis du CIAOSN ne sont pas contraignants. Aussi, dans l'hypothèse où, suite à une demande d'avis émanant d'une autorité publique, le CIAOSN devait confirmer qu'un mouvement rencontre la définition de l'organisation sectaire nuisible, l'autorité publique récipiendaire de l'avis ne serait pas liée par l'avis du CIAOSN et conserverait l'intégralité de son pouvoir d'appréciation.

72. Le CIAOSN ne se prononce pas sur la question de savoir si un mouvement est une secte ou un mouvement sectaire. Il invite à cet égard les demandeurs à se forger leur propre opinion sur base des informations reçues (avec références), de la consultation des sources dont il dispose en bibliothèque ou en dossiers (consultables).

Observations

73. La Rapporteuse spéciale remercie le Gouvernement belge pour cette réponse détaillée. Elle note également qu'en date du 28 juin 2005, la Cour d'Appel de Bruxelles a condamné l'Etat Belge relativement au rapport de la «Commission d'enquêtes sur les sectes» parce que cette dernière aurait manqué à son devoir de prudence dans la rédaction dudit rapport. La Rapporteuse spéciale souhaiterait être informée précisément sur les suites qui seront réservées à cette affaire et notamment sur les résultats du pourvoi en cassation dont cette décision semble avoir fait l'objet.

China

Response from the Government dated 31 December 2004 to a communication sent on 15 October 2004 with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of expression, the Special Rapporteur on torture, the Special Rapporteur on the right to health and the Special Rapporteur on violence against women. (See E/CN.4/2005/61/Add.1 at para. 59 to 65)

74. The Government informed that in view of the fact that Falun Gong has carried out many illegal activities, it has in accordance with national legislation, sought to protect the basic human rights and freedoms of the population by banning

the Falun Gong. The Chinese Government shows great concern and care for the vast majority of Falun Gong practitioners. It recognizes that they have been duped and that they are victims. Its policy towards them has been one of unity, education and assistance. As for the extremely small number of Falun Gong diehards who engage in illegal acts, China's judicial authorities will punish them, in accordance with the law, not because they practise Falun Gong, but because they engage in illegal criminal acts.

Response from the Government dated 31 December 2004 to a communication sent on 19 October 2004 with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture. (See E/CN.4/2005/61/Add.1 at para. 66)

75. The Government informed that on 2 December 2002 the Intermediate People's Court of the Tibetan Autonomous Prefecture of Kardze sentenced **Tenzin Deleg Rinpoche** to death, deferred for two years, and deprived him of his political rights for life for the crime of causing explosions. He was also sentenced to 14 years' imprisonment and 3 years deprivation of political rights for the crime of inciting separatism. On 23 January 2003, the Sichuan Province Supreme People's Court upheld the verdict and the sentence. The deferral of the death sentence was due to expire on 23 January 2005. Article 50 of the Constitution provides that if a person sentenced to death with a suspension of the execution does not intentionally commit a crime during the period of suspension, his sentence shall be reduced to life imprisonment. The Government informed that the trial was carried out in accordance with fair trial standards. It further informed that he has been treated fairly while in prison and that the allegations of torture are groundless.

Response from the Government dated 8 July 2005 to a communication sent on 3 November 2004 (See E/CN.4/2005/61/Add.1 at para. 67 to 71)

76. The Government informed that the rules and regulations displayed at Mosque No.2 in Burqun county town have been drawn up in accordance with relevant state law and fully respect freedom of religion. They are displayed in a prominent position in the area where religious activities take place, with a view to ensuring that the religious congregation is fully aware of the rules and regulations set down for places of worship to ensure that they conduct their religious activities in accordance with the law, while at the same time ensuring that the general public can monitor implementation of the rules governing places of worship. The allegations in the communication that the authorities have been interfering excessively in religious affairs have found no foundation in fact.

77. The Government further informed that following an investigation it had been ascertained that there had been no blocking of religious websites. A website for the reporting of offences has not been established.

Communication sent on 26 November 2004 with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture

78. The Special Rapporteurs brought to the attention of the Government the situation of Ms. **Jiang Zongxiu**, aged 34, who was beaten to death during interrogation on 18 June 2004 at the Public Security Bureau of Tongzi County, Guizhou province. She was reportedly arrested on 17 June while she and her mother-in-law were distributing Christian tracts and Bibles in the market place in Tongzi County, Guizhou province. Both of them were sentenced to 15 days administrative detention for their suspected activities of "spreading rumors and disturbing social order". Ms. Jiang was found dead during interrogation time at about 2p.m. on 18 June 2004. No steps had been undertaken to investigate the case. The first autopsy result issued by the local government claimed Ms. Jiang died of heart failure.

Responses from the Government dated 6 April 2005 and 16 June 2005

79. On 17 June 2004, the villagers Jiang Zongxiu and her mother-in-law Tan Dewei from Baishi village in Ganshui township, Qijiang county, Chongqing city, were conducting activities in the hawkers' market in Tongzi county, Zunyi city, Guizhou province, which seriously disrupted commercial operations in the market. Acting in accordance with the provisions of article 19, paragraph 2, of the Rules on Penalties for Offences against Law and Order and pursuant to the law, the public security authorities held Tan and Jiang in public order detention for 15 days.

80. On 18 June at 2 p.m. Jiang suddenly fell ill while in the administrative detention facility of the Tongzi county public security bureau and was promptly transferred to a nearby hospital where efforts to save her life failed and she died. On 27 June, the Tongzi county public security bureau, together with members of Jiang Zongxiu's family, entrusted the Forensic Science Centre of Zunyi Medical School in Guizhou province to carry out a forensic enquiry into the causes of Jiang's death, to be conducted in the presence of members of the deceased's family. The conclusions of the forensic enquiry ruled out the possibility of mechanical asphyxia, mechanically induced death or poisoning, and clearly established that the deceased suffered sudden death due to lipocardiac causes (because of the excessive build-up of fat in her heart, a condition which at any time can cause sudden death).

81. Following careful investigation it was verified that, at all times throughout the period of Jiang's administrative detention, the public security authorities had acted in strict compliance with the law, had duly respected all Jiang's lawful rights, and had never applied any form of torture or other inhuman treatment against her. When Jiang fell ill, she received prompt attention to save her life. The allegations that Jiang was beaten to death in the public security bureau during her interrogation are not consistent with the facts.

82. The Chinese Constitution and Chinese law clearly establish that citizens shall enjoy the freedom of religious belief. Article 36 of the Chinese Constitution stipulates that citizens of the People's Republic of China enjoy the freedom of religious belief. The measures taken by Chinese judicial authorities against Jiang were consistent with the law and were applied because the latter had conducted activities which seriously disrupted commercial operations in the market and had nothing to do with any issue of freedom of religious belief.

Communication sent on 29 November 2004

83. The Special Rapporteur brought the following reports to the attention of the Government:

Zeng Guangbo, 36 years old, a Chinese house church leader from Nanyang city, Henan province was arrested on 1 March 2004 for the second time that year while trying to pass the Inner-Mongolia border to Russia for a house church ministry there. According to an eyewitness, Zeng was taken away by Nanyang Public Security Bureau after he was detained at the border with Russia.

Pastor Cai Zhuohua, 32 years old, a house church leader ministering at six house churches in Beijing was allegedly arrested by three officers believed to be from the Department of State Security on 11 September 2004 after attending a Bible study session that morning. On 27 September Cai's wife, Xiao Yunfei, and her brother, Xiao Gaowen, and sister-in-law, Hu Jinyun, were also arrested in Hengshan county, Hunan province. All four arrested were reportedly being held at Qinghe Detention Center, Haidian District, Beijing.

On 6 August 2004, more than 100 house church leaders were allegedly arrested in Tongxu County, Kaifeng City, Henan Province. The group was beginning a two week retreat when more than 200 military police, Public Security Bureau and other officers surrounded the venue. No arrest warrants or official identification papers were shown during the arrest. Among those arrested were the leaders Zhang Wanshun of Sanmenxia City, Mr. Zhang Tianyun of Nanyang City and Mr. Yu Guoying of Tongxu County. The raided meeting of the 100 house church leaders was held at the home of Ms. Xiang Zi, the wife of one of the retreat organizers. She was arrested along with their three children, aged between eight and eleven years. The retreat was sponsored by the non-denominational house church network, Henan House Church.

On 6 August 2004, Liu Fenggang, Dr. Xu Yonghai and Zhang Shengqi were reportedly sentenced to terms of imprisonment of three years, two years and one year respectively by the Intermediate People's Court of Hangzhou City in Zhejiang Province. The three were convicted under Article 111 of the Chinese Criminal Law. The crime they were to have committed was "illegally soliciting and providing national intelligence to overseas organizations". They were alleged to have committed the crime by providing public court information about the trial of a house church Christian, Ms Li Baozhi, to an overseas magazine.

On 6 August 2004, eight underground Roman Catholic priests and two underground Roman Catholic seminarians were arrested in Sujiazhuang Village in Quyang County, Hebei Province, during a religious retreat. Nine of the ten arrested belonged to the Baoding Diocese. Amongst those detained were Huo Junlong, the administrator of the Baoding Diocese in Hebei, Zhang Zhenquian of Baoding and Huang of Sujiazhuang.

On 12 July 2004, over a hundred leaders were reportedly arrested at a retreat in Xinjiang Autonomous Region. At the time of the communication, five of those arrested, namely Mr. Zhao Xinlan, 50, Ms. Li Cuiling, 44, Mr. Wang Chaoyi, 39, Mr. Yang Tian Lu, 39, and Ms. Gao Rui'er, 28, were still being detained in A Ke Su prefecture near the provincial capital of Urumqi. The retreat in Xinjiang was organised by the Anhui-based house church network, Ying Shang Church. One of the leaders of the group, businessman Luo Bing Yin, had been transferred from the local detention centre to Funan Prison in Anhui Province. It was reported that no court hearing had taken place and that charges against him were not known.

84. Response from the Government dated 16 June 2005

Zeng Guangbo

On 6 August 2004, , without obtaining the relevant permit, Zeng and some 70 other persons held an unlawful gathering in Muxianzhang village, Lizhuang township, Tongxu county, Henan province, which seriously disrupted public order in that area. That same day, the Henan province public security authorities, acting in accordance with the Rules on Administrative Penalties of the People's Republic of China imposed administrative penalties and delivered an educational reprimand against the persons involved. None of these persons was taken into custody, however.

Cai Zhuohua and others

Since 2003, Cai, together with his associates Xiao Yunfei and the three other persons, without obtaining industrial, commercial or tax registration, have unlawfully printed and sold some 1 million publications, swiftly amassing immense profits totaling some 500,000 yuan and, in view of the large quantity of publications, have breached article 225 of the Chinese Criminal Code, on unlawful business operations. On 27 September 2004, the Beijing city public security authorities, acting in accordance with the Chinese Criminal Code and the Chinese Code of Criminal Procedure, took Cai and the four other persons into criminal custody; on 20 October 2004, following approval by the procurator's office, they were arrested. Procedural investigations are currently being conducted.

Liu Fenggang, Xu Yonghai, Zhang Shengqi and others

In early October 2001, Liu and Xu conspired together and, with funds provided by Xu, Liu moved to Anshan city in Liaoning province for the purpose of gathering State intelligence. After this, Liu set out the intelligence which he had gathered in documentary form and with Xu's assistance, transmitted it abroad. On 25 July 2003, Liu received instructions from persons outside the country that he was to proceed to Dongtou county in Wenzhou city, Zhejiang province, and to Xiaoshan district, Xihu district and other districts of Hangzhou city to gather State intelligence. After this, Liu set out the intelligence which he had gathered in documentary form and on 5 August of that same year instructed Zhang to transmit the materials by email

to persons outside the country. On 17 August 2003, in Dachengzi township, in the Miyun district of Beijing, he was taken in and questioned by the police for participating in an unlawful activity. On that same day, Liu gathered together relevant information about the event and set it out in documentary form and, with Zhang's help, transmitted it by email to persons outside the country. Following appraisal by the State secrets office, the materials referred to above were deemed to be State intelligence.

The Hangzhou city people's intermediate court determined that the conduct of the three persons in question constituted the offence of espionage for a foreign power and the divulging of State intelligence and, on 6 August 2004, passed verdict at first instance, sentencing Liu to three years' fixed term imprisonment and stripping him of his political rights for three years; sentencing Xu to two years' fixed term imprisonment and stripping him of his political rights for two years; and sentencing Zhang to one year's fixed term imprisonment and stripping him of his political rights for one year. After judgement was passed, Liu and Xu both filed appeals. Zhang accepted the judgement and did not file an appeal. He was released on 7 February 2005 on completion of his sentence.

After hearing the case at second instance, the Zhejiang high court found that the original judgement had been based on clear facts, the legal provisions applied were correct, the sentence was commensurate with the offence and the trial proceedings had been in accordance with due process and, on 13 September 2004, the court ruled that the appeal brought by Liu and Xu should be dismissed and that the original judgement should stand.

Huo Junlong, Zhang Zhenqian and others

On 6 August 2004, Huo held a training session for underground priests in Quyang county and, after he and the others had been duly admonished by officials of the religious affairs bureau, they were ordered to disperse voluntarily. The public security authorities did not intervene in this matter, nor were any restrictive measures taken against him.

Luo Bingyin and others

Since 2003, without obtaining industrial, commercial or tax registration, Luo has unlawfully printed some 20,000 copies of publications, reproduced many thousands of leaflets and marketed these among the general public, swiftly amassing immense profits. In view of the large quantities involved, he breached the provisions of article 225 of the Chinese Criminal Code, on unlawful business operations. On 2 September 2004, the Fuyang city public security authorities, acting in accordance with the Chinese Criminal Code and the Chinese Code of Criminal Procedure, took Luo into criminal detention; on 1 October, following approval by the procurator's office, Luo was arrested; on 29 November the case was referred to the prosecution service for the institution of legal proceedings. According to our understanding, the Xinjiang public security authorities have not taken any restrictive measures against Zhao Xinliang and the five other persons.

The action taken by the public security authorities in adopting mandatory measures against the above-mentioned persons was fully consistent with their status as offenders against Chinese law and had nothing to do with issues relating to the freedom of expression or opinion or the freedom of religious belief. Throughout the entire course of the legal proceedings referred to above, the Chinese judicial authorities acted in strict compliance with the legal stipulations of the Chinese Criminal Code, the Chinese Code of Criminal Procedure, Regulations on Penalties for Offences against the Administration of Law and Order and other instruments.

Urgent Appeal sent on 16 December 2004 with the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur of the Commission on Human Rights on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

85. The Special Rapporteurs were informed that **Zhang Rongliang**, an underground church leader, was detained by police on 1 December 2004 in Xuzhai village, where he lived, in Zhengzhou city, Henan Province. It was alleged that he was at risk of being tortured. Moreover, since he was diabetic, concern was expressed that he would not have access to the medication or treatment he needed. It was reported that his wife and child were in hiding.

86. According to witnesses, police searched every household in the above mentioned village and confiscated Christian DVDs, other materials and photos revealing Zhang's connections with foreigners.

87. Reports indicated that Zhang Rongliang was the leader of the China for Christ Church and of the Protestant Fangcheng Mother Church. He was the co-author of House Churches of China – Confession of Faith and Declaration. Zhang Rongliang had already been imprisoned five times for his beliefs, for a total of 12 years, during which time he was allegedly tortured.

Response from the Government dated 12 May 2005

88. At the time this report was finalized, the Special Rapporteur was not in a position to reflect the content of the reply from the Government of China as she had not received the translation of its content from the relevant services.

Urgent appeal sent on 27 April 2005 with the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture

89. The Special Rapporteur were informed that, on 31 March 2005, Ms. **Liu Yawen**, aged 56, was arrested by the police when she was seen distributing Falun Gong Video-CDs in Beijing. She was held at the Xuanwu District Detention Centre. After she was detained, police officers searched her home for other Falun Gong

materials. She was denied visits by her family and it was not known whether she had been charged with any offence.

90. In view of her alleged detention incommunicado, concern was expressed that she could have been at risk of torture or other forms of ill-treatment.

Response from the Government dated 22 July 2005

91. On 31 March 2005, the Beijing public security authorities, while conducting patrol duties, arrested Ms. Liu in the process of conducting unlawful activities of the Falun Gong sect. The public security authorities took Liu into custody for the purposes of investigation, conducted a search of her residence and notified her family in accordance with due process. On 30 April, the labour re-education committee of the Beijing city government, acting in accordance with the law, ordered Liu Yawen to serve a term of two years' re-education through labour.

92. The decision to order Liu Yawen to serve a two-year term of labour re-education was taken because she had conducted activities which violated Chinese law, and throughout the handling of this case the Chinese law enforcement authorities acted in strict compliance with the law and carried out their law enforcement duties in a civil manner.

Communication sent on 9 June 2005

93. The Special Rapporteur sent this communication to underline the tenth anniversary of the disappearance of Gedhun Choekyi Nyima, 16 years.

94. Gedhun Choekyi Nyima, then aged 6, disappeared together with his parents from Lhari, their home village in Tibet on 17 May 1995, three days after having been recognized as the eleventh reincarnation of the Panchen Lama by the Dalai Lama. Their whereabouts were not known.

95. The Special Rapporteur wished to express her concern about the grave interference with the freedom of belief of the Tibetan Buddhists who have the right to determine their clergy in accordance with their own rites and who have been deprived of their religious leader.

Response from Government dated 7 September 2005

96. The Government informed that Gedhun Choekyi Nyima is not the "Panchen Lama" but merely an ordinary Tibetan child. At the current time, Nyima is in good health and, just like other children, is leading a normal, happy life and receiving a good cultural education. According to our understanding, he is already at secondary school and his school results are good. He and his family are not willing to let this interfere with their normal routine.

97. China respects and upholds citizens' freedom of religious belief and provides legal guarantees of such freedom. Article 36 of the Chinese Constitution stipulates that citizens of the People's Republic of China enjoy the freedom of religious belief. In addition to the Constitution, the Chinese Criminal Code, the Ethnic Minorities

(Regional Autonomy) Act, the Compulsory Education Act, the Labour Code and other laws all contain legal provisions upholding citizens' freedom of religious belief and prohibiting discrimination on the grounds of a person's religious beliefs or lack of religious beliefs. The (*Tibetan Buddhist* ed.) religious community is protected under the Constitution and the law and enjoys full freedom to conduct normal religious activities. At the current time, there are some 120,000 lamas and nuns, 1,700 living Buddhas and 3,000 lamaseries in the Tibetan Buddhist community in China.

98. The notion of the reincarnation of the living Buddha is a special tradition of Tibetan Buddhism, and over the last few hundred years a fairly comprehensive method and procedure have been developed for the reincarnation of the living Buddha: where the issue of the reincarnation of the major living Buddhas is concerned the central Government fully respects the traditional Tibetan Buddhist ritual. In accordance with religious ritual and historical precept, following the drawing of lots from a golden urn, due endorsement by the Chinese central Government, the fully satisfactory performance of the enthronement ritual and the so-called "sitting-on-the-bed" ceremony, the eleventh Panchen Lama has been reverentially accepted by the wide community of Tibetan Buddhist lamas and by the Buddhist congregation.

Communication sent on 13 September 2005 with the Special Rapporteur on violence against women, its causes and consequences

99. The Special Rapporteurs brought the two following cases to the attention of the Government:

On 21 May 2002, police officers from the Zhonggong police station arrested Ms. **Ren Shujie**, 42, living in the Tiexi District, Shengyang City, Liaoning Province, for practicing Falun Gong. She was later sentenced to three years of forced labour and was detained at the Longshan Labour Camp. No charges were brought against her and she was provided no hearing before a court of law. She went on hunger strike for 64 days, during which time she was subjected to torture and harsh labour for fifteen hours daily. After bringing an end to her hunger strike she continued to be tortured by the prison guards, including Tang Yubao, who subjected her to electric shocks. On 22 March 2004, she was transferred to Masanjia Labour Camp where she was forced to sleep on cement floors for three months. She was released on 24 December 2004, due to her extremely weak conditions, weighing less than 40 kg, whereas at the time of her arrest she weighed 80 kg. The several complaints that Ren Shujie made to the prison guards, who were the only authorities she had access to, provided no response or amelioration to her conditions of detention.

On 21 January 2000, Ms. **Liu Yunxiang**, aged 32, living in Yangjiazhuang village in Junbukou Township was arrested by police officers belonging to the Junbukou Township of Weifang City in Shandong province, for practicing Falun Gong. No charges were brought against her and she was provided no hearing before a court of law. She was subjected to severe beatings, and the men who were also arrested with her were forced to beat her and the other arrested women on their hips. During her detention, she was forced to curse the founder of Falun Gong, drink alcohol and smoke cigarettes, which is

against Falun Gong principles. As a result of this treatment, Ms. Liu Yunxiang miscarried. She was released on 20 January 2000 after having paid for her release. In the Summer of 2001, she was arrested again for practicing Falun Gong and was once again subjected to torture including electric shocks, as a result of which she miscarried a second time. After twenty days of torture, she was sent to a detention centre for another month, after which she was released.

Response from Government dated 12 December 2005

100. At the time this report was finalized, this reply was still in the process of being translated.

Communication sent on 14 October 2005

101. The Special Rapporteur brought to the attention of the Government the situation of **Sonam**, a monk from the Potala Palace in Lhasa, capital of the Tibet Autonomous Region, who was arrested on or around 21 August 2005 at the rear-vehicle entrance of the Potala Palace, which became the winter home of the Dalai Lama in 1648. This entrance normally is used by tourist groups and not by Tibetan visitors.

102. According to witnesses, Sonam was lured to the rear entrance by a message saying that someone was waiting for him. When he arrived there, he was quietly taken away in an unmarked vehicle. No one had seen Sonam since the incident. It was assumed that security forces carried out the arrest in the run-up to the festivities of 1 September 2005, when China celebrated the 40th anniversary of the founding of the Tibet Autonomous Region.

Communication sent on 19 October 2005

103. The Special Rapporteur was informed that, in July 2005; the Chinese authorities had expelled some 40 Buddhist nuns (out of a total number of 50) from Gyarak monastery. They had been forced to participate in a state led re-education campaign, part of which is to sign written statements condemning the Dalai Lama, Tibet's exiled religious leader. In order to register for this, they were asked to have photos taken, which most of them refused. Similar pressure has been exerted on nuns and monks in other monasteries, such as Tsuklakhang Temple.

104. Furthermore reports indicated that authorities were issuing certificates to new monks, who thereby were bypassing the lengthy process of preparing for monastic life. They were equipped with mobile phones and required to inform officials, if any kind of activity or prayer was performed with a reference to the Dalai Lama. There were cases when Chinese officials raided monasteries even before the conclusion of prayers if there had been some reference to Dalai Lama.

Communication sent on 23 November 2005 with the Special Rapporteur on torture

105. The Special Rapporteur brought to the attention of the Government additional information received on the situation of Pastor Cai Zhuohua, a house church leader in Beijing, who, on 8 November 2005, was sentenced to three years imprisonment on charges relating to illegal business practices. The sentence was handed down by the People's Court of Haidian District, Beijing. According to the information received, the charges were made following the discovery of 200,000 copies of the bible and other Christian literature in his possession. Pastor Cai Zhuohua's wife, Xiao Yunfei, brother in law, Xiao Gaowen, and sister in law, Hu Jinyun, were also found guilty at the same proceedings. On 11 September 2004, Pastor Cai Zhuohua was arrested by three plain-clothed State Security officers. There were concerns that Pastor Cai Zhuohua was subjected to electric shocks whilst he was in pre-trial detention.

106. Pastor Cai Zhuohua was the subject of a previous letter sent by the Special Rapporteur on Freedom of Religion or Belief on 29 November 2004.

Observations

107. The Special Rapporteur is grateful for the Government's responses. She would like to take this opportunity to remind the Government of the concluding observations adopted by the Committee on the Rights of the Child on 24 November 2005 further to the second periodic report submitted by China (CRC/C/CHN/CO/2). In paragraph 44, the Committee stated that, "[w]hile noting the adoption of the Regional Ethnic Autonomy Act in 2001, which guarantees freedom of religion for ethnic minorities in mainland China, [it] is concerned about reports that children, in particular Tibetan Buddhist, Uighur and Hui children, have been restricted in studying and practising their religion, and in some cases have been detained for participating in religious activities. It is also concerned at reports that children of families practising their religion, notably the Falun Gong, are subject to harassment, threats and other negative actions, including re-education through labour. The Committee notes the information provided about the Gedhun Choekyi Nyima, but remains concerned that it has not yet been possible to have this information confirmed by an independent expert." In relation to this observation the Committee in paragraph 45 recommends that "the State party take all necessary measures to ensure the full implementation of the Regional Ethnic Autonomy Act. In particular, the Committee recommends that the State party:

- (a) Enact legislation explicitly guaranteeing freedom of religion for those under 18 that is not tied to a limited number of recognized faiths, and which respects the rights and duties of parents to give guidance to their children in the exercise of their rights in this regard in a manner consistent with the evolving capacities of the child;
- (b) Repeal any ban instituted by local authorities on children of any age from participating in Tibetan religious festivals or receiving religious education;
- (c) Repeal any ban instituted by local authorities on children of any age from attending mosques or receiving religious education throughout the mainland;
- (d) Take all necessary measures to ensure that children may choose whether to participate in classes on religion or atheism;

Following publication several threats were made against the cartoonists, some of which are still under investigation. The cartoons prompted several private associations to file a complaint under the sections 140 and 266b of the Danish Criminal Code with the police. According to section 140 of the Criminal Code, any person, who, in public, ridicules or insults the dogmas of worship of any lawfully existing religious community in Denmark shall be liable to imprisonment for any term not exceeding four months, or, in mitigating circumstances, to a fine. Section 266b of the Criminal Code criminalizes the dissemination of statements or other information by which a group of people are threatened, insulted or degraded in account of e.g. their religion.

114. The complaint was taken up by the Regional Public Prosecutor in Viborg who decided that cartoons fall within the scope of sections 266b and 140. However, on 6 January 2006 the Prosecutor decided to discontinue the investigation for lack of a reasonable suspicion that a criminal offence indictable by the state has been committed. The Prosecutor stated that when assessing what constitutes an offence the freedom of speech must also be taken into consideration. The freedom of speech must be exercised with the necessary respect for other human rights, including the right to protection against discrimination, insult and degradation. In finding that there was no reasonable suspicion that a criminal offence indictable by the state had been committed, the Prosecutor attached importance to the fact that the article in question concerns a matter of public interest, which means that there is an extended access to make statements without these statements constituting a criminal offence. Furthermore according to Danish case law journalists have extended editorial freedom when it comes to subjects of public interest. These reasons led to the conclusion that in this case no criminal offence under section 140 or 266b of the Criminal Code had been committed. A complaint against the Prosecutor's decision can be lodged with the office of the Director of Public Prosecutions.

115. In general the Danish Government strongly focuses on ensuring an inclusive, multicultural society characterized by mutual respect and shared democratic values. In his New Year's address of 2006 the Danish Prime Minister stressed the important and absolute nature of the freedom of speech and that it was necessary to exercise that freedom in a civilized respectful manner so as not to cause fragmentation within Danish society. Other members of cabinet have put forward similar views. Furthermore the Danish Government is continuing its dialogue with representatives of minorities and leaders of religious communities in order to achieve mutual respect and understanding as well as stronger community participation, active citizenship, freedom and equality, better opportunities for the young and prevention of radicalization.

Observations

116. The Special Rapporteur is grateful for the Government's response and encourages the Government to continue its efforts to increase mutual understanding and religious tolerance, in accordance with article 10 of Resolution 2005/40 of the Commission on Human Rights. She would like to reiterate the words from her joint press statement with the Special Rapporteur for contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression on 8 February 2006. In this statement the Special Rapporteurs expressed their concern at

the grave offence caused by the cartoons and at the violent response the cartoons had provoked and they made a special call for tolerance and dialogue. The Special Rapporteurs acknowledged that while both freedom of religion and freedom of expression should be equally respected, the exercise of the right to freedom of expression carries with it special duties and responsibilities. It requires good judgment, tolerance and a sense of responsibility. Furthermore the Special Rapporteurs feel that peaceful expression of opinions and ideas, either orally, through the press or other media, should always be tolerated. The press must enjoy large editorial freedom to promote a free flow of news and information, within and across national borders, thus providing an arena for debate and dialogue. Nevertheless, the use of stereotypes and labeling that insult deep-rooted religious feelings do not contribute to the creation of an environment conducive to constructive and peaceful dialogue among different communities.

Egypt

Communication sent on 26 May 2005

117. The Special Rapporteur brought to the attention of the Government additional reports related to the requirement to mention one's belief on identity cards and other documents. It had been alleged that the forms currently contain three religious affiliations to choose from: Islam, Christianity and Judaism and that it was impossible for members of other religious groups or non-believers to indicate their religion or leave the space blank. In its reply dated June 2004 the Government of Egypt had indicated that the concerned persons had committed a criminal act by forging their identity cards. However, several persons of different fates alleged that they were forced to forge the identity card forms, because otherwise they would have to lie about their religious affiliation in order to obtain a card. There were further reports that some persons had been refused marriage on the basis of the religion indicated on their identity cards. This issue has also been the subject of an earlier communication, sent on 15 April 2004.

Communication sent on 12 July 2005

118. The Special Rapporteur has brought the following situation to the attention of the Government:

In 1977, Manqateen's Coptic community in El-Minya, Upper Egypt, applied to the authorities for a permit to build a church to carry the name of Anba Antonious. At the time of the communication, no approval had been issued. Egyptian legislation requires a prior approval by the State Security Agency for building or operating a Christian establishment, contrary to Islamic establishments or mosques which can be opened anywhere and operate freely.

When, in 1978, the Copts of Manqateen started building the church despite not having been authorised, the construction site was attacked on several occasions by groups of Muslims. Subsequently police ordered to halt construction. In 1999, following a request by the villages' Copts, Ministry of Interior officials conducted an inspection. In their conclusions adopted in

2003, the Secretary of State for the Interior referred to security reasons and prohibited the completion and resumption of the use of the church.

Tensions between the religious communities persisted. When, on 3 December 2004 the Coptic community obtained the permission to use a hall for their religious ceremonies from the Social Ministry, angry villagers attacked it and Coptic shops, pharmacies, houses and cars.

Communication sent on 1 November 2005

119. The Special Rapporteur was informed that, since May 2005, Ms. **Lavinia Mihaela Zah**, of Romanian origin, was denied entry to the Egyptian territory although she had received citizenship on 3 November 2003 following her marriage with an Egyptian citizen (marriage in Romania on 12 August 2000, Egyptian marriage certificate on 6 February 2001). When she returned to Egypt on 11 May 2005 after having given birth in Romania, she and her baby were held at the airport of Cairo on the orders of the State Security Police for 27 hours before being put on a plane to Romania without having had access to her husband. According to information received, the reason behind entry denial could be related to the position of her husband as full time minister with the Maadi Community Church, registered under the Protestant Synod.

Observations

120. The Special Rapporteur is concerned that she has not received a reply from the Government concerning the above mentioned allegations. The Special Rapporteur urges the Government to ensure compliance with paragraph 4(c) of Resolution 2005/40 of the Commission on Human Rights, which provides that States will review, whenever relevant, existing registration practices in order to ensure the right of all persons to manifest their religion or belief. She would also like to draw attention to paragraph 10 of the same Resolution, in which the Commission on Human Rights emphasized the importance of a continued and strengthened dialogue among and within religions or beliefs, encompassed by the dialogue among civilizations, to promote greater tolerance, respect and mutual understanding.

121. The Special Rapporteur would also like to take this opportunity to remind that she has still not received a reply from the Government further to her letter asking for an invitation to visit Egypt to assess the situation of freedom of religion or belief.

Eritrea

Urgent appeal sent on 13 April 2005 with the Special Rapporteur on torture

122. The Special Rapporteurs were informed that, on 13 March 2005, Pastor **Kidane Weldu**, of the Mulu Wengel ("Full Gospel") Evangelical Church was arrested in Asmara, and continued to be held incommunicado in the 2nd Police Station. It was believed that he was arrested solely because of his religious beliefs. In view of his alleged detention incommunicado, concern was expressed that he might have been at risk of torture or other forms of ill-treatment, particularly in order to abandon his faith.

123. The Special Rapporteurs had also received information concerning 16 members of the Kale Hiwot (“Word of Life”) Evangelical Church in a small town near Asmara. According to the allegations, they were arrested on the same day for watching a Christian video in a church member’s home. Although they were neither charged nor brought to court, two elderly women among them were freed after admitting to some offence and paying a fine equivalent to US\$12. None of the detainees have been brought before a court within 48 hours, as required by law, nor charged with any offence. Several senior members of the same church had reportedly been detained without charge or trial since April 2004.

124. Previous communications on similar cases had been sent to the Government (e.g. E/CN.4/2005/62/Add.1, paras. 661, 662, 663 and 664 and E/CN.4/2005/61/Add.1, paras 94 and 96).

Urgent appeal sent on 3 June 2005 with the Working Group on Arbitrary detention and the Special Rapporteur on Torture

125. The Special Rapporteurs and the Working Group brought to the attention of the Government the situation of Mr. **Demoze Afewerki**, aged 67, head of the inspection department of the Housing and Commerce Bank of Eritrea and chair of the Gideons (Bible) International branch in Eritrea who was believed to have been arrested at the same time as Pastor Kidane Weldu, on behalf of which a communication was sent on 13 April 2005, by the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the question of torture. According to the allegations received, Mr. Afewerki was also being held in incommunicado detention and without charge in the special security section (Wenjel Mirmira) of the 2nd police station in Asmara.

126. Pastor Kidane Weldu was one of the 16 full-time pastors of various evangelical churches detained without charge in military, security and police prisons in Eritrea on account of their religious beliefs. Concern was expressed that they were prisoners of conscience, detained solely for the peaceful exercise of the right to freedom of religion.

127. It was further alleged that up to 900 members of these banned churches, worshipping clandestinely, were also held in detention. Amongst this group, it was believed that there were approximately 150 women, including well-known evangelical singer Helen Berhane.

128. Concern was heightened by reports that those detained were being held in harsh conditions, in shipping containers, secret cells or underground prisons, and that some might be subjected to torture in order to extract signed renunciations of their faith. They were reportedly detained in a number of military prisons (with over 230 in Sawa military conscription and training centres, near the Sudanese border), Mai Serwa army camp near Asmara, and police and security prisons in Asmara, Keren town in the north and the Red Sea port of Assab.

Urgent appeal sent on 3 June 2005 with the Working Group on Arbitrary detention and the Special Rapporteur on Torture

129. The Special Rapporteurs and the Working Group were informed that, on 28 May 2005, the security forces arrested a wedding party of over 200, including the bride, whose name was not known and the groom, **Binyam Gezay**, in Asmara. The only other name available was that of a gospel singer, **Essey Stefanos**. All those arrested were members of the banned Meseret Christos church in Eritrea. They were held in a police station in the Expo district of Asmara. Several detainees were released without charge on 29 May, but the majority remained in custody. According to Eritrean law they should have been brought before a court within 48 hours of arrest, but this had not been done.

130. Fear was expressed that the detainees were at risk of being tortured in an attempt to force them to renounce their faith.

Communication sent on 14 October 2005 with the Working Group on Arbitrary Detention

131. The Special Rapporteur and the Working Group brought to the attention of the Government the situation of: **Ukbay (m)**, **Yergalem Afewerki (f)**, **Abraham (m)**, **Berhane (m)**, **Eden (f)**, **Elsa (f)**, **Freweyni (f)**, **Gebremichael (m)**, **Hamelmal (f)**, **Pastor Simon (m)**, **Teklemariam (m)**, **Sirak Gebremichael (m)**, all members of the Kale Hiwot (Baptist) Church and **Akberet Nigussie (f)**, Rema Church office administrator, who along with over 200 members of evangelical churches had been arrested on 30 September and 3 October 2005 at the Kale Hiwot Church's Development Project, and were detained following a crackdown by the authorities in the capital, Asmara, which also resulted in the closing of the Church Project's office. Office equipment and documents were seized from the premises of both churches, which had been under continuous surveillance by the security forces for some days.

132. It was further reported that none of them had been charged with any offence and that they had not been brought before a court within 48 hours, as required by law. They were held without charge at the 5th Police Station in Asmara. They were believed to be at risk of torture.

Response from Government dated 8 December 2005

133. The Government responded that the persons whose names were listed in the communication were not detained because of their religious beliefs but because they attempted to leave the country to evade participation in the mandatory National Service Program, endangered National Security in the name of religion and engaged in other crimes against the State. The competent authorities are determined to take similar actions against such criminal activities in the future.

Observations

134. The Special Rapporteur regrets that she has not received any response from the Government with regard to the abovementioned cases. She is particularly concerned about the amount of allegations of arbitrary arrest and detention for religious reasons. She would like to draw attention to article 4 (f) of Resolution 2005/40 of the Commission on Human Rights, which provides that States shall ensure that "no one within their jurisdiction is deprived of the right to liberty or security of person because of religion or belief and that no one is subjected

to torture or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violence of these rights.”

135. Moreover, she reminds the Government that she is still awaiting a reply to her request to visit the country.

Greece

Communication sent on 9 June 2005

136. The Special Rapporteur brought the following cases to the attention of the Government:

On 10 May 2005, **Makedonas Alexandridis**, a Jehovah's Witness, was sentenced by the Military Court of Ioannini to six months of imprisonment for insubordination and disobedience. It was reported that Mr. Alexandridis has performed military service in Russia prior to moving to Greece and becoming a conscientious objector. He applied for conscientious objector status, but the Greek Law 2510/1997 excludes anyone who has previously served in any armed forces from the right to conscientious objection.

On 17 May 2005, **Andreas Anastasiou**, a Jehovah's Witness, was reportedly sentenced by the Military Court in Larissa to six months of imprisonment, for refusing reserve duty. He had already served his military service in the Greek army prior to becoming a Jehovah's Witness.

On 18 May 2005, **Nikos Baltoukas**, aged 37, was sentenced by the Military Court of Xanthi to 15 months of imprisonment on charges of insubordination for refusing to perform one week of military reserve duty. Mr. Baltoukas had performed his military service in 1990-91. When he was called up for reserve duty on 31 October 2004, he refused to report, based on reasons of conscience.

On 23 May 2005, conscientious objector **Georgios Koutsomanolakis** was sentenced by the Military Court of Athens to a suspended 24-month prison term on charges of insubordination. Reports indicate that Mr. Koutsomanolakis was already charged with insubordination in 1979, at a time when there was no alternative service in Greece, because as a Jehovah's Witness he refused to serve military service on religious grounds. He fled Greece and was granted political asylum in Germany, where he has been living since then. He was reportedly arrested on 12 May 2005 on the Greek island of Rhodes while visiting his parents and he was transferred to Korydallos prison on 16 May 2005 where he remained imprisoned until his trial.

Response from Government dated 12 August 2005

137. The following information was provided by the Government regarding the handling of these cases by the competent military courts according the legislation in force:

Alexandridis Makedonas, 38 years old, was sentenced on 10 May 2005 by the 5-member Military Court of Ionnina (Judgement no 68/2005), with four to one (4-1) votes, to six (6) months in prison and to the legal cost (73 Euro), for "Disobedience in times of peace", because, when he was drafted into the Armed Forces (Health Operation Centre-Health Training Centre) on 31 January 2005, he refused to receive clothing and equipment and attend the military training. Instead, he stated that he wished, as a Jehovah's Witness, to serve in "a social political alternative service". The execution of this sentence was suspended for three years and, in the event of lifting or revocation of the suspension, the commutation of the sentence to a fine of 4.40 Euro for each day of imprisonment was ordered. The proceedings revealed that Mr. Alexandridis has carried out 24 months of military service in the Armed Forces of the former Soviet Union and was aware that, in Greece, he was obliged to carry out three-months of military service (presidential decree 292/03). He did not meet the legal requirements because he did not act within the relevant time limit (from the date of notice until enlistment) although he had been examined twice in the past by the competent exemption committee and he had received two annual deferrals (27 March 2002 and 19 August 2003). An appeal was lodged against the above judgement. A cassation appeal may be lodged against the judgement of the military court of appeal before the Supreme Court.

Andreas Anastasiou, 30 years old, was sentenced on 17 May 2005 by the 5-member Court Martial of Larissa (Judgement no 89/2005), with three to two (3-2) votes, to a total of six (6) months in prison and to the legal costs (E73), for "Disobedience in times of peace", and "draft evasion in times of peace", because, on 28 March 2005, he refused to receive clothing and equipment and attend the military training of his unit (32TYP), invoking his religious beliefs as a Jehovah's Witness and, on 13 September 2003, he did not report to the military camp of 30 MKD to carry out a reserve obligation of nine (9) days, although he was called by special personal notice, again invoking his religious beliefs as a Jehovah's Witness. Therefore, he became a draft evader from 14 September to 10 January 2005. This sentence was commuted by the court to a fine of 4.40 Euros for each day of imprisonment and its execution was suspended for three years. The proceedings revealed that Mr. Anastasiou has carried out armed military service in the Greek Armed Forces in the past. An appeal was lodged against the above judgment. A cassation appeal may be lodged against the above judgment of the military court of appeal before the Supreme Court.

Nikos Baltoukas, 37 years old, was sentenced on 18 May 2005 by the 5-member Court Martial of Xanthi (Judgment No 271/2005) to fifteen months in prison for "Disobedience in times of peace" because he did not enlist, although he was called by special personal notice to enlist on 31 October 2004 to the 25th Engineering Company (LMX) to carry out a reserve obligation. Therefore, he became a draft evader from 1

November 2004 to 4 February 2005. Mr. Baltoukas did not invoke any religious reasons for his refusal. The execution of this sentence was suspended for three years and its commutation to a fine of 4.40 Euro for each day of imprisonment was ordered.

The aforesaid judgment establishes that, in his defence, Mr. Baltoukas stated, *inter alia*: "... the Greek army has changed radically as to the purpose which it serves. It serves economic interests and, for this reason, they are often beyond the borders. The most important reason for my refusal to carry out the reserve obligation is my class. I am a construction worker and I live with the anxiety of day labour. Therefore I am in no position to leave my work each time the army may call me, until I become 45 years old. I defend my country in my own way, and, if I have to... I will enlist in the extraordinary event that Greece is in danger. I found myself in a situation of conflict of duties ... Politics change; it was different in 1980 and different in 1990. In any event, when I served my regular service, things were more clear". An appeal was lodged against the above judgment. A cassation appeal may be lodged against the judgment of the military court of appeal before the Supreme Court.

Georgios Koutsomanolakis, 45 years old, was unanimously sentenced on 23 May by the 5-member Court Martial of Athens (Judgment no 645/2205) to two (2) years in prison for "Disobedience in times of peace" because he did not enlist, although he was called to enlist on 6 August 1979 in the Greek Armed Forces (44TH Infantry). Therefore, he became a draft evader from 7 August 1979 to 1 January 2005, when his draft evasion was discontinued by law, having attained his 45th year of age. He invoked his religious beliefs as a Jehovah's Witness for the non-enlistment. The above sentence was commuted by the court to a fine of 4.40 Euro for each day of imprisonment and its execution was suspended for three years. A thirteen-day period of detention was deducted from the two-year sentence, during which Mr. Koutsomanolakis was detained in Korydallos prison awaiting trial. An appeal was lodged against the above judgment. A cassation appeal may be lodged against the judgment of the military court of appeal before the Supreme Court.

Observations

138. The Special Rapporteur is grateful for the Government's detailed response to her communication. However, she notes with concern the strict time limits for applying for conscientious objector status. In this regard, she draws the Government's attention to Council of Europe Recommendation 1518(2001), which invites member states to introduce into their legislation "[t]he right to be registered as a conscientious objector at any time before, during or after conscription, or performance of military service". This acknowledges that conscientious objection may develop over time, and even after a person has already participated in military training or activities.

139. In Resolution 1998/77, the Commission on Human Rights also recognizes that persons performing military service may develop conscientious objections. The Special Rapporteur would also like to emphasize the concluding observations adopted by the Human Rights Committee on 25 April 2005 (CCPR/CO/83/GRC) further to the initial periodic report submitted by Greece (CCPR/C/GRC/2004/1), which states that, "The Committee is concerned that the length of alternative service for conscientious objectors is much longer than military service, and that the assessment of applications for such service is solely under the control of the Ministry of Defence (Article 18). The State party should ensure that the length of service alternative to military service does not have a punitive character, and should consider placing the assessment of applications for conscientious objector status under the control of civilian authorities." (Paragraph 15)

India

Communication sent on 20 January 2005

140. The Special Rapporteur brought to the attention of the Government information she had received according to which, following the tsunami disaster, in Tamil Nadu, a number of Dalits had been denied aid supplies and expelled from relief camps by higher caste groups who refused to eat with them or live under the same roof. In the relief camps of the port town of Nagapattinam, Dalits were allegedly not being allowed to drink water from tanks placed by UNICEF. In the tsunami-hit areas, food and cash distributions normally took place in Hindu temples, often the only structures still standing because they were built from solid granite. Reports indicated that Dalits were left out in these distributions due to the fact that as 'untouchables' they were not allowed to enter the halls of worship. Dalits had allegedly carried out much of the initial work in the immediate aftermath of the disaster such as carrying away dead bodies and disposing animal carcasses because upper caste people consider such work taboo and socially degrading.

Communication sent on 17 May 2005

141. The Special Rapporteur was informed that, on 19 April 2005, 200 persons, some of them carrying weapons, launched an attack and set fire to the 'Believer's Church' in Lamding village, Tentha Lamkhai area, State of Manipur, which was still under construction. Mr. Romol, Mr. S. Tombi, Mr. O. Tiken, and Mr. L. Thoiba, all local Christians, were injured. The church had been attacked twice in the recent past (in early April 2005 and November 2004) and a local court had ordered police to provide security while reconstruction took place. However, it was not clear whether security was provided.

142. In a similar incident, a large number of villagers attacked a Christian house church on 1 May 2005 in Mangalwarapete village, Karnataka state. They harassed the 60 people present at the service and burned Christian literature. They beat Pastor Paulraj Raju of King Jesus Church and injured his wife and another elder of the Church. The latter had been attacked and asked to leave the district by villagers earlier this year. Pastor Raju had also been in detention between January and March 2005 on charges of converting Hindus.

Communication sent on 9 June 2005

143. The Special Rapporteur brought to the attention of the Government the situation of evangelist **Kiran Kurmar**, aged 30, who was assaulted on 27 February 2005 by nine Hindu extremists belonging to the Vishwa Hindu Parishad while he was on his way to visit a Hindu man who had invited him for prayers in the Khurda district. They tied him up and threatened to throw him into the Chilika Lake. When the police arrived, they arrested him and charged him with preaching Christianity to Hindus in order to convert them, an activity prohibited by the "Orissa Freedom of Religion Act" of 1967. Mr. Kumar was subjected to torture while in police custody. Reports further indicated that he was presented before the Sub-Divisional Magistrate in Banapur only on 1 March 2005. He was granted bail on 8 March 2005. Dasarathi Behera, the Hindu man that Mr. Kumar was visiting on the day of his arrest was also arrested and accused. He testified before the police that he believed in Jesus Christ without any fear or pressure induced by anyone, a testimony which should have absolved Mr. Kumar of any charges of "forced conversion".

Communication sent on 19 July 2005

144. The Special Rapporteur brought to the attention of the Government the situation of Ms. **Imrana**, a 28-year-old resident of Charthawal, who was raped by her father-in-law, Ali Mohammad, at Muzaffarnagar in western Uttar Pradesh. The Islamic panchayat (village council), referring to sharia provisions, subsequently asked her to abandon her husband. On 29 June 2005, the Deoband School of theology issued a fatwa stating that she could not return to her husband. Uttar Pradesh chief minister, Mulayam Singh Yadav, openly backed the clerics and called for acceptance of the fatwa.

Communication sent on 29 August 2005

145. The Special Rapporteur was informed that, following pre-election promises by the ruling Bharatiya Janata Party (BJP) to reduce the number of conversions to Christianity, the government of Chattisgarh had prepared draft amendments to the provisions of the Dharma Swatantraya Adhiniyam (Freedom of Religion Act) with the aim of reducing the number of conversions of the local population to Christianity. Already the law currently in force allowed punishing persons who attempt to convert somebody "forcefully or fraudulently" by prison sentences for up to two years and a fine. The pending amendments foresaw imprisonment for up to four years and a ten-fold increase in the amount of the fine. Moreover, the pending amendments required a person who wishes to convert to inform the local authorities 30 days in advance.

146. In a similar move, officials in the north-central state of Madhya Pradesh announced that their anti-conversion law would be amended to make the conversion of tribal people to Christianity more difficult following the publication of a report claiming large-scale conversions initiated by Christian missionaries. No details about the planned measures were known at the time of the communication, but already under the applicable law district officials had to be notified of conversions seven days in advance. It was feared that the amendments and the controversies surrounding them might have lead to increased tensions between the various religious groups.

Observations

147. The Special Rapporteur expresses her concern at not having received any response from the Government. She urges the Government to provide her a detailed reply concerning the communications sent as soon as possible.

148. She would like to point out that article 4(g) of Resolution 2005/40 of the Commission on Human Rights urges States to ensure that all public officials and civil servants, including members of law enforcement bodies, in the course of their official duties, respect different religions and beliefs and do not discriminate on the grounds of religion or belief. In addition article 10 of the Resolution emphasizes the importance of a continued and strengthened dialogue among and within religions or beliefs to promote greater tolerance, respect and mutual understanding.

149. With regard to the problem of conversion, the Special Rapporteur would like to draw attention to paragraph 5 of General Comment 22 of the Human Rights Committee which provides that, *“the freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.”* In addition the Special Rapporteur would like to refer to paragraphs 40 to 68 of her previous report to the General Assembly (A/60/399) where she addressed the question of conversion as well as missionary activities and propagation of religion. In particular, she underlined that *“[m]issionary activities and other forms of propagation of religion are part of the right to manifest one’s religion or belief. They may be limited only under restrictive conditions, and the Special Rapporteur disapproves of the criminalization of certain acts specific to the propagation of one’s religion”*.

150. She would furthermore like to draw attention to paragraph 21 of General Comment 28 of the Human Rights Committee which provides that article 18 of may not be relied on to justify discrimination against women by reference to freedom of thought, conscience and religion.

Indonesia

Communication sent on 25 January 2005

151. The Special Rapporteur had been informed that a hard line Islamic group had warned that Christian groups which assisted in aid efforts after the tsunami should not try to convert orphaned children in Aceh. The head of the radical Islamic Defenders Front, Hilmy Bakar Almasaty, allegedly warned an Australian Catholic group called Youth off the Streets that its plan to set up an orphanage in Aceh, the only Indonesian province to have fully implemented Muslim sharia law, would be unwelcome if it involved attempted conversion. Hilmy's organization, known as FPI, was reportedly better known for smashing up bars and nightclubs in Jakarta and elsewhere deemed to be un-Islamic. FPI was allegedly moving thousands of volunteers to help in the reconstruction of Aceh and to guard against foreign influence from the thousands of foreign military and aid workers delivering humanitarian assistance to the region.

Communication sent on 26 July 2005

152. The Special Rapporteur brought to the attention of the Government the situation of Ms. Rebecca Laonita, Ms. Ratna Mala Bangun and Ms. Ety Pangesti who organized and conducted a children's holiday camp, called 'Happy Week' in Haurgelis, West Java. The camp's programme consisted of opening and closing prayers, singing songs, practical tutoring in reading, writing and mathematics and trips to parks and swimming pools. The camp was organised for local Christian children but Muslim children were invited to attend if their parents consented.

153. At the beginning of May 2005, the Indonesian Council of Muslim Clerics (MUI) brought a case against the three women alleging that they tried to convert the children to Christianity by giving them gifts. On 13 May 2005, the women were arrested and had since then been held in Indramayu Prison.

Urgent appeal sent on 7 November 2005

154. On 16 October 2005, the congregations of three churches, including a Lutheran, a Presbyterian and a Pentecostal church, were prevented from holding a joint outdoor service in Jatimulya, East Bekasi, West Java in Indonesia. The congregations gathered to hold the service but were prevented from doing so by approximately 300 Muslims who had gathered in the same place to conduct their own service. The members of the three churches accordingly moved elsewhere to carry out their service. However, the group followed them and verbally abused them until the congregations were forced to disperse. The police officers who were present did not reportedly intervene. The Mayor of East Bekasi closed down three churches five weeks before. Following the closures, the congregations had been gathering regularly to hold outdoor services. The Special Rapporteur was concerned that similar events could occur at future services held by the congregations of the three churches.

Response from the Government dated 12 December 2005

155. The Government gave a number of clarifications. In particular it informed the Special Rapporteur that some 200 police officers were present at the incident and did intervene to separate the two groups.

156. The Joint Decision of the Minister of Religious Affairs and the Minister of Internal Affairs of 1969 requires adherents of any religious denomination to secure permission from neighbouring residents if they want to build a place of worship. In accordance with the Joint Decision, the three churches requested the necessary authorizations and pending the conclusion of the administrative processes, they used one of the residential houses in Jati Mulya as a place of worship.

157. The local residents did not approve and consequently sealed the house, claiming that the Regent of Bekasi had forbidden the use of residential houses for public worship in accordance with the relevant legislation. After the closure of the house, the three groups decided to hold their services in the street in the Jati Mulya compound, which led to the incident referred to in the letter of 7 November 2005.

the Jannah Ahmadiyyah in Indonesia. The Special Rapporteur was particularly concerned that this attack was the latest in a series of attacks against the Ahmadiyyah community. According to the information received, previous attacks had not been effectively investigated by the police or other state authorities and no efforts had been made to prevent further attacks from being carried out.

Response from the Government dated 9 January 2006

163. The Government expressed its concern about the incident and condemned the attack. It stated that despite the fact that Ahmadiyyah is widely regarded by mainstream Muslims in Indonesia and throughout the world, the belief does not conform to accepted Islamic tenets. However, there is no excuse for the use of violence against its members. The Government confirmed that the Indonesian Ulama Council (MUI) had renewed its fatwa of 1984 pronouncing the Ahmadiyyah heretical.

164. It informed that the fatwa had been the object of much debate in Indonesia, indicating that the fatwa has both strong supporters and strong critics in Indonesia. The Government indicated that the MUI and the Indonesian Government are two distinct entities and that the Government has no authority of any kind to influence or interfere in the decisions of the religious body.

165. The Government informed that the police took a number of measures following the incident. They took steps to prevent physical clashes between the Ahmadiyyah and members of the community, including by asking local imams to keep the peace. They also took steps to guard the assets and activities of the Ahmadiyyah by involving the community in a community watch programme (siskamling).

Observations

166. The Special Rapporteur is grateful for the Government's responses to some of the communications and urges the Government to reply to the other communications. The Special Rapporteur draws the Government's attention to Resolution 2005/40 of the UN Commission on Human Rights, in which the Commission urges States to ensure the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes.

167. Paragraph 8 (a) of Resolution 2005/40 urges states to step up their efforts to eliminate intolerance and discrimination based on religion or belief notably by taking all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, with particular regard to religious minorities and also to devote particular attention to practices that violate the human rights of women and discriminate against women.

168. She also recalls Article 6(a) of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion in which it is stated that the right to freedom of thought, conscience, religion or belief includes the freedom, "[t]o worship or assemble in connection with a religion or belief, and to

establish and maintain places for these purposes". In addition Article 6(b) provides that the freedom to establish and maintain appropriate charitable or humanitarian institutions is also included in the right to freedom of religion.

169. The Special Rapporteur would also like to take this opportunity to insist on receiving an invitation from the Government to visit Indonesia to assess the situation of freedom of religion or belief. As she underlined in her previous report to the General Assembly (A/60/399), the Government has been reminded of this request for an invitation on many occasions since 1996.

Iran (Islamic Republic of)

Urgent appeal sent on 3 December 2004 with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on Torture and the Special Rapporteur on violence against women, its causes and consequences

170. The Special Rapporteur brought to the attention of the Government the situation of Ms. **Hajieh Esmaelvand**, a 35-year-old mother of two, and **Rouhollah Maseouli Gargari**, aged 22, from the town of Jolfa who were believed to be at risk of imminent execution. On 16 January 2000, **Hajieh Esmaelvand** was sentenced to death by hanging by the 3rd Branch of the Public Court of Jolfa for adultery, and five years' imprisonment with corporal punishment for assisting in the premeditated killing of her husband. Then aged 17, Rouhollah Maseouli Gargari was sentenced to hanging for his role. The 37th Branch of the Supreme Court of Justice later amended the verdict against Hajieh Esmaelvand to stoning, and it was scheduled to be carried out on 1 September 2004. Following an appeal, the Supreme Court of Justice upheld the sentence of stoning for Hajieh Esmaelvand. The sentences were expected to be carried out within the following three weeks.

Response from the Government dated 13 January 2005

171. The Government informed that Ms. Esmaelvand was charged as an accomplice to her husband's murder and was sentenced to death. Upon rejection of her appeal by the Supreme Court, she had requested to be pardoned. Her request was under consideration and therefore her sentence had been put on hold.

172. Urgent appeal sent on 13 December 2004 with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on Torture and the Special Rapporteur on violence against women, its causes and consequences

173. The Special Rapporteur brought to the attention of the Government the situation of **Leyla Mafi** who was facing imminent execution for "morality-related" offences. The death sentence was said to have been passed to the Supreme Court for confirmation. She was to be flogged before she was executed. Concern had been expressed that she was sentenced to death for crimes she would allegedly have committed while she was less than 18 years old.

174. On 28 November 2004, she was sentenced to death by a court in Arak, while she was 18, on charges of "acts contrary to chastity", including controlling a brothel, having intercourse with blood relatives and giving birth to a child out of wedlock. It was reported that IQ tests had revealed that she had the mental age equivalent to that of an eight year-old. However, she had apparently never been examined by the court-appointed doctors, and was sentenced to death solely on the basis of her explicit confessions, without consideration of her background or mental health. She was forced into prostitution by her mother at the age of eight and bore several children as a result. She was also repeatedly raped, sold into marriage, and subsequently forced into prostitution by her respective spouses.

Response from the Government dated 4 February 2005

175. The Government confirmed that Ms. Leila Mafi had been sentenced to death. The verdict was challenged and therefore sent to the Supreme Court for further consideration. On this basis, the sentence was not considered as final. In addition to the reconsideration of the Supreme Court, there were provisions of extraordinary appeals offered to the accused, should the sentence be reconfirmed.

Urgent appeal sent on 15 December 2004 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Representative of the Secretary General on Human Rights Defenders, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on torture

176. The Special Rapporteurs brought to the attention of the Government the situation of Mr. **Bahram Mashhadi**, aged 31, and a member of the Bahá'í community, who was arrested on 1 December 2004 by the Iranian intelligence authorities when he arrived to present an appeal on the situation of Bahá'ís in Iran to a group called the Eastern Tehran Assembly of Jurists (*Majma'-e-Qada'i-e-Sharq-e-Tehran*). He was taken to the local police station, where he was detained overnight.

177. On 2 December, he was transferred to the headquarters of the Prosecutor's Office of the Revolution (*Dadsitani-e-Markaz-e-Enghelab*), where he was interrogated. Accompanied by a guard, he was subsequently brought back to his home to collect some personal effects and then taken to Evin Prison, Tehran. Since then, his relatives had gone there on several occasions in order to visit him. Each time, the prison authorities denied any knowledge of him being held there. It had been impossible to obtain any further information on Mr. Mashhadi's whereabouts.

178. It was believed his detention was related to a written appeal submitted to the President of the Islamic Republic of Iran on 15 November 2004 on the situation of Bahá'ís in Iran, by a group of Iranian Bahá'ís on behalf of the entire community. Subsequently, some of the Bahá'ís who distributed the message were arrested. Most of these individuals were detained for a short period of time and then released.

Urgent appeal sent on 14 March 2005 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Working Group on Arbitrary Detention

179. The Special Rapporteurs brought to the attention of the Government the situation of Mr. **Shahrukh Ta'ef**, Mr. **Kayvan Rahimiyán**, and his wife Ms. **Fereshteh Subhani**, three prominent Bahá'ís, who were arrested on 6 March 2005 in Tehran by agents of the Intelligence agency. No reasons were given for their arrests. Their family members and other Bahá'ís had been unsuccessful in locating them. It was also reported that on the same day, early in the morning, seven or eight agents entered the home of Mr. and Ms. Rahimiyán and ransacked their house. They took away a quantity of documents; books; printed material; a copy machine and other possessions.

180. It was further reported that Mr. **Mehran Kawsari** was re-arrested on 8 March 2005. He had been previously arrested for distributing a letter to the President of the Republic denouncing the destruction on 2-3 February 2005 of the Bahá'í cemetery of Yazd. Mr. Kawsari was sentenced to three years imprisonment. He was held in Evin prison. Mr. **Bahram Mashhadi**, another Bahá'ís previously detained, who was the subject of a communication sent on 15 December 2004, was also re-arrested and given a one-year sentence for the same alleged offence.

181. According to the source, these actions coincided with the launch of a campaign against the Bahá'ís in government-controlled media. In an article published on 8 January 2005 in Jomhuri-e-Eslami newspaper, the Bahá'ís letter to the President of the Republic was portrayed as a "provocative" activity by the Bahá'ís and as "part of a plan by the United States" to exert pressure on Iran. Another article appeared in a Yazd newspaper complaining about the Bahá'ís.

Response from the Government dated 27 May 2005

182. The Government indicated that Mr. Shahrukh Ta'ef has been charged with financial corruption and the legal proceedings were underway. Mr. Mehran Kawsari had been charged for measures against the internal security of the State. The preliminary proceedings had been carried out and, since he had filed an appeal, his case had been sent to the Tehran Appellate Court for consideration. He refused the offer of bail and has remained in custody.

Urgent appeal sent on 12 April 2005

183. Follow-up communication concerning the situation of Mr. **Hamid Pourmand**, a 47-year-old lay pastor with the Assembly of God Church in Bandar-I Bushehr who was the subject of a previous communication on 3 November 2004. Recent reports indicated that, on 16 February 2005, a Tehran military court found him guilty of deceiving the armed forces by not declaring that he was a convert from Islam. The Court reportedly sentenced him to three years in jail. He was reportedly held at the Evin Prison in Tehran where he had allegedly spent most of his imprisonment in solitary confinement. The verdict of the military court was reportedly under appeal to the Supreme Court. Besides, concerns had been expressed that, on 4 April 2005, he was allegedly told that he would be produced before a Shariah Court within 7 to 10 days, on two separate charges of apostasy and proselytizing, the first of which is a capital crime in the Islamic Republic of Iran.

Urgent appeal sent on 11 May 2005 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Working Group on Arbitrary Detention

184. The Special Rapporteurs had been informed that, on 2 May 2005, Mr. **Abu'l-Qasem Shushtari** was arrested in connection with a gathering of Bahá'ís who were celebrating the First Day of Ridvan (a holy day). After an argument with officials, he was taken to the Prosecutor's Office, where an order was issued for his arrest. At the time of the communication, he was held in Evin prison without charge.

Response from the Government dated 1 July 2005

185. The Government indicated that Mr. Abu'l-Qasem Shushtari, who was charged with activities against the state and disturbing public order, had been released on bail for further consideration.

Urgent appeal sent on 13 May 2005 with the Working Group on Arbitrary Detention

186. The Special Rapporteurs brought the following situation to the attention of the Government:

187. On 16 April 2005, Ms. **Minu Sasani**, a Bahá'í, was arrested without charge in Tehran and taken to an unknown location. Her home was searched, her papers, confiscated. Her whereabouts were still unknown.

188. On 25 April 2005 five Bahá'ís were arrested: Mr. **Ardeshir Rasteh**, Mr. **Shirzad Bahineh**, Mr. **Imam-Quli Rasteh-nejad**, Mr. **Allahreza Khastar** and Mr. **Husnu'llah Davaran**. In November 2004, these persons had filed complaints to protest against the confiscation of homes and land of their families in the village of Kata (province of Buyir-Ahmad and Charmahal-Bakhtiyari). They were summoned to appear for a hearing before the court of the Sisakht region on 25 April 2005. When they presented themselves at the court house, they were arrested upon a decision from the judge ordering their detention for an undetermined period of time. They were held incommunicado.

189. On 3 May 2005 Mr. **Najaf-Quli Bahamin**, Mr. **Alijan Dastpish**, Mr. **Ali Rasteh** and Mr. **Valiu'llah Parandush**, Baha'is living in the province of Buyir-Ahmad and Charmahal-Bakhtiyar as well, were similarly arrested by order of a court. They had been summoned to a court hearing at which the judge asked them whether they would relinquish real estate in their possession to the authorities. When they refused to do so, they were arrested upon a decision from the judge ordering their detention for an undetermined period of time. They were held in a prison in the city of Yasuj.

Urgent appeal sent on 18 August 2005 with the Working group on arbitrary detention and the Special Rapporteur on torture

190. The Special Rapporteur had received the following information concerning the arrest of 14 Bahá'ís in the first week of August 2005:

191. On 3 August 2005, Ms. **Simin Gorji** was arrested in the city of Ghaem Shahr. On 4 August 2005, Mr. **Hooman Bakhatavar**, Mr. **Kaviz Nuzdehi**, Ms. **Nahid Ghadiri**, Ms. **Nasrin Ghadiri**, Mr. **Vahid Ghadiri**, Ms. **Sima Rahimian**, Mr. **Jalayer Vahdat**, and Ms. **Rozita Vaseghi** were arrested in the city of Mashhad. Ms. **Sima Eshraghi**, who was not at home at the time of the arrests, was summoned to appear at the police and, when she did so, arrested on 6 August 2005.

192. On 5 August 2005, a group of trainers working to promote the moral education of young Bahá'ís in Iran were arrested, while they were meeting in the city of Karaj. The group consisted of Mr. **Pooya Movahhed**, resident of Karaj, Ms. **Nasim Ashrafi**, Ms. **Nasim Naderi**, and Mr. **Emad Sharghi**, all residents of Tehran,

193. The whereabouts of the 14 individuals were not known at the time of the communication. In view of their incommunicado detention, concern was expressed that they might have been at risk of torture or ill-treatment.

Communication sent on 11 October 2005 with the Special Rapporteur on the promotion and protection of to freedom of opinion and expression

194. The Special Rapporteurs had received the following information concerning the situation of Bahá'ís in Iran in August and September 2005:

195. On 19 August 2005, Mr. **Davar Nabilzadeh** was arrested in the city of Mashhad.

196. On 14 September 2005, Ms. **Sima Rahmanian Leghaee**, Mr. **Changiz Derakhshanian**, and Ms. **Mina Hamran** were arrested in the city of Ghaem Shahr.

197. On 21 September 2005, Mr. **Misagh Laghaee**, Mr. **Shahin Sanaee** and Ms. **Mahvand Laghaee** were arrested in the city of Babol Sar.

198. Ms. **Soheila Motallebi** and Mr. **Foad Naeemi** were arrested in Sari on 20 and 28 August 2005 respectively.

199. It was feared that they were arrested because of their religious belief. All of them were still in custody, except for Mr. **Derakhshanian**, who was released on bail on 17 September 2005, Ms. **Soheila Motallebi** and Mr. **Foad Naeemi**, who were released on 19 September 2005.

200. On 5 September 2005, the homes of nine Baha'is, Mr. **Farshid Dadvar**, Mr. **Ezzatollah Khorram**, Mr. **Ahmad Naeemi**, Mr. **Majid Ghane**, Mr. **Azizollah Khordadi**, Mr. **Farrokh Shadpour**, Ms. **Ashraf Yavari**, Mr. **Amrollh Sarafraz**, and Mr. **Behnam Rohani Fard**, nine Bahá'ís in the city of Yazd were searched, and their books, along with their computers, tapes, videos and CDs confiscated.

201. The Special Rapporteurs were also informed that, on 5 September 2005, the court in Karaj sentenced four Bahá'ís, namely, Ms. **Nasim Ashrafi**, Mr. **Pooya Movahhed**, Ms. **Nasim Naderi**, and Mr. **Emad Sharghi**, subject to a communication sent by the Special Rapporteur on freedom of religion or belief on 18 August (IRN 29/2005), to ten months of imprisonment on the charge of opposition to the Islamic Republic of Iran. This charge was

verbally conveyed to the Bahá'ís. When they asked for a written document, the court refused to issue one. At the time of the communication, the sentence was under appeal. It was feared that the convictions were related to their religious beliefs.

Urgent appeal sent on 8 November 2005 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture

202. The Special Rapporteurs were informed that, on 27 April 2004, **Grand Ayatollah Yasub al-Din Rastgari**, aged 78, a religious leader and scholar, of Qom in Iran, was arrested in Qom for publishing a book on religious history titled "The reality of religious unity". His two sons were also arrested and the company that published the book was closed down. It was difficult to obtain exact information on the criminal charges, trial and subsequent sentencing of Ayatollah Rastgari. However, it was thought that he was accused of insulting Islam and inciting schism in the book. It was thought that he was secretly sentenced to four years imprisonment by the Special Court for the Clergy. Ayatollah Rastgari was held in incommunicado detention and his relatives had not been informed of his whereabouts. He was also reported to be in poor health, suffering from diabetes and heart disease.

203. Concern was expressed for Mr. Rastgari's health, and in view of his incommunicado detention, it was feared that he might have been at risk of torture or cruel, inhuman or degrading treatment or punishment.

Urgent appeal sent on 14 November 2005 with the Special Rapporteur on torture and the Special Rapporteur on Violence against women, its causes and consequences

204. The Special Rapporteurs expressed their concerns in view of the imminent execution of **Leyla Mafi**.

205. Her death sentence had been commuted and she was now facing a sentence of flogging and three and a half years in prison. The Supreme Court reportedly overturned the verdict issued in 2004 but upheld the sentence of flogging, sending the case back to the Court of First Instance in the city of Arak for a retrial. The Court of First Instance acquitted Ms. Mafi of the charges of incest and controlling a brothel. She was however found guilty under Article 637 of the Penal Code of an "unchaste act with next of kin (other than fornication)." She was sentenced to 99 lashes of the whip for this offence. She was also found guilty of "providing the facilities for corruption and prostitution by being available for sexual acts" and sentenced to three and a half years imprisonment for this offence.

Response from the Government dated 25 January 2006

206. The Government informed that Ms. Mafi had been charged with establishing a brothel and had been sentenced to death by the court of first instance. The Supreme Court subsequently overturned the sentence and referred the case to the Court of Appeal for reinvestigation. The Court of Appeal reconsidered the case and acquitted her on the charges of incest and establishing and running a brothel. However, she was found guilty of facilitating corruption by way of fornication contrary to the Islamic

penal code. The Court ruled that since she did not have a personal residence, she should reside in a rehabilitation centre for at least eight months to ensure her physical and mental integrity.

207. The Government informed that the allegations of torture or ill-treatment were categorically denied. It also stated that the Special Rapporteur on freedom of religion or belief should not send urgent appeals that were irrelevant to her mandate.

Observations

208. The Special Rapporteur is grateful for the Government's responses to some of her communications. However, she regrets that some of the responses were only partial and hopes to receive further information as soon as possible.

209. The Special Rapporteur remains particularly concerned about the continued persecution of members of the Bahá'í community and would in this respect like to reiterate her support for the recommendations made by the Committee on the Elimination of Racial Discrimination in its most recent concluding observations (CERD/C/63/CO/6, para. 14).

210. Additionally she would like to draw the Government's attention to paragraph 9 of General Comment 22 of the Human Rights Committee which provides that, "the fact that a religion is recognized a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers". Furthermore paragraph 21 of General Comment 28 of the Human Rights Committee provides that State parties must take measures to ensure that freedom of thought, conscience and religion will be guaranteed and protected in law and practice for both men and women, on the same terms and without discrimination. Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion.

Iraq

Communication sent on 7 October 2005

211. The Special Rapporteur wanted to raise her concerns over the situation of women in the context of religious norms and traditions. This topic was the subject of an allegation letter sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the question of torture, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on the sale of children, child prostitution and child pornography, Special Rapporteur on violence against women, its causes and consequences and Special Representative of the Secretary-General on the situation of human rights defenders on 30 September 2005.

212. Women and girls, including non-Muslims, were believed to be increasingly under pressure, often violent, to wear a veil or headscarf and to wear the traditional

abaya. This had led to a reduction in the number of girls and women attending schools and universities. The Ministry of Higher Education and Scientific Research had been informed of 3000 cases of women and girls who had requested postponement of their studies as a result of the security situation linked to this matter. An increase in acid attacks at the hands of religious groups and militia against women for not wearing the veil and not wearing the traditional abaya had also been reported. Justification for these attacks was based on the reasoning that when a woman or a girl does not wear a veil or the abaya, she was going against Muslim traditions and should be punished.

213. In northern Iraq, the practice known as "Jin be Jin" (exchanging one woman for another) has contributed to the high incidence of forced marriage. The law allows the mitigation of punishment for perpetrators found guilty of crimes such as honour killings and mutilations. Continued use of female genital mutilation continues to be reported in the northern region of Iraq.

214. Reports indicated that several women had been targeted by religious groups that perceive politically active women as contrary to their religion. In this context, the killings of Fern Holland, Salwa Oumashi, Amal al-Ma'amalachi, Lami'a Abed Khadawi, Aquila al-Hashimi, all women's rights activists or politically active women, had been reported. Several cases of women receiving death threats to prevent them from pursuing their advocacy or political work had been brought to the attention of the Special Rapporteur.

Observations

215. The Special Rapporteur regrets that there has been no response received from the Government to this communication. While she recognizes the difficult situation that the Government is facing at the moment, she would like to draw attention to paragraph 8(a) of Resolution 2005/40 of the Commission on Human Rights in which States are urged to eliminate intolerance and discrimination based on religion and to devote particular attention to practices that violate the human rights of women and discriminate against women, including in the exercise of their right to freedom of thought, conscience, religion or belief.

Jordan

Communication sent on 20 May 2005

216. The Special Rapporteur brought to the attention of the Government the situation of Mr. Samer Muhammad Khair Talib al-Aidy, who was reportedly convicted on charges of apostasy. He had converted from Islam to Christianity several years before.

217. Mr. al-Aidy was arrested on 15 September 2004 and charged before a Shari'a court with apostasy. However, he was released on bail the next day. Between September and late November he appeared at several court hearings, where he was asked to reconsider his conversion. At the last hearing, on 23 November 2004 he was convicted of apostasy. Mr. al-Aidy's lawyer appealed the decision. In March 2005, he

received a verdict from the Court of Appeal, dated 25 January 2005, which upheld the original conviction.

Response from the Government dated 24 June 2005

218. The Government indicated that Mr. Al-Aidy converted from Islam to Christianity ten years ago; something in itself considered a serious breach of the law. Yet no action was initiated against him during this period. However, Mr. Al-Aidy recently began proselytizing amongst Muslims, in clear defiance of the standing laws and well-established norms of the country, including Article 99 of the Jordanian Constitution. This conduct led to the initiation of a court case against him for apostasy and illegally proselytizing. The Government further informed the Special Rapporteur that Mr. Al-Aidy's case was being reviewed by the Court of Appeal in accordance with applied legal procedures in Jordan. All legal action was carried out with full respect of Jordanian legal norms in due processes of law.

Communication sent on 12 July 2005

219. Following on the Government's response dated 24 June 2005, the Special Rapporteur requested the Government of Jordan to provide her with the relevant excerpts of the legal acts on which the actions taken against Mr. Al-Aidy were based. She also asked the Government to explain which restrictions to proselytism and missionary activities are provided for by Jordanian legislation and whether they comply with international standards as provided by article 18 of the International Covenant on Civil and Political Rights.

Response from the Government dated 17 October 2005

220. The Government informed that Jordan has undertaken a number of legislative initiatives to move towards a society where individual freedoms are upheld, and where majority rule is coupled with minority rights. However, in certain situations societal pressures could impair freedom of choice. Those who proselytize amongst Muslims may be in danger of being alienated by society, which regards its sacred duty to protect Islam. However, we are in a process of societal change which government institutions strongly support.

221. When Mr. Al-Aidy got married, he did so in accordance with Shari'a Law. Once he decided to convert to Christianity, his marriage contract, as well as every legal aspect relating to his marital life is affected by the dramatic change. It therefore becomes possible to take legal action against him either by members of his family and or members of society. It is apparent that Mr. Al-Aidy himself chose to publicize his case. If he had decided to convert quietly, there would have been less tension surrounding it.

222. The Government indicated that it was their firm belief that Mr. Al-Aidy could reduce or alleviate the pressures he is facing if he were to become aware of the religious sensitivities that Muslims in Jordan face and show respect for that. There are legislative and procedural requirements that Mr. Al-Aidy needs to undertake which may enable him to become a missionary in Jordan, such as the need to apply and register at the Prime Minister's Office.

Observations

223. The Special Rapporteur is grateful for the additional legal materials sent by the Government in response to her letter dated 12 July 2005. She takes this opportunity to draw the attention of the Government to Article 18(1) of the International Covenant on Civil or Political Rights, which provides that the right to freedom of religion “shall include freedom to have or to adopt a religion or belief of his choice [...]”. In addition, the Special Rapporteur would like to refer to paragraphs 40 to 68 of her previous report to the General Assembly (A/60/399) where she addressed the question of conversion as well as missionary activities and propagation of religion.

Kazakhstan

Response from the Government dated 1 April 2005 to a communication sent on 3 November 2004 (See E/CN.4/2005/61/Add. 1, at para. 149 to 152)

224. The Government informed the Special Rapporteur that, following inquiries made by the Aktobe procurator’s office in May 2004, it was established that Mr. Vrasily D. Kliver, the leader of the International Council of Evangelical Christians/Baptists in Aktobe, regularly conducted religious services without having registered this association.

225. On 5 May 2004, Mr. Kliver, the leader of the aforesaid religious association presided over a religious service attended by 30 people at a private residence located at 30 (b) Klenovaya Street. As a result, the Aktobe procurator’s office instituted proceedings in connection with an administrative offence contrary to article 375, paragraph 1, of the Code of Administrative Offences of the Republic of Kazakhstan (administrative liability for failure by leaders of religious associations to register an association with the State authorities).

226. By its decision of 7 June 2004, Aktobe city court ruled that Mr. Kliver had committed an administrative offence contrary to article 375, paragraph 1, of the aforesaid Code, on account of which he was fined 9,100 tenge and the activities of the association were suspended for three months. He was also fined 1,838 tenge for violating article 521 of the Code (failure to obey a subpoena or to give evidence). No appeals or objections were lodged against this decision.

227. Moreover, Mr. Kliver had previously been the subject of administrative proceedings in connection with his failure to register a religious association, as indicated by the following judicial decisions:

-Decision of Aktobe city court dated 12 June 2001 in connection with an offence contrary to article 375, paragraph 1, of the Kazakh Code of Administrative Offences (a warning);

-Decision of Aktobe city court dated 19 February 2002 in connection with an offence contrary to article 375, paragraph 1, of the Code of Administrative Offences (fined 823 tenge);

-Decision of Aktobe city court dated 12 March 2003 in connection with an offence contrary to article 375, paragraph 1, of the Code of Administrative Offences (fined 4,360 tenge, three-month suspension of the activities of the association);

-Decision of Aktobe city court dated 25 September 2003 in connection with an offence contrary to article 375, paragraph 1, of the Code of Administrative Offences (fined 8,720 tenge, six-month suspension of the activities of the association).

228. These judicial decisions were not reviewed by way of appeal or supervision. The Government noted that no administrative measures have been taken against Mr. Kliver under article 525 of the Code of Administrative Offences.

229. The Taraz procurator's office instituted proceedings against Mr. Petr F. Panafidin, the leader of the local congregation of the Evangelical Christian/Baptist Church, in connection with an administrative offence contrary to article 375, paragraph 1, of the Code of Administrative Offences of the Republic of Kazakhstan (carrying on activities without registering with the Ministry of Justice).

230. By its decision of 15 April 2003, Taraz city court ruled that Mr. Panafidin had committed an administrative offence contrary to the aforesaid article of the Code, and cautioned him. In spite of this, Mr. Panafidin took no steps to register the religious association with the Justice Department and persisted in carrying on his unlawful activity. Accordingly, on 23 March 2004 the Taraz procurator's office once again instituted proceedings against him in connection with an administrative offence contrary to article 375, paragraph 1, of the Code and referred the case to the courts. By its decision of 6 May 2004, Taraz city court ruled that Mr. Panafidin had committed the said administrative offence and fined him 1,838 tenge.

231. Mr. Panafidin did not challenge the court's decision in appeal or supervisory proceedings.

232. Thus, the Government stated that administrative proceedings were correctly brought against the above-mentioned individuals for flouting the provisions of the Religious Freedom and Religious Associations Act. Religious freedom and the separation of church and State are guaranteed by Kazakh law. The cardinal points in State policy towards religious associations are consistency and a balanced approach as regards relations between different faiths, equal rights for all religions, tolerance, and the prohibition of lobbying in the interests of a particular religion.

233. Meanwhile, the activities of unregistered religious associations are becoming a serious problem. Many of these associations are operating under the guise of schools, healthy lifestyle groups, and religious educational and commercial organizations. They have a significant impact on the overall religious situation and have the potential to undermine the established yet fragile network of interdenominational relations in Kazakhstan. Accordingly, the relevant State agencies are obliged to monitor compliance with the laws and regulations on the activities of

religious associations in Kazakhstan, and action is taken against those who fail to comply.

234. Finally, the Government noted that, in Kazakhstan, questions of religious freedom are viewed in the broader context of efforts to uphold human rights. Religious associations may resolve any problems arising at the local level by applying to independent institutions to protect their rights, for example the Kazakh Government's Council for Relations with Religious Associations, whose members include the leaders of many of the religions represented in Kazakhstan; the Association of Religious Associations, which is playing an increasingly prominent role in solving interdenominational problems; and the national Human Rights Commission, the Ministry of Justice and the Office of the Commissioner for Human Rights of the Republic of Kazakhstan."

Communication sent on 6 July 2005

235. The Special Rapporteur was informed that the Parliament had recently approved what were believed to be far-reaching "national security" amendments to eleven laws. Concern had been expressed that the ban on the activity of unregistered religious associations and the amendments to the administrative code significantly limited believers' rights.

236. The draft law introduced amendments to both the criminal and the administrative codes. Indeed, Article 337 (1), included in the Criminal Code, provided that: "Organizing the activity of a public or religious association or another organization after a court has taken a decision to ban their activity or to close them down because they give rise to extremism". It punished participation in the activity of a religious association that had been banned by a court with a fine of 200 times the monthly wage, or up to two years' imprisonment.

237. Moreover, a new Article, 374-1, was introduced to the administrative code, and punished participation in the activity of an unregistered religious organization with a heavy fine. Also article 375 of the administrative code, which dealt with violations by religious groups in the past, including by punishing refusal to register a religious organization was amended as follows: "Missionary work carried out by citizens, foreign citizens and persons who have no citizenship, without the appropriate registration, will attract a fine of up to 15 times the monthly wage of a citizen, while foreigners and persons without citizenship will be fined up to 15 times the monthly wage and will be expelled beyond the borders of the Republic of Kazakhstan."

Response from the Government dated 31 August 2005

238. The Government informed that on 8 July 2005 the Head of State signed an Act amending and supplementing certain legislative acts, including the Freedom of Religion and Religious Associations Act. With the entry into force of the new Act, the operation of unregistered religious organizations is prohibited as a criminal offence. The penalty is a prison term of three to six months imprisonment. In addition, the Act regulates the procedure for reorganizing and closing down religious organizations and introduces additions to the definition of criminal and administrative responsibility for certain offences arising from displays of extremism. The bodies

responsible for official registration check information on the establishment, reorganization and dissolution of legal entities. Under Article 42 of the Civil Code, they are not entitled to refuse registration in the absence of evidence that the establishment of a legal entity is improper.

Observations

239. The Special Rapporteur thanks the Government for its response to her communications. She would like to take this opportunity to draw the Government's attention to paragraph 4(c) of Resolution 2005/40 of the Commission on Human Rights, which urges all States "to review, whenever relevant, existing registration practices in order to ensure the right of all persons to manifest their religion or belief, alone or in community, with others and in public or in private."

240. Moreover, the Special Rapporteur wishes to emphasize that the right to freedom of religion is not limited to members of registered religious community. As she reminded in her previous report to the Commission on Human Rights, referring to the OSCE/ODIHR Guidelines for Review of Legislation pertaining to Religion or Belief, "registration should not be compulsory, i.e. it should not be a precondition for practicing one's religion, but only for the acquisition of a legal personality and related benefits" (E/CN.4/2005/61, para. 58).

Kuwait

Communication sent on 20 May 2005

241. The Special Rapporteur had received information concerning a clause in the recent amendments to the electoral law promoting a specific religious belief. According to the information received amendments to the election law adopted on 16 May 2005 by the Parliament giving women passive and active election rights contain a clause stating that women voting and running for political office must adhere "to the dictates of Islamic Sharia."

Response from the Government dated 16 August 2005

242. The Government informed the Special Rapporteur that the amendment to the electoral law does not promote a specific religion and that the Special Rapporteur had received incorrect information on this point. According to article 2 of the Constitution of the State of Kuwait: "The religion of the State is Islam and the Islamic sharia is the principal source of legislation." Article 12 stipulates that the State must preserve the Arab Islamic heritage. Thus, the information which the Special Rapporteur has received, suggesting that the amendment promotes a specific religion, does not chime with the above-mentioned constitutional provisions. The clause: "Women who stand for office and vote must comply with the precepts of the Islamic sharia", as contained in article 1 of Act No. 17 of 2005, amending article 1 of the Parliamentary Elections Act No. 35 of 1962, is consistent with the Constitution of Kuwait, which provides that the religion of the State is Islam and the Islamic sharia is the principal source of domestic legislation and laws.

243. In addition, the provisions of article 1 of the aforementioned Act are redundant, since they confirm the actual state of affairs, whereby Kuwaiti women comply with the precepts of the Islamic sharia, which do not negate freedom of religion or deny rights, but are simply there to ensure that women are respected and that they respect themselves. This clause is there to help women and not to harm them.

244. With regard to the Special Rapporteur's requests for clarification, the competent authority's reply had been summarized in the following points:

- (a) The amendment to the Act was intended to grant women the right to stand for election and the right to vote;
- (b) Generally speaking, elections to the National Assembly are monitored by the sub committees and the main committees of the electoral commission, under the chairmanship of a judge or public prosecutor, and by the National Assembly and the Constitutional Court. Each body carries out this task in accordance with its respective functions and pursuant to the Parliamentary Elections Act No. 35 of 1962, as amended, and Act No. 14 of 1973, concerning the establishment of the Constitutional Court;
- (c) The clause in article 1 of the Act No. 17 of 2005, providing that women who stand for election and who vote must comply with the precepts of the Islamic sharia, has no influence whatever on women's right to stand for election and to vote;
- (d) With regard to safeguarding the religious rights of minorities, suffice it to say that article 29 of the Constitution of Kuwait provides: "All people are equal in human dignity and with respect to their public rights and duties before the law. There shall be no distinction among them on grounds of sex, origin, language or religion." Article 35 stipulates: "Freedom of belief is absolute. The State shall protect freedom of worship in accordance with prevailing customs and without prejudice to public order or morals."

Observations

245. The Special Rapporteur is grateful for the details provided in the Government's response.

Malaysia

Communication sent on 12 October 2005

246. The Special Rapporteur had received information concerning a decision by Malaysia's Court of Appeal according to which conversions from Islam to another religion have to be authorised by sharia courts in the case of *Lina Joy*, formerly *Azlina Jailani*, aged 41.

247. *Lina Joy*, a former Muslim who converted to Christianity in the late 1980s, had approached the National Registration Department (NRD) in February 1997 in order to request that her name and religious status be changed on her identity card. The application was rejected in August 1997 on the grounds that the sharia court had not granted permission for her to renounce Islam. When she appealed the decision, in 1998, the NRD allowed the name change, but refused to change the religious status on

her identity card. Following another appeal, High Court Judge Datuk Faiza Tamby Chik ruled in April 2001 that she could not change her religious identity, because ethnic Malays are defined as Muslims under the Constitution. He also said jurisdiction in such cases lay solely in the hands of the sharia court. On 19 September 2005 the Court of Appeal announced the final decision stating that Lina Joy must apply to a sharia court for permission to legally renounce Islam.

248. Law requires all Malaysian citizens over the age of 12 to carry an identity card with them at all times and all identity cards issued to Muslims must clearly display their religious identity. A Muslim designation on an identity card has legal consequences, such as the prohibition of marrying a Christian

Observations

249. The Special Rapporteur thanks the Permanent Mission for acknowledging the communication. She would like to remind the Government that paragraph 9 of General Comment 22 of the Human Rights Committee states that, "the fact that a religion is recognized as a state religion or that it established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 or 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for Government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26."

250. Moreover, she reminds the Government that the right to change religion is a fundamental part of freedom of religion or belief. In its General Comment No. 22, the Human Rights Committee stated that "the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another". This aspect of the right to freedom of religion or belief is absolute and may therefore not be subjected to any form of limitation (see A/60/399, paras 46 to 54).

Maldives

Urgent appeal sent on 8 July 2005 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary General on Human Rights Defenders

251. The Special Rapporteurs raised their concerns at reports that, on 4 July 2005, the Supreme Council for Islamic Affairs issued a press release stating that the Universal Declaration, and in particular its article 18, contradicts the Constitution of the Maldives and the Islamic faith. Moreover, the aforementioned Supreme Council prohibited people from acquiring copies of the Universal Declaration that were given out by the National Human Rights Institution. In addition, the Council made the following statement: "As no Maldivian wishes to practice another religion but Islam

we have banned people from possessing the Declaration that is being distributed by the Commission”.

252. Following the press release, the National Human Rights Commission (NHCR) had stopped the distribution of the Universal Declaration. Concern was expressed that this statement aimed at preventing the NHRC from carrying out its human rights activities in particular to raise awareness about religious freedom by distributing the UDHR.

253. The Special Rapporteurs requested the Government to provide them with information on the formal powers given to the Supreme Council for Islamic Affairs by the legislation and whether the laws of the country provide for a hierarchy between different religious groups. They also requested the Government to indicate how the banning of the Universal Declaration on Human Rights was compatible with international norms and standards on the right to freedom of opinion and expression and standard contained in the Declaration on human rights defenders, and the UN Charter.

Response from the Government dated 11 July 2005

254. Pending the official response from the Government, the Permanent Representative forwarded to the Special Rapporteur a copy of the self explanatory Media Release issued by the Government on 11 July 2005 regarding the above mentioned statement.

Response from the Government dated 31 August 2005

255. “Fully understanding that the statement issued by the Supreme Council for Islamic Affairs of the Maldives about the Universal Declaration of Human Rights was disconcerting, the Government has quickly re-affirmed its commitment to international standards of human rights protection and is looking at ways of expediting signing on to ICCPR and ICESCR. The reform process that President Gayoom has initiated, in particular the revising of the Constitution, provides a historic opportunity to incorporate international standards of human rights protection into our basic law.

256. Furthermore, it is mentioned that the President has ratified the Human Rights Bill which gives statutory status to the Human Rights Commission of the Maldives. This is an important development which will contribute to strengthening the independence and effectiveness of the Commission. The Government is fully committed to supporting and strengthening the Human Rights Commission as it has a central role to play in ensuring better human rights protection.

257. The Government provided the following responses to the questions raised in the communication:

258. Although the Supreme Council for Islamic Affairs issued a Press Release which stated the position summarized in the communication, the pronouncement had no legal effect. This was explained by statements issued by the Government on 11 July 2005 and on 12 July 2005. The Government’s statements explained that the

Declaration was not banned in the Maldives and asserted the Government's commitment to the protection and promotion of human rights.

259. The Government gave widespread publicity to the above-mentioned statements clarifying the Government's commitment to the Universal Declaration. It also informed the Supreme Council to desist from making such pronouncements without prior consultation with the concerned authorities.

260. The mandate of the Supreme Council is derived from Law No. 6/94 (Islamic Unity of the People) and from Presidential Decree. The mandate covers the administration and supervision of all matters relating to the public conduct of rites, rituals and observances of the Islamic faith and the propagation of the Islamic faith, values and knowledge. The Council is also empowered to approve books on Islamic knowledge whether produced locally or imported for local distribution.

261. The Declaration is not banned in the Maldives. On the contrary, the Government very firmly asserts that "it is unthinkable for this Government to ban international human rights standards". The Government attached the statement issued by the Government stating that there was no ban and further stating that Government fully endorses the objective of the Declaration. The Government believes that banning the Declaration would be incompatible with compliance with international norms and standards on the right to freedom of opinion and expression and standards contained in the Declaration on Human Rights.

Observations

262. The Special Rapporteur is grateful for the Government's response and encourages the Government to continue taking positive steps with regard to upholding its obligations under the Universal Declaration.

The Netherlands

Communication sent on 28 October 2005

263. The Special Rapporteur brought to the attention of the Government the situation of Ms. **Samira Haddad**, a 32-year-old Muslim woman who was reportedly refused a post as Arabic teacher at the Islamic College in Amsterdam based on her refusal to wear a headscarf.

Observations

264. The Special Rapporteur hopes to receive a reply to her communication in the near future. However, in the meantime, she has been informed by various reliable sources that the national Equality Commission ruled in favour of Ms. Haddad on 15 November 2005. Although the Netherlands' system of parallel public and private denominational education gave the Islamic college a high level of discretion in deciding what requirements it could set for its staff, the Equality Commission found that the fact that non-Muslim employees were exempt from the requirement to wear a headscarf while Muslim employees were obliged to wear a headscarf constituted an inadmissible differentiation on the basis of religion.

265. While the Special Rapporteur does not discourage the existence of denominational schools, she expresses her concern about pressure within the schools to adhere to certain religious obligations. In this regard she would like to draw the Government's attention to article 5(1) of the International Covenant on Civil and Political Rights which provides that, "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

New Zealand

Communication sent on 14 July 2005

266. The Special Rapporteur was concerned at reports that several mosques and Islamic centers were reportedly vandalized in the northern city of Auckland on the night of 11 July 2005. The buildings' windows were broken and some graffiti, which read "RIP (Rest In Peace) Londoners," and "RIP London" were sprayed in black paint on walls facing the street. Concern had been expressed that these attacks on the Muslim community were perpetrated in retaliation to subway and bus bombings in central London on 7 July 2005, which killed more than 50 people and injured 700 and for which a Muslim group had reportedly claimed responsibility. The Special Rapporteur had been informed that both Muslim and political leaders had condemned these recent series of attacks.

Response from the Government dated 6 September 2005

267. The Government provided the following answers to the questions raised by the Special Rapporteur:

268. The facts alleged in the letter of 14 July are accurate. There were seven incidents concerning five mosques (one being targeted twice) and one Muslim cultural centre in Auckland over the period 8-11 July 2005. The nature of the incidents was as outlined in the Special Rapporteur's letter.

269. In relation to each of the above seven incidents complaints were lodged with the Police.

270. As a result of the complaints to the Police an investigation was carried out, leading to the arrest of two 18-year-old students who are both members of a right wing group. The two individuals have been charged with seven counts of intentional damage under section 269 of the Crimes Act 1961. The Police are not looking for any other offenders.

271. At the time of the attacks Police patrols were tasked with increasing their observations on mosques. Additionally, meetings were held with mosque leaders to provide advice and support as well as to provide briefing on the Police investigation that was at that time taking place. Liaison with the mosques and with local leaders is continuing.

272. The Prime Minister Helen Clark released a statement condemning the attacks on 10 July, a copy of which was attached to the Government's response.

Observations

273. The Special Rapporteur is grateful for the Government's detailed response and appreciates the efforts made by the Government in order to prevent the reoccurrence of such acts. She is pleased that the Government is taking all necessary steps to comply with paragraph 8(a) of Resolution 2005/40 of the Commission on Human Rights which urges states to step up their efforts to eliminate intolerance and discrimination based on religion or belief notably by taking all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, with particular regard to religious minorities.

Pakistan

Response from the Government dated 18 November 2004 to a communication sent on 10 November 2004 (See E/CN.4/2005/61, at paragraph 187-189)

274. The Government indicated that Pastor Wilson Fazal was kidnapped on 16 May 2004 by unknown persons. His son Jerry Wilson lodged a report at Airport Police Station Quetta on the same day. Keeping in view the past threats reported by him to the Police, two Police Constables had been provided at his disposal to ensure 24 hours security.

275. The abduction case of Pastor Wilson Fazal was registered at Airport Police Station Quetta on 16.05.2004 (FIR No. 4704 U.S. 365 PPC). The case was being investigated by an experienced team of CIA Quetta under the supervision of Superintendent of Police/CIA. It was also reported that Pastor Wilson Fazal had appeared at Islamabad Parliament Lodges on 16 May 2004. The Police teams were accordingly sent to Islamabad to collect him. The Pastor had, however, so far given no clues as to the names and other details of the alleged perpetrators to the Police and investigating authorities.

276. The Government had provided him security for his protection even before the incident because of the threats reported by him, which he did not use on the day of the incident. However, the Government had continued to provide him necessary security to avoid any untoward incident in the future.

Additional response from the Government dated 11 February 2005

277. The Government informed the Special Rapporteur that discreet enquiries conducted into the matter revealed that on 12 September 2004 one Burner B. Newton, President Christian Social Welfare, an uplift organization, Jacobabad lodged an FIR No. 57/04 u/s 154 at Police Station Civil Lines, Jacobabad about the kidnapping of Mr. Yousaf Masih by some unknown armed persons when he was returning from church to his home. Two days later i.e. on 14 September 2004, the Yousaf Masih was

found to have been recovered from Banu (NWFP). On return from Banu, the Yousaf Masih told Police that after his kidnapping from Jacobabad, he was taken to Sukkur and later on to the place where the kidnappers kept him which was at a drive of half an hour from Bannu City, where he contacted Christian Hospital for help and support.

278. On 17 September 2004 the Yousaf Masih was brought to Jacobabad under Police custody where he stated that kidnappers were Pushto speaking and had anti-American feelings. In the investigations, the veracity of his account could not be established. However, authorities remained alert for security of Churches and the Pastors.

Communication sent on 21 June 2005

279. On 27 March 2005 the Apostolic Church in Khahamba village, near Lahore was attacked. One worshipper, Arshad Masih, died and others were seriously wounded. The Christians had been asked to close the Church in the past and the graveyard next to the Church had been seized by local Muslims.

280. The Special Rapporteur was further informed that Pastor **Shamoun Babar**, 37, and his driver, **Daniel Emanuel**, 36, were kidnapped on 5 April 2005, from the university town area of Peshawar by unknown persons. Their families informed the police and government authorities about the kidnapping and registered a complaint with the district police station.

281. On 7 April 2005 the badly mutilated bodies of the two men were found near Mulazai village in Nasirbagh, Peshawar, North West Frontier Province, with their noses and ears cut off. Pastor Babar was a well-known preacher and evangelist at Peshawar. According to reports, before the kidnapping he had been receiving threats and had been asked to stop his church activities.

Response from the Government dated 18 July 2005

282. The Government indicated that the enquiries revealed that the issue was a dispute on 06 Kanal of land in phase-II WAPDA town, Lahore. At first that land was subject of a dispute between WAPDA Town and M/s Zulfiqar Dogar and Mukhtar Dogar, but the court decided in favour of Dogars who constructed cattle shed at the land in question.

283. Some local Christians also wanted that land to extend their graveyard adjacent to the land. Reportedly a group of 25-30 people on 27th March 2005 started dismantling the cattle shed which led to a row between the two groups. Some individuals namely Zulfiqar Dogar, Mukhtar Dogar, Imran Dogar and Shah Behram Dogar resorted to aerial firing. Resultantly, one individual named Irshad died while a few others were injured.

284. On report of the incident, Police Station Sattokatla registered FIR No. 200/05 under section 302/324 of the Pakistan Penal Code. Those involved in the incident were arrested and Police recovered a 30-bore pistol, 244 bore raffle and a pump action from them. The case against the accused is presently being heard by Judge Ghulan Rasool in Anti-Terrorism Court.

Communication sent on 24 August 2005 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

285. The Special Rapporteurs were informed that, on 3 February 2005, **Mohammed Younus Shaikh** was arrested by police in the city of Kharadar for having distributed copies of his book, "Shaitan Maulvi" (Satanic Cleric), in which he stated that stoning to death (Rajam) as a punishment for adultery was not mentioned in the Quran. He was also accused of insulting four local Imams (religious leaders) by describing them as "Jews". In response, local clerics issued several fatwas declaring that Younus Shaikh should be killed for insulting Islam. On 11 August 2005 he was sentenced to life imprisonment by a special "anti-terrorism" court for writing and distributing books that contained blasphemous and sacrilegious material. He was being held in solitary confinement in Karachi Central Prison. Concern was expressed that the charges brought against Mohammed Younus Shaikh were a means of restricting his right to freedom of religion and his right to freedom of opinion and expression, and also a tool at silencing human rights defenders.

Communication sent on 17 November 2005

286. On 12 November 2005, a group of between 1,500 to 2,000 unidentified individuals attacked and set fire to a number of churches and other Christian buildings in the town of Sangla Hills in Pakistan. The buildings that were attacked included a Catholic Church, a Salvation Army Church, a United Presbyterian Church, a school and a student hostel. According to the information received, approximately 450 Christian families had left their homes the night before after receiving threats from local residents. The incident took place after the alleged burning of an Islamic school and the desecration of the Koran by a Christian man on 11 November 2005.

Response from the Government dated 20 December 2005

287. The Government informed that it had investigated the details of the incident and that the relevant authorities had provided the following information. An individual threw a burning match into Quaran Mahal, where old copies of the Holy Quran are preserved. As a result, copies of the Holy Quran caught fire. A case was registered against the accused at Sangla Hill police station and he was interrogated in accordance with procedure. Soon after the incident, District Police Officers arrived at the scene to control the mob. To maintain peace and order, the District Administration also requested representatives of traders, student leaders and other prominent personalities to use their influence to avert any demonstration or procession. The protestors who were allegedly involved in damaging the properties and Churches of the Christian community have been arrested and a case under 16 MPO and the Anti-terrorist Act has been registered against them at City Police Station, Sangla Hill.

288. The Government has taken a number of measures to carryout a thorough and effective investigation and to dispense justice. An Enquiry Officer has been appointed who enquire into the failure of the local police to take effective preventative measures. In addition, a Tribunal will conduct an inquiry into the incident and submit a report to the Government. Two platoons of the Punjab Constabulary, along with

officers from Sangla Hill police force were deployed at local churches and residences of Christians in Tariq Colony for the safety and protection of minorities. In addition, religious leaders of both Muslim and Christian communities have been approached to use their influence to keep the city peaceful and calm.

Observations

289. The Special Rapporteur is grateful for the Government's response and investigations into the cases of Pastor Fazal and Pastor Babar and his driver.

290. She would like to draw the Government's attention to paragraph 12 of Resolution 2005/40 of the Commission on Human Rights with regard to her communication concerning the arrest of Mohammed Younus Shikh. In paragraph 12 the Commission on Human Rights emphasizes that restrictions on the freedom to manifest religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion.

291. She would also like to encourage the Government, with regard to the Sangla Hills violence, to continue taking the necessary steps to comply with paragraph 8 (a) of Resolution 2005/40 of the Commission on Human Rights which urges states to step up their efforts to eliminate intolerance and discrimination based on religion or belief notably by taking all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, with particular regard to religious minorities.

Republic of Korea

Communication sent on 24 May 2005

292. The Special Rapporteur had received reports that 1030 Jehovah's witnesses were jailed in the Republic of Korea because they refused to do military service for reasons related to their religious belief.

293. The Special Rapporteur was informed that the Republic of Korea had not established a mechanism to allow members of certain religious minorities not to serve in the military, if their belief forbids them to do so, e.g. it was claimed that 1030 Jehovah's witnesses were imprisoned for this reason. Furthermore, there were reports that these persons face discrimination once they leave the prison with regard to employment and other social services.

Response from the Government dated 29 July 2005

294. The Government provided the following information in response to the Special Rapporteur's communication:

295. Regarding the accuracy of the information, the Government informed that there are 1,114 Jehovah's Witnesses who are jailed as of July 12, 2005, which roughly

corresponds to the information provided. There is no official record of Jehovah's Witnesses facing discrimination with regard to employment or other social services after they leave prison. Since conscientious objection to military service is not permitted by law, there is a realistic possibility that such individuals may experience disadvantages. However, this may be attributed purely to the free will of employers and does not stem from systemic discrimination.

296. Regarding judicial procedures, the Government informed that on July 15, 2004, the Supreme Court ruled that conscientious objectors to military service were guilty of violating the Military Service Law. On August 26, 2004, the Constitutional Court confirmed that Article 88 of the Military Service Law, intended to penalize the evasion of conscription, is constitutional. However, the Court indicated that there is a need for the legislature to develop a national solution in order to protect the conscience of objectors to military service. In November 2004 a revision bill which aims at providing Alternative Service for conscientious objectors to military service was proposed and this is under discussion at the National Assembly.

297. The Government further indicated that in light of the specific circumstances in the Republic of Korea, conscientious objection to military service needs to be restricted as it may be harmful to national security.

298. Unlike the freedom to form or determine inner conscience, the freedom to object to fulfilling the duty of military service for reasons of religion or conscience may be restricted by Clause 3 of Article 18 of the International Covenant on Civil and Political Rights for public causes in that it manifests or realizes one's conscience through passive non performance.

299. Given the specific security circumstances in the face of a hostile North Korea, the Republic of Korea, the world's sole divided nation, has adopted the Universal Conscription System, which recognizes all citizens' obligation to perform military service. Thus, the principle of equality in military service duty and responsibility carries much greater significance in the Republic of Korea than in any other country.

300. Considering the strong social demand for and expectation of equality in the performance of military service, allowing exceptions to military duty may undermine social unity and greatly harm national capabilities by giving rise in society to the problem of inequality in the obligation to fulfil military service.

301. Furthermore, the approval of conscientious objection to military service while military manpower is still the mainstay of national defence may lead to the misuse of conscientious objection as a legal device to evade military service. This would be greatly detrimental to national security by destroying the oasis of the national military service system, the Universal Conscription System. This is of particular concern in light of the social trend of attempting to evade military service duty by using any and every means possible.

302. Various considerations in the Republic of Korea mean that the time is not right for the adoption of the Alternative Service System even though it is under discussion at the National Assembly.

303. By its very nature a nation's military service system has a direct bearing on national security. It is a matter of legislative discretion vested in the lawmakers for the creation of a national army with the maximum capabilities for national defence, taking into account a nation's geopolitical stance, internal and external security conditions, economic and social state, and national sentiment, as well as various other factors.

304. Considering the Republic of Korea's security situation, the demand for equality in military service duties, and various concomitant tumbling blocks to the adoption of the Alternative Service System, it does not seem that the ROK has reached the necessary stage of improved conditions in security and military service nor has national consensus been reached on this.

Observations

305. The Special Rapporteur is grateful for the Government's detailed response. She has also taken note of the Government's position on conscientious objectors through the third periodic State Party Report, which it submitted to the Human Rights Committee in February 2005 (CCPR/C/KOR/2005/3). While she notes that military service may sometimes be necessary for purposes of national security she would like to draw the Government's attention to paragraph 11 of General Comment 22 of the Human Rights Committee which provides that although the International Covenant on Civil and Political Rights "does not explicitly refer to a right to conscientious objection, the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief."

Romania

Urgent appeal sent on 21 October 2005

306. The Special Rapporteur had received information concerning the current draft of a new religion law that was approved by the Government at its session on 14 July 2005 and recently sent to parliament under "emergency procedures." It was believed that the parliament would adopt the new law, set to replace the 1948 communist-era religion law which had remained in force in the post-communist era, by the end of the year 2005. The draft law was at the time of the communication being reviewed by the Committee on Human Rights, Religious Denominations and Minorities of the Senate. It was also being considered by the parallel committee in the lower house, the Chamber of Deputies.

307. Concerns had been expressed that the proposed law divided religious communities into three categories with widely differing rights. It was reported that 18 faiths recognised by the Government as "religious denominations" or "cults", a category that was allegedly almost inaccessible to other faiths, were given the greatest rights. Those with fewer than about 22,000 members could register as "religious associations" with lesser rights, while those with fewer than 300 members could only function as "religious groups" which were given no legal status.

308. Reports indicated that, under the draft law, only the "recognised religious denominations" or "cults" had the right to provide religious education in public schools, establish their own religious schools, or receive financial support from the state.

309. Besides, Article 13 paragraph 3 of the draft prescribes punishment only for those who obstruct the religious practice of members of the "recognised denominations", providing no such protection to unrecognised communities. In this regard, concern was also expressed about the alleged undefined powers which the law gives to the State in deciding which religious communities should gain the status of "recognized religious denominations".

Observations

310. The Special Rapporteur is concerned that the Government has not responded to her communication. In this regard she would like to draw the Government's attention to paragraph 4(a) of Resolution 2005/40 of the Commission on Human Rights which urges States to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience and religion and belief to all without distinction. Furthermore, paragraph 4(c) of the same Resolution requires States "to review whenever relevant existing registration practices in order to ensure the right of all persons to manifest their religion or belief, alone or in community with others and in public or private."

311. In addition, the Special Rapporteur would like to reiterate the points made with regard to this issue by her predecessor in the report submitted to the Commission on Human Rights following his visit to Romania in September 2003 (E/CN.4/2004/63/Add.2, paras 94 to 96): "With regard to the distinction between recognized religions and non-recognized religions or religious or faith-based communities, the Special Rapporteur [...] considers that the principle of freedom of religion or belief, as enshrined in international human rights law, is difficult to reconcile with a formal or legal distinction between different kinds of religious or faith-based communities insofar as such a distinction in their status must imply a difference in rights or treatment, which may, in some cases, constitute discrimination that is incompatible with the exercise of human rights". The Special Rapporteur therefore encouraged "the Romanian Government to abolish the distinction between recognized and non-recognized religions, possibly when it adopts the new law on religions, which it is hoping to do in the near future. In any case, the Government should ensure that this distinction does not lead to discrimination that is incompatible with international human rights law or to restrictions that might curtail the right to freedom of religion or belief, in violation of international law".

312. The Special Rapporteur wishes to receive further information from the Government, including regarding the compatibility of its measures concerning religious communities with relevant international human rights law.

Russian Federation

Response from the Government dated 30 June 2004 to a communication sent on 26 March 2004 (See E/CN.4/2005/61/Add. 1, at paragraph 202)

313. The relevant ministries and departments have no information concerning the alleged violations of the rights of the Grace Pentecostal Church and the Orthodox Parish of the Annunciation. The leaders of the congregations have not filed complaints in the courts regarding any unlawful actions by the authorities of the city of Sovetskaya Gavan.

Response from the Government dated 24 March 2005 to a communication sent on 27 October 2004 (See E/CN.4/2005/61/Add. 1, at paragraph 203-204)

314. The Government indicated that a religious conference entitled "International Brotherhood of the Council of Churches" was held in August 2004 in the village of Lyubuchany in the Chekhov district of Moscow oblast (region) on a plot of land belonging to V.A. Chekanov and intended for farming. In contravention of articles 4, 5 and 7 of the Federal Meetings, Rallies, Demonstrations and Processions Act of 19 June 2004 no written notification of the holding of a public event at this place was submitted to the Chekhov district local government authorities. The procurator's office of the town of Chekhov was given notice by L.I. Chekanova regarding the impermissibility of holding a public event on a plot of land provided for farming and of arbitrarily erecting a structure on it. The event nevertheless took place. In the procurator's office V.A. Chekanov explained that the event could not be stopped in view of the fact that about 5,000 people had arrived from various regions of Russia to take part in the religious gathering.

315. With a view to ensuring law and order and averting any possible violations, militia officers carried out a range of preventive measures in which the services of Russia's Ministry of Emergency Situations and first-aid teams were also involved. No disturbances of public order occurred during the holding of the conference. The actions of the law-enforcement bodies were recognized as justified by the procurator's office of the Chekhov district of Moscow oblast. The prayer house of the International Union of Churches of the Evangelical Christian Baptists (IUC ECB) located at 38, Novaya Street, in the village of Lyubuchany belongs to the Kareev family. In connection with the arson of this house, a criminal case was initiated pursuant to article 167, paragraph 2, of the Criminal Code of the Russian Federation (intentional destruction or damaging of property), and proceedings are now being conducted by the investigative section of the Chekhov district internal affairs department of Moscow oblast.

316. The Government further indicated that the reason for the closure of the annual Urals regional Jehovah's Witnesses congress, held in July 2004 in the Uralmash sports stadium of the city of Yekaterinburg, was the cancellation of the rental agreement by the management of the stadium.

Additional response from the Government dated 19 April 2005

317. As a result of further inquiries into the incident involving the disruption of a congress of the Jehovah's Witnesses religious organization at the Uralmash sports stadium on 10 March 2004, the acting procurator of the Ordzhonikidze district of the city of Yekaterinburg opened a criminal case on the basis of indications of an offence under article 148 of the Criminal Code of the Russian Federation (obstruction of the

exercise of the right to freedom of conscience and religion). The progress of the investigation into this case is being supervised by the Office of the Procurator -General of the Russian Federation.

Communication sent on 17 March 2005

318. The Special Rapporteur was informed that, in southern Russia, three confessions regarded as "traditional", namely the Greek Orthodox, the Muslims and the Jews, had all failed to regain their places of worship which were confiscated by the state in Communist times.

319. The Greek Orthodox community in the city of Krasnodar is part of the Moscow Patriarchate and has the support of its local Russian Orthodox bishop. Yet it has failed to get the authorities to return a church it can prove belonged to it, which now houses a state sanitation and disease control department. Indeed, despite having the backing of its local Russian Orthodox bishop, the Greek Orthodox community has unsuccessfully fought to win back its historical church building for eight years. Currently scattered among Russian Orthodox parishes, there were approximately 1,000 practising Greek Orthodox in Krasnodar region. Although they were content to be under the Moscow Patriarchate and currently had access to priests who have a reasonable knowledge of Greek, the Greek Orthodox would be able to worship as one parish led by an ethnic Greek priest if they had their own church. In particular, parishioners could then make their confessions in Greek and obtain commemoration services for the thousands of Greek victims of the 1915 genocide in present-day eastern Turkey and local Stalinist purges directed against Greeks in 1938.

320. Moreover, the Krasnodar's Progressive Jewish community, another confession usually counted as "traditional" in Russia, had abandoned its nine year struggle to win back a pre-revolutionary synagogue in the city centre that the community once used and which would now be a government trade department. The 70-strong Progressive Jewish congregation is currently able to meet for worship at nearby rented premises, where there would not be enough space at festivals. In late October 2004, Krasnodar region's religious affairs official, Mr. Aleksandr Babskov, reportedly stated that he did not have official confirmation that the building in question had ever been a synagogue, and claimed to be unaware of any official claim to it by a religious community.

321. Finally, in the neighbouring region of Stavropol, the local Muslim community had similarly fought in vain for over ten years for the restitution of a pre-revolutionary city mosque, which currently houses Stavropol's regional museum. According to a March 2004 statement from the Council of Muslim Religious Organisations in Stavropol City, the region's arbitration court finally refused to hear a case set to decide the issue - after seven months of preliminary deliberations - on the grounds that it was "outside its competency". The local Muslim community was forced to file the suit with the court in the first place, explains the statement, because the Stavropol regional authorities repeatedly refused to acknowledge receipt of a 31 December 1999 instruction issued by Russia's Ministries of Culture and State Property demanding the return of the former mosque to local Muslims. In late October 2004, Mufti Ismail Berdiyev of the Spiritual Directorate of Muslims of Karachai-Cherkessia and Stavropol Region maintained that the Stavropol regional authorities'

apparent support for the creation of a local muftiate separate from his own was due to his insistence upon the return to believers of the historical mosque in Stavropol city.

Response from the Government dated 15 August 2005

322. The Government informed that under Article 22 of the Freedom of Conscience and Religious Associations Act, only a religious organization registered as a corporation was entitled to request that places of worship belonging to the State be transferred to it. At the time of the application, the Greek Orthodox Brotherhood of SS Constantine and Elena had not been re-registered in order to confirm its status as a corporation and as such the building could not be transferred to it.

323. The Synagogue is a site of historical and cultural importance. The issue of transferring title of the building has never been brought before the courts. In 2005, Krasnodar's Deputy Chief Executive has justified the refusal to approve the transfer on the grounds that the building is encumbered by contractual obligations with a regional voluntary organization of law enforcement officers, security guards, police and detective organizations.

324. The Mosque is a federally listed historical and cultural monument, which houses the G.N. Prozritelev and G.K. Prave Stavropol Local Museum. The Federal Ministry of Culture does not object to a religious heritage site being used for its originally intended purpose. However, such a transfer would only be possible if the museum gave its consent and was provided in advance with comparable premises. To date no comparable premises have been offered to the Museum and as such, the transfer of the Mosque to the Muslim religious organization is not possible at the present time.

Observations

325. The Special Rapporteur is grateful for the Government's responses to these communications and would appreciate being notified of the progress of the investigation regarding the incident at Uralmash sports stadium on 10 March 2004. Furthermore she would like to draw the Government's attention to paragraph 4(b) of Resolution 2005/40 of the Commission on Human Rights in which States are urged 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.

326. The Special Rapporteur would also like to take this opportunity to insist on receiving an invitation from the Government to visit the Russian Federation. As she underlined in her previous report to the General Assembly (A/60/399), the Government has been reminded of this request for an invitation on many occasions since 1998.

Saudi Arabia

Urgent appeal sent on 13 May 2005 with the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

327. The Special Rapporteurs brought to the attention of the Government information they had received concerning the arrest of 40 Pakistani Christians during a meeting for worship in Badeea district, the arrest of three Egyptian Christians and a raid of a house church in Al-Olaya district, all in Riyadh.

328. On 22 April 2005, 40 workers from Pakistan, resident in Saudi Arabia, were arrested by officials from the independent body ensuring the conformity with religious norms under the religious authorities (muttawa) while meeting for joint Catholic-Protestant prayer. Several muttawa surrounded the house, beat some of the worshippers, destroyed Christian symbols and confiscated bibles, tapes and other Christian materials. All persons present, including minors, were detained at the Dera police station and later released. The police refused to return the labor cards that foreigners need in order to be able to stay in Saudi Arabia.

329. On 24 April 2005, the Saudi Police arrested three Egyptian citizens residing in the Kingdom of Saudi Arabia, Nabil Nassif Youssef, 35 years, Hani Nassif Youssef, 30 years, Youssef Nassif Youssef, 25 years, in Riyadh. They were accused of preaching Christianity because bibles were found in their possession. They were held incommunicado. It was unclear whether charges had been brought against them.

330. On 29 April 2005, muttawa, together with several high-ranking sheiks, broke up a private worship service of 60 Ethiopian and Eritrean Christians in Al-Olaya district. They arrested five of them (Yemane Gebre Loul and Gazai Zarom from Eritrea and Msfen Tekle, Yonas Tekle, and Teklu Mola from Ethiopia) who were transferred to prison facilities of the Ministry of Interior, where they were still held at the time of the communication. Police also confiscated the worshippers' bibles.

Urgent appeal sent on 29 November 2005 with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and the Special Rapporteur on the right to education

331. The Special Rapporteurs brought to the attention of the Government information they had received according to which, on 12 November 2005, a Court in Bukairia permanently banned Mr. Muhammad al-Harbi, a high school chemistry teacher in Qassim Province, from teaching and sentenced him to 40 months imprisonment and to a public flogging of 750 lashes after he was found guilty of blasphemy (15 lashes per week at the public market in the town of Al-Bikeriya in Al-Qassim). The sentence against him was based on complaints from students and their parents, as well as a number of his colleagues who teach religious studies of the Muslim faith at his school. They claimed that Mr. Al-Harbi had mocked Islam and had attempted to sow doubt in the students' creed by sharing his opinion with them on various topics including Christianity, Judaism and the causes of terrorism. He had moreover encouraged his students to engage in critical thinking in resolving apparent differences of meaning between the Koran and the words and deeds of the prophet Muhammad. Mr. Al-Harbi was not allowed to attend the trial against him and his lawyer was not recognised by the Court. Mr. Al-Harbi is appealing the decision.

332. In March 2004, Mr. **Muhammad al-Sahimi**, a former Arabic teacher in middle and high school, was banned from teaching and sentenced to three years imprisonment and to 300 lashes for having expressed his views in class. The court had found him guilty of un-Islamic, sexual, social and religious practices. Charges against him had mainly been based on discussions he led on the varying concepts of love in poetry. Religion teachers at his schools had interpreted his words as constituting apostasy.

333. The Special Rapporteurs requested the Government to indicate on what legal basis Mr. Al-Harbi and Mr. Muhammad al-Sahimi had been sentenced and subjected to criminal sanctions, and how this legal basis was compatible with international norms and standards on the rights and freedoms provided for in the Universal Declaration of Human Rights. They also wanted to know on what legal basis Mr. Al-Harbi's lawyer was not recognized by the Court, and how this legal basis was compatible with international norms and standards on the right to appropriate legal assistance during a trial.

Observations

334. The Special Rapporteur is concerned that the Government has not responded to her urgent appeals. She would like to draw the Government's attention to paragraph 9 of General Comment 22 of the Human Rights Committee which provides that "the fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 or 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter [...] are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2 of the Covenant constitute important safeguards against the infringement of the rights of religious minorities and other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups." Paragraph 10 provides that: "If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties etc. or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it."

335. The Special Rapporteur is concerned about the measures taken against those individuals or groups who profess a different religion to the official religious doctrine and urges the Government to take steps to ensure that freedom of religion does not make adherence to a religion other than the State religion impossible.

Serbia and Montenegro

Response from the Government dated 14 February 2005 to a communication sent on 27 October 2004 (See E/CN.4/2005/61/Add. 1, at paragraph 210)

336. The Government informed that the Bill was drafted by the Ministry of Religious Affairs of the Republic of Serbia, with the aim of regulating relations between State and the Church. The Bill was drafted because the previous Law on the issue was repealed in 1993. The draft Bill has not yet been considered by the Government or the Assembly of the Republic of Serbia. The Government enclosed a memo prepared by the Ministry of Religious Affairs, containing a number of observations and comments on the Bill.

Communication sent on 17 March 2005

337. The Special Rapporteur sent this communication to raise her concern in view of reports that the latest and fourth draft of the proposed religion law would, like previous drafts on which she had previously sent a communication on 27 October 2004 (see above), divide religious communities into "traditional" faiths and other faiths with lesser rights. Baptist Pastor Dane Vidovic indicated that this division "is critical, because it will affect other laws and areas of life, including rights to religious education in public schools, taxes and property, social security and pension funds." Religion Minister Milan Radovic has reportedly wrongly justified this situation on the basis that Serbia is the "only country in Europe without a law regulating relations between the state and religious communities", claiming that this is a "dangerous legal void". Reports indicate that the religion ministry is attempting to finalize the text after receiving many critical comments from domestic and international non-governmental organizations and religious groups. It is convening a roundtable discussion of this latest draft with religious organizations and legal specialists, as well as representatives of the Organization for Security and Cooperation in Europe and the Council of Europe.

338. Serbia has not had a law on religious communities since 1993 and attempts to draft this new law have been controversial. For the last 13 years, religious communities attempting to gain legal status in Serbia have had to register as citizens' associations, which is legally problematic.

Response from the Government dated 18 April 2005

339. The Government noted that its response dated 14 February 2005 sent to a communication dated 27 October 2004 on the same issue as those raised in the communication sent on 17 March 2005 had not been included in the report for the 61st Session of the Commission on Human Rights.

Observations

340. The Special Rapporteur is grateful for the responses received from the Government, along with the copy of the draft bill and the observations and comments.

Sri Lanka

Communication sent on 20 January 2005

341. The Special Rapporteur had received information according to which, with the controversial anti-conversion bill to be presented in the Parliament shortly, anti-

Christian sentiments had re-surfaced with the main Buddhist representative party, the Jathika Hela Urumaya (JHU) protesting against large amounts of Tsunami funds being allocated to Christian organisations.

342. The initial protests in this regard were allegedly directed at the Sri Lankan branch of the World Vision following funds generated from the Tsunami-aid cricket match being directed to the organisation for relief work.

343. The Janatha Vimukthi Peramuna party (JVP), had allegedly joined in the accusations that the allocation of funds to World Vision Sri Lanka would make conversions from Buddhism to Christianity more rampant.

Response from the Government dated 17 March 2005

344. The Government indicated that it was not in a position to substantiate, deny or justify any statement or opinion expressed by independent political parties or organizations with regard to the allegations and concerns expressed in the Special Rapporteur's communication.

345. Within the country's democratic framework that provides for the freedom of expression and opinion, independent political parties, civil society organizations and religious groups and individuals have expressed different views on the subject of alleged unethical religious conversions in Sri Lanka. Therefore, it was the wish of the Government of Sri Lanka that during the forthcoming visit to Sri Lanka, the Special Rapporteur would be able to speak to all stakeholders on the issue of alleged unethical conversions and form an independent opinion on the subject, while appreciating the democratic framework that prevails in Sri Lanka not only with regard to freedom of religion or belief but also to the freedom of expression and opinion.

Urgent appeal sent on 25 May 2005

346. The Special Rapporteur was informed that the erection of a Buddha statute in a bus -stand in the town of Trincomalee had provoked angry reactions since 17 May 2005. Two explosions had allegedly occurred close to the site where the Buddha statute stands; protests and demonstrations opposing the erection of the statute had taken place and a number of public establishments, schools, banks and other buildings had been closed for several days. As a result of the explosions and disturbances, one person was allegedly killed and a few others were injured.

Observations

347. The Special Rapporteur is grateful for the Government's response dated 17 March 2005 and would like to take this opportunity to once again thank the Government for having enabled her to visit Sri Lanka from 2 to 12 May 2005. For a full analysis of the situation of freedom of religion or belief in Sri Lanka, including regarding the issues raised above, the Special Rapporteur refers to the report she has recently submitted following her visit (*E/CN.4/2006/5/Add.3*).

Thailand

Communication sent on 12 July 2005

348. The Special Rapporteur sent this communication in relation to a series of beheadings of Buddhists by Muslim militants between November 2004 and June 2005. A similar incident was subject of a communication on 14 June 2004, to which the Government replied on 6 July 2004 (See E/CN.4/2005/61/Add.1, at para. 227 to 232).

349. On 15 June 2005 the corpse of a retired Buddhist teacher, aged 65, was found in Pattani Province. He had been beheaded by a group of Muslims who left a note next to the head, saying that they would kill two civilians for every innocent Muslim detained by the authorities without evidence.

350. On 5 June 2005 the body of Boonchan Saipeth, aged 59, a rubber plantation employee, was found at his house in Yaha district of Yala province. His head had been left hundred meters away on the road.

351. On 9 November 2005, the decapitated body of Kaew, aged 60, was found in a house in Changpeuk village in Narathiwat province. Police found handwritten letters with the body that threatened more attacks on religious grounds.

352. On 2 November 2005 the head of deputy village chief Ran Tulae was found by a road in southern Narathiwat province. The rest of the body was discovered on the same road a kilometer away together with a note saying the killing was in revenge for the killing of Muslims in November in Tak Bai district.

Observations

353. The Special Rapporteur is concerned that there has been no response yet to this communication and hopes that the Government will remedy this situation in the near future. She would like to draw the Government's attention to Paragraph 8 (a) of Resolution 2005/40 which urges states to step up their efforts to eliminate intolerance and discrimination based on religion or belief notably by taking all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief. She would also like to refer to paragraph 10 of the same resolution, in which the Commission on Human Rights emphasizes the importance of a continued and strengthened dialogue among and within religions or beliefs, encompassed by the dialogue among civilizations, to promote greater tolerance, respect and mutual understanding.

354. Moreover, as she underlined in her previous report to the Commission on Human Rights (E/CN.4/2005/61, para. 42), "human rights obligations of States [...] also consist in ensuring the free exercise of freedom of religion or belief by protecting religious minorities and enabling them to practise their faith in all security. States also have an obligation to bring the perpetrators of acts of violence or of other acts of religious intolerance to justice and to promote a culture of religious tolerance".

Turkey

Communication sent on 22 June 2005 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture

355. The Special Rapporteurs brought to the attention of the Government the situation of Mr. **Mehmet Tarhan** who was arrested on 8 April 2005, early in the morning, and brought to a military unit in Tokat, and later transferred to the military prison in Sivas. A declared conscientious objector to compulsory military service, Mehmet Tarhan was charged under Article 88 Turkish Military Penal Code for insubordination. In the Sivas Military Prison, according to his lawyer, he faced threats and abuse by fellow detainees without any intervention on his behalf of the prison staff. On his arrival, staff sergeant Mustafa Selvi threatened Mehmet Tarhan with transfer to "Common Cell No. 2", where the "wildest" prisoners are imprisoned. Later, he was ordered to enter a darkened "Common Cell No. 1" where the inmates threatened him with death for being a traitor and beat him and pulled his hair. He was later transferred to a single cell, where he continued to be subject to threats, beatings, and demands for money and clothes from fellow prisoners. He sustained injuries to his lips, bruises to his chin, neck, body, knee, legs and feet. As a result of his injuries he has experienced breathing pains, hair loss, and difficulty standing. Despite informing the prison staff, they did not prevent further attacks, but rather encouraged other prisoners to beat him. Following the requests from his lawyer, the prison authorities recorded his abuse and undertook to ensure his safety. However no information was available concerning any investigations carried out. Mehmet Tarhan had reportedly gone on a hunger strike to protest his treatment in detention.

Response from the Government dated 7 October 2005

356. The Government indicated that Mr. Mehmet Tarhan was being sought for failing to report for military service when he was caught on 10 April 2004 in Izmir. Later he was transferred to Menderes Recruitment Office in Izmir and then to his military unit where he did not obey the instructions given to him, declaring his refusal to perform military service on grounds of conscientious objection. He was transferred to Military Prison after he was arrested on 11 April 2005. His lawyers lodged complaints with the Military Prosecution Office on 3 May, 25 May and 6 June 2005, alleging ill-treatment in prison.

357. Mehmet Tarhan was released on 9 June 2005 during his trial on the charge of insubordination to avoid military service under Article 88 of Military Penal Code. However, he committed the same offence after his release and was returned to the military unit he was assigned to. A second investigation was commenced against Mehmet Tarhan who was later arrested upon the Court's ruling. The Military Court convicted him on both insubordination charges and sentenced him to a total of 4 years imprisonment and also ruled on the continuation of his arrest at the hearing held on 10 August 2005 for both cases.

358. His lawyers have submitted a petition for extension of time to appeal against the Court's ruling which is at the stage of being notified to the parties.

359. An inquiry was launched by the Military Prosecution Office into his allegation of ill-treatment in prison. This inquiry is still underway.

360. Mehmet Tarhan went on hunger strike between 25 May and 29 June 2005 during which he refused any assistance including food and drink and consumed only sugar and vitamin pills.

361. The Government further informed the Special Rapporteur that Article 72 of the Turkish Constitution stipulates that national service is the right and duty of every Turkish citizen, the implementation of which shall be regulated by law. In this framework, according to Article 1 of the Military Act No. 1111 military service is an obligatory service for every man who is a citizen of the Republic of Turkey. In this light, it is not possible to be exempted from military service on grounds of conscientious objection under Turkish legislation in force. Currently, there is no legislation or application on alternative service in Turkey.

362. The Government indicated that conscientious objection has not been recognized as a right under international law. In this framework, Article 4(3) b) of the European Convention on Human Rights and Fundamental Freedoms stipulates that forced or compulsory labour shall not include “any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service”. Thus, this provision explicitly leaves the recognition of conscientious objectors to the discretion of States. Similar wording is used in Article 8(3) of the International Covenant on Civil and Political Rights. Furthermore, the European Court of Human Rights and the Commission have supported the view that “the Convention and its Protocols do not guarantee, as such, any right to conscientious objection and that Article 9 of the Convention, which provision guarantees to everyone the right to freedom of thought, conscience and religion, does not give conscientious objectors the right to be exempted from military or substitute civilian service. It does not prevent a Contracting State from imposing sanctions on those who refuse such service (cf. No. 7705/76, Dec. 5.7.77, D.R.9 p. 196; No. 10600/83, Dec. 14.10.85, D.R. 44 p. 155; and No. 17086/90, Dec. 6.12.91, D.R. 72, p. 245).

Additional response from the Government dated 2 December 2005

363. The Government informed that Military Prosecutor’s Office initiated an investigation into the allegations of ill-treatment at the Military Prison at the 5th Infantry Training Brigade Command, where he is currently detained. As a result of the investigation, an indictment was issued on 26 October 2005 charging an officer and a non-commissioned officer in the military prison administration with neglecting official duty and charging two detainees with looting. The trial is underway at the Military Court of the 5th Infantry Training Brigade Command.

Observations

364. The Special Rapporteur is grateful for the Government’s response to this communication. However, she would like to underline that she did not raise the issue of conscientious objection under article 8 of the ICCPR but rather under article 18 ICCPR. Moreover, the right to conscientious objection has been addressed by the

Human Rights Committee, which stressed, in paragraph 11 of its General Comment 22 that although the International Covenant on Civil and Political Rights does not explicitly refer to a right to conscientious objection, the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.

Turkmenistan

Communication sent on 17 March 2005

365. The Special Rapporteur addressed several situations in this communication.

366. The following situations involving Jehovah's Witnesses had been brought to her attention: on 8 September 2004, **Gulzhemal Allagulyyeva** a Jehovah's Witness from the Khojamb district of Turkmenabad region was fined 1,250,000 manats allegedly because of her religious activities. She was reportedly forced to sign a statement that she would stop sharing her faith with others. Reports indicated that an officer of the NSM secret police and two officers of the police's 6th department, which deals with terrorism, were present at the administrative commission.

367. In the evening of 29 September 2004, **Altyn Jorayeva**, a Jehovah's Witness from Seydi, and her three children aged 6, 7 and 8 were visiting fellow believer **Babakuly Yakubov** in the village of Khojakenepsi in Farab district. Three other Jehovah's Witnesses, namely **Shukurjan Khatamova**, **Rozyzhan Charyyev**, and **Oguldurdy Altybayeva** were also reportedly present. Four policemen suddenly entered the apartment without producing any personal identification documents. Deputy police chief **Akhmetjan Alymov** and **Serdar Khuseynov** searched the apartment for religious literature and confiscated what they could find. Ms. Jorayeva and her children were taken to the police station where the Chief of police, Mr. **Khemrayev** interrogated her in an alleged verbally abusive manner. As a consequence of threats and intimidation, her children were forced to utter the oath of loyalty to President **Saparmurat Niyazov** as well as to recite verses to him. The family was released shortly before midnight.

368. On 13 October 2004, Mr. **Yakubov** and Mr. **Khatamova**, who were also present during the above-mentioned raid, were summoned to the hyakimlik's administrative commission and each fined 2,500,000 manats. The chairman of the commission, **Berdyyev**, reportedly ordered hyakimlik official **Abdull Charyyev** to have Mr. **Yakubov** dismissed from his work.

369. On 19 October 2004, officers of the hyakimlik of Ashgabad's **Azatlyk** district forcibly took **Vladimir Rodionov**, an underage boy, from school to the hyakimlik. Without notifying his mother, **Tatyana Rodionova**, Vladimir was intensively interrogated and threatened in an alleged attempt to obtain the addresses of his mother's fellow believers. He was forced to sign a statement that he would not attend any more Jehovah's Witness meetings with his mother.

370. On 2 November 2004, the police arrested **Amangozel Atageldiyeva**, **Gulshirin Atageldiyeva**, **Ayjemal Khummedova** and **Maysa Annagylyjova** in the

town of Saparmurat Turkmenbashi, in the Mary region of south-eastern Turkmenistan. The four women were taken to the local administration, threatened and allegedly mocked with the aim of forcing them to abandon their religious views before they were freed. Two further Jehovah's Witnesses, Guncha Atageldiyeva and Bakhar Sapayeva, were reportedly summoned and similarly threatened in the following days.

371. On 12 November 2004, Ms. **Bilbil Kulyyeva** was forcibly evicted from the hostel in Ashgabad where she was living with her four children. The eviction was reportedly ordered by the religious affairs department of Ashgabad city hyakimlik.

372. On 16 November 2004, a district police officer arrested **Maksat Khalyshev** while he was in the street in an outlying suburb of Ashgabad. After finding a Bible and other religious literature on him and in the absence of a permit to live in the capital, Khalyshev was taken to the police station. He was reportedly verbally insulted and humiliated before he was taken to a holding centre where he was kept for 24 hours in the open air on a cold concrete floor without any covering.

373. On 26 November 2004, **Murat Saryyev**, originally from Dashoguz, was summoned to the administration of Ashgabad's Kopetdag district. He was reportedly met by a commission of nine persons in the room dedicated to the Ruhnama, a book of President Niyazov's "spiritual" writings which has taken the place of the works of Lenin as an object of official veneration. He was then reportedly humiliated by the members of the commission who also allegedly threatened him that his apartment would be confiscated and that he would be evicted from Dashoguz if he continued to conduct meetings with his fellow believers in his apartment and to speak about the gospel to others.

374. On 10 December 2004, **Darya Meshcherina**, a 20-year old Jehovah's Witness in Ashgabad was arrested by the police after she gave a friend "My Book of Bible Stories". Two police officers reportedly drove her to the police station where the content of her bag was inspected and the following items were confiscated: The Watchtower magazine, brochures, audiocassettes, photocopied sheets of paper and a medical identification document. Reports further indicate that she was forced to make a written statement. Finally, on 20 December 2004, the Ashgabad's Azatlyk district court fined her 2,500,000 manats under Article 205 of the Code of Administrative Offences, which punishes any religious activity that has not been authorized by the Government.

375. Finally, it has been brought to the attention of the Special Rapporteur that the Jehovah's Witnesses are among a whole range of religious communities that had failed to obtain registration with the Government and therefore the right to conduct any religious activity. Other such faiths effectively banned would include all Protestant denominations apart from the Adventists and possibly the Baptists whose registration had not reportedly been completed eight months after they were given their registration certificate, Shia Muslims, the Armenian Apostolic Church, the Catholics (except on Vatican diplomatic territory), the Lutherans, the Jews, the Yezidis as well as the New Apostolic Church. Besides, even for registered faiths such as the Muslims, the Russian Orthodox, the Adventists, possibly the Baptists, the Hare Krishna community and the Baha'is, religious activity is reportedly legal only in the few authorised places of worship.

376. The Special Rapporteur was also informed that two mosques were demolished in Ashgabad in October 2004 in addition to the four demolitions which reportedly took place earlier in the capital. Both mosques were located in Shor-Garadamak in Azatlyk district of northern Ashgabad. Reports indicate that a sign hanging in front of one of the properties indicated that the Azatlyk district police outreach unit would be built to replace this mosque. All six mosques were reportedly destroyed a few days before the start of the Muslim fasting month of Ramadan.

377. Two people were allegedly arrested for protesting against the demolition of the mosque near Ashgabad's Customs Clearing House. The names of those detained were unknown and it was not known whether they were still being held or whether they were punished for the protest.

378. The Special Rapporteur had further been informed that the authorities continued to retain tight control over all Muslim activity. For instance, it was reported that the main imam for the city of Ashgabad, Hezretguly Khan, was dismissed in September 2004 because "some Wahhabis" had been found in the city.

379. Finally, the 2004 pilgrimage to Mecca, the haj, as in previous years, saw only 188 pilgrims allowed to travel. This number was reportedly far below the reported quota allocated to Turkmenistan by the Saudi authorities. It was reported that at least one person who had been on the haj waiting list for at least 10 years went on this year's haj by paying a bribe in US dollars to somebody else who had been on the waiting list for less than 2 years.

380. The Special Rapporteur was also informed that Turkmenistan had increased the number of religious prisoners of conscience it had jailed by imprisoning two further Jehovah's Witnesses, **Atamurat Suvkhanov**, aged 18, and **Begench Shakhmuradov**, aged 26, for refusing on religious grounds to serve in the armed forces. Atamurat Suvkhanov was sentenced to 18 months' imprisonment in the north-eastern town of Dashoguz on 17 December 2004, while Begench Shakhmuradov was reportedly sentenced in the Azatlyk district of the capital Ashgabad to one year's imprisonment on 10 February 2005. It was reported that Mr. Suvkhanov was held in the women's labour camp in the eastern town of Seydi whereas the whereabouts of Mr. Shakhmuradov were unknown. Both men were sentenced under Article 219 of the Criminal Code, which punishes refusal to serve in the armed forces. This brings the total number of known religious prisoners of conscience in the State to five, four of them Jehovah's Witnesses and one Muslim, the 57-year-old former chief mufti, **Nasrullah ibn Ibadullah**, who was arrested after falling out with President Niyazov and was serving a 22-year sentence on charges that the Government allegedly refused to make public. He had not been freed despite recent reported prisoner amnesties. The two other Jehovah's Witness prisoners, Mansur Masharipov and Vepa Tuvakov, both from Dashoguz, were reportedly sentenced on 28 May and 3 June 2004 on the same grounds and were reportedly held in the Seydi men's labour camp. All these sentences were reportedly issued following the televised announcement by President Saparmurat Niyazov in early 2004 that all imprisoned conscientious objectors should be released. Reports indicated that religious prisoners of conscience in Turkmenistan had been harshly treated in the past, regularly beaten, threatened with homosexual rape, and in one case allegedly treated with psychotropic drugs. Concerns had been expressed that

Turkmenistan offers no non-combat alternative to those who cannot serve in the military on grounds of conscience.

Response from the Government dated 18 April 2005

381. The Government indicated that Turkmenistan is a secular State and, according to the country's Constitution, religion is separate from the State. At the same time, a respectful attitude to generally accepted norms and values in the spiritual sphere of society is one of the main principles of the formulation and application of State policy in Turkmenistan. In this connection, Turkmenistan has been and remains committed to the rigorous and consistent pursuit of a policy for the comprehensive implementation of guarantees in the field of human rights and freedoms, including in the sphere of religion or belief.

382. In this context, the Government referred to the constitutional provision specifying that in Turkmenistan "the State guarantees freedom of religions and faiths and their equality before the law. Religious organizations are separate from the State and may not intervene in affairs of State or perform State functions. Everyone has the right independently to determine his or her own religious preference, to practice any religion alone or in association with others, to practice no religion, to express and disseminate beliefs related to religious preference, and to participate in the performance of religious cults, rituals and ceremonies" (article 11 of the Constitution of Turkmenistan).

383. In accordance with domestic legislation, the registration of religious organizations and groups is ensured in the territory of Turkmenistan through compliance with generally recognized international norms regardless of their number, faith or religion.

384. Convincing evidence of this process is the fact that Turkmenistan now knows (officially registered and functioning) religious organizations and groups of Muslims, Orthodox Christians, Seventh-day Adventists, Baha'is, Evangelical Christian Baptists and a Hare Krishna group. In addition, on 16 April 2002 the following religious organizations and groups were also registered: the Church of Christ, the "Greater Grace" Evangelical Church, the "Light of the East" Church of Evangelical Christians, the Full Gospel Christian Church and the New Apostolic Church. At the same time, we can report that, following the humanistic traditions of the Turkmen people and guided by the principles of justice, mercy and philanthropy, Vepa Tuvakov, Atamurat Suvkhanov, Mansur Masharipov and Begench Shakhmuradov were pardoned by a Presidential Decree of 16 April 2005.

385. The Government also indicated that there were no instances of the detention of persons on account of their religion or cases of application of administrative sanctions against them. Furthermore, we can report that there are no instances of the demolition of buildings in which religious ceremonies or acts of worship are conducted.

386. Neutral Turkmenistan, strictly following the international obligations that it has undertaken, is steadfastly pursuing a policy of close cooperation with the United Nations and its institutions.

387. In conclusion, the Government emphasized that Turkmenistan is demonstrating in practice its readiness to engage in a dialogue at the level of the international organizations, and primarily with the United Nations, in a spirit of constructivism and dedication to the achievement of the common goals defined in the name of peace and of the well-being of each of the peoples constituting the foundation of our cooperation within the framework of the community of nations.

Observations

388. The Special Rapporteur is grateful for the Government's response. She remains, however, concerned about the number of alleged cases of violations or limitations of the right to freedom of religion or belief. She also notes that the lack of freedom of religion in Turkmenistan has been raised by other United Nations human rights mechanisms. In its most recent concluding observations on Turkmenistan (CERD/C/TKM/CO/5), the Committee on the Elimination of Racial Discrimination stated that, "while stressing the complex relationship between ethnicity and religion in Turkmenistan, [it noted] with concern information that members of religious groups do not fully enjoy their rights to freedom of religion".

389. In particular, the Special Rapporteur wishes to emphasize that the right to freedom of religion is not limited to members of registered religious communities. As she reminded in her previous report to the Commission on human rights, referring to the OSCE/ODIHR Guidelines for Review of Legislation pertaining to Religion or Belief, "registration should not be compulsory, i.e. it should not be a precondition for practicing one's religion, but only for the acquisition of a legal personality and related benefits" (E/CN.4/2005/61, para. 58).

United Kingdom of Great Britain and Northern Ireland

Urgent appeal sent on 25 April 2005 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Working Group on Arbitrary Detention and the Special Rapporteur on torture

390. The Special Rapporteurs brought to the attention of the Government the situation of Hua Jin, a 35 year-old student and national of the People's Republic of China, residing in Manchester, who was detained at Harmondsworth Immigration Removal Centre and was at risk of imminent forcible return to China, following the rejection of his asylum application. On 10 September 2003, around 2am, while on vacation in China, he was arrested together with another person, Zhu Zhigong, in Jinxi City, Liaoning, by officers of the Jinxi City Lianshan District Police. At the time of their arrest, they were distributing Falun Gong-related flyers in a residential area. They were brought to separate interrogation rooms on the second floor of the station and interrogated about their activities. Zhu Zhigong was beaten, including with handcuffs. Hua Jin was slapped, beaten and kicked by three police officers, and lost a tooth. The two men were later held together in a room, from which Hua Jin escaped through a window. He reportedly remained in hiding for ten days in Taiyuan City, Shanxi, before boarding a flight back to the United Kingdom on 21 September 2003. He has been involved with Falun Gong activities prior to his arrival as a student in the UK, for which his family has been threatened, and continues to be involved, including

protests against the persecution of Falun Gong practitioners before the Chinese consulate in Manchester.

391. In view of allegations of ill-treatment of Hua Jin and threats related to his practice of Falun Gong, concern was expressed that he might have been at risk of torture or other forms of ill-treatment should he be returned.

Response from the Government dated 30 August 2005

392. On 30 August 2005 the Government replied to the communication of 25 April 2005 concerning Hua Jin. The Government informed that he was scheduled to return to China on 26 April 2005. It informed that the allegations regarding Hua Jin's treatment in China essentially repeat the account he gave to the Adjudicator who heard his appeal against the refusal of his asylum claim. The account Hua Jin gave to the Adjudicator contained a number of discrepancies when compared with the accounts he had previously put forward in support of his claim. The Adjudicator did not accept that Hua Jin was arrested or persecuted in China. His application to appeal against the Adjudicator's decision to the Immigration Appeal Tribunal was refused on 25 June 2004.

Communication sent on 14 July 2005

393. The Special Rapporteur first wished to condemn the bombings which took place in London on 7 July 2005 and expressed her sympathy and her sorrow to the families of all those killed. She also praised the Government as well as the people of London for pursuing the values of tolerance and non-discrimination.

394. The Special Rapporteur then brought to the attention of the Government information she had received according to which, despite strong calls from community leaders not to retaliate on any group, following these attacks Muslims across the country had been facing a stream of insults and attacks.

395. According to the information received, there had been several arson attacks and acts of vandalism reported on mosques in various parts of the country, including London, the West Midlands, Merseyside, Leeds, Tower Hamlets [east London], Merton [south London] Telford and Birkenhead. For instance, the police were investigating a fire in a Leeds mosque, which might have been caused either by a petrol bomb or an incendiary device.

396. It was further reported that Muslim monitoring groups had recorded with the authorities between three and four thousand hateful and threatening messages received by mosques across the country. The East London Mosque, near the site of one of the attacks, had reportedly received hate e-mails and specific threats to disrupt Friday prayers. A few police officers reportedly stood outside during the prayers on 8 July 2005, which ultimately ended without any incidents.

397. In view of the above, the Special Rapporteur welcomed reports that the police service has increased patrols near places of worship and has put in place consultations with a view to reassure and protect all individuals in the country.

Response from the Government dated 30 September 2005

398. The Government first agreed that regrettably, such incidents do occur and it is important that the police respond and make every effort to identify those responsible.

399. With reference to the arson attempt on Armley mosque in Leeds, the Government indicated that this attack was a failed attempt to set fire to the toilet block of the mosque in the early hours of 8 July 2005. West Yorkshire Police had advised the Government that it had not been possible to apprehend any suspects in relation to the incident, because local CCTV did not give sufficiently good quality material to identify anyone involved. Of course, should further information come to light, this position might have changed. They also confirm it was a relatively minor incident (some burning material was pushed through a window, but no accelerants/inflammable liquids etc. were used).

400. While the Government could not separately identify the incident of abusive emails to the mosque in East London it confirmed that there were widespread reports of abusive/threatening Islamophobic emails, letters and phone calls shortly after the attacks.

401. The Prime Minister and the Home Secretary met faith leaders shortly after the attacks and gave a commitment to intensify their work with faith communities over the following months. That work was now taking place, with a programme of ministerial meetings with community and faith group representatives, and a series of working groups, including one addressing security issues, Islamophobia, protecting Muslims from extremism, and community confidence in policing.

402. The police were alive to the need to reassure communities that might be targeted and were liaising directly with community leaders and with local authorities to ensure the safety and security of all their communities at this time. This has involved, for example, high visibility police patrols near mosques, following consultation with representatives of local communities. In addition, the Government had been working to reassure communities and to ensure they would receive feedback about their experiences. The Government further assured the Special Rapporteur that the police response to hate crime at all levels was robust. This work would continue and relates to wider work the Home Office, regional and local partners and the police are engaged in to foster greater community cohesion and address community tensions. For example, relationships have been developed with media outlets to ensure that issues relating to race, cohesion, faith and asylum and immigration are reported in a fair and responsible way, to avoid exacerbating tensions or creating a climate in which extremism and hate crime are more likely.

403. The Government finally indicated that it continued to monitor community tensions. On the whole, community relations remain positive and the sort of attacks to which the Special Rapporteur referred in her communication are reducing and the tension levels in communities returning to normal. The experiences of the past two months had reinforced the Government's determination to root out unacceptable behaviour.

Observations

404. The Special Rapporteur is grateful for the Government's detailed responses and welcomes the Government's commitment to take necessary measures to prevent the reoccurrence of such acts.

United States of America

Communication sent on 23 May 2005

405. The Special Rapporteur was informed that there had been several acts of desecration of the Holy Koran during the interrogations of detainees at the detention facility in Guantanamo Bay in Cuba. It was for instance reported that a copy of the Koran was flushed down a toilet by interrogators and that detainees have reacted to such desecrations including by organizing a hunger strike. It was moreover reported that instances of desecration of the Holy Koran may have taken place in other detention facilities under control of the US Army.

406. These allegations began to appear through the media but also through the testimonies of several former detainees. As a result of these allegations, a number of demonstrations, rallies and other forms of popular reactions have taken place in different places, including in Afghanistan, Indonesia and Pakistan, during which people have been killed or injured.

Response from the Government dated 18 August 2005

407. The Government stated that the Department of Defense (DoD) has carefully looked into the matter of Koran mishandling at the U.S. detention facility in Guantanamo Bay, Cuba. The DoD investigation found five instances of apparent mishandling by guards or interrogators.

408. The Government reemphasized its dedication to the freedom of religion. The Joint Task Force has carefully implemented a standard operating procedure that makes every effort to provide detainees with religious articles associated with the Islamic faith (which was attached to the Government response) and takes particular care that the Koran is handled in a respectful manner.

409. The alleged instances of Koran mishandling, and specifically the claim that a Koran was flushed down the toilet, were the focus of an in-depth investigation that was concluded on 3 June 2005. This investigation found no credible evidence that a member of U.S. military personnel responsible for providing security to Al Qaeda detainees under U.S. Control at Guantanamo Bay, Cuba ever flushed a Koran down the toilet. An interview with the detainee who reportedly made this allegation revealed that he was not a witness to any such mistreatment and no other claims of this type have been made. The matter is therefore considered closed.

410. Since the issuing of Korans to detainees in January 2002, there have been nineteen incidents involving handling of the Koran by Joint Task Force personnel. Of these nineteen incidences, ten involved the touching of a Koran during the normal performance of duty. The other nine incidents involved intentional or unintentional

mishandling of a Koran. General Hood, who led the investigation, identified seven incidents where a guard may have mishandled a Koran. In two additional instances (one confirmed) an interrogator may have mishandled a Koran. The investigation also revealed fifteen cases in which the detainees themselves mishandled or inappropriately treated the Koran.

411. With regard to the five instances of confirmed Koran mishandling the Joint Task Force found:

- 1) During an interrogation in February 2002, a detainee complained that guards at Camp X-ray kicked the Koran of a detainee in a neighbouring cell. The interrogator reported the incident, the guards were aware of the detainee's complaint but there is no evidence of further investigation.
- 2) On 15 August 2003, two detainees complained that their Korans were wet because the night shift guards had thrown water balloons on the cell block. The complaints were recorded. It has not been determined whether further complaints were made by the detainees or whether their Korans were replaced. There is no evidence of further investigation into this incident.
- 3) On 21 August 2003, a detainee complained that a two-word obscenity had been scrawled in English on the inside cover of his English-language Koran. The complaint was recorded and the English-language Koran was taken from the detainee who retained his Arabic-language Koran. There is no record of a formal complaint of the detainee to the commander.
- 4) On 25 March 2005 a detainee complained to his guards that urine came through an air vent and splashed on him and his Koran while he lay near the air vent. A guard reported to his cellblock commander that he was at fault since he had left his post to urinate outside and had done so near the air vent so that the wind blew his urine into the air vent. The guard was relieved of duty and the detainee was immediately issued with a fresh uniform and a new Koran.
- 5) On 25 July 2003, a contract interrogator apologized to a detainee for stepping on the detainee's Koran in an earlier interrogation. The memorandum of the 25 July 2003 interrogation shows that the detainee had reported to other detainees that his Koran had been stepped on. The detainee accepted the apology and agreed to inform other detainees of the apology and ask them to cease the disruptive behaviour caused by the incident. The interrogator was later terminated for a pattern of unacceptable behaviour.

412. As part of the investigation, General Hood has determined that the current guidance to the Guard force for handling the Koran is adequate although a number of recommendations for minor modifications are under review. The Government feels it is important to note the number of Korans (some 1600) which have been distributed among detainees to facilitate their desire to freely worship and the small number of very regrettable incidents should be seen in light of the volume of efforts to facilitate free religious practice.

Communication sent on 30 June 2005

413. The Special Rapporteur brought to the attention of the Government information she had received concerning the situation of Mr. **Wazir Ahmed**, Mr.

Zahid Ahmed, Mr. Hashmat Ali, Mr. Abdul Majeed, Shamsulhaq, Mr. Muhammad Aslam and Mr. Muhammad Abid, former detainees of the detention facility in Guantanamo Bay, Cuba. They were among a group of forty-five men originally arrested four years ago in Afghanistan.

414. According to the information received, while they were in custody in Guantanamo Bay, the aforementioned were victims of ill-treatment, such as sexual harassment during prayers as well as humiliation through desecration of the Holy Koran, which was deliberately designed to hurt their religious beliefs.

Observations

415. The Special Rapporteur is grateful to the Government for its detailed reply and would like to refer to the joint report that she submitted with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on the situation of detainees at Guantánamo Bay (E/CN.4/2006/120).

Uzbekistan

Communication sent on 4 May 2005 with the Special Rapporteur on torture

416. The Special Rapporteurs brought to the attention of the Government the situation of Mr. **Iskander Tolipov**, UYa-64/18 Prison infirmary, Tashkent, who was imprisoned in KIN-36 Prison, Navoi City, from 17 December 2004 to 17 February 2005. When he arrived at the prison, guards stood in lines on either side of him and beat him with truncheons. The guards prohibited him from praying or reading the Koran. When he protested this rule, guards handcuffed and beat him several times with truncheons on his chest and lower back and on the soles of his feet. After one of the beatings, the prison director, Ziyodullal Madievich, asked him "Do you understand the rules now?" After he replied that he would continue to pray, the director instructed to the guards, "It seems he does not understand the rules, continue." He was also threatened with sexual assault. For refusing to stop his religious activity, he was later punished with six months in a damp isolation cell, without heating or bedding. He became ill, and since 17 February 2005 he has been held in the UYa-64/18 Prison infirmary, Tashkent, suffering from tuberculosis. Iskander Tolipov was sentenced to seven years' and six months' imprisonment on 24 March 2002 for membership in an illegal religious organisation.

Response from the Government dated 1 July 2005

417. The Government informed that Iskander Tolipov was convicted of a number of offences on 24 March 2002 and was sentenced to seven and a half months deprivation of liberty. He is currently serving his sentence at UYa-64/36 in the city of Navoi. It informed that no unlawful actions had been taken by the administration of the prison. Furthermore, he did not show any signs of torture or ill-treatment when he

underwent a routine medical check on his arrival. They indicated that he had been suffering from tuberculosis before he was admitted to the prison.

418. The Government informed that under Article 12 of the Penal Correction Code, convicts are guaranteed freedom of conscience. It informed that Iskander Tolipov is entitled to profess any religion or not to profess and religion at all. The law allows inmates to practice religious rites and make use of articles of worship and religious literature. The Government informed that these requirements of the law are strictly observed by the administration of the institution.

Communication sent on 7 June 2005

419. The Special Rapporteur was informed that Uzbek authorities had banned the relics of two saints recognized by the Russian Orthodox Church from entering the country. The two saints, Grand Duchess Elizaveta Fyodorovna and a lay-sister Varvara, were reportedly both nuns martyred in 1918, by being thrown alive down a mine shaft. Reports indicated that the relics had already been brought to eight other former Soviet republics over the past six months.

420. The Special Rapporteur was further informed that the Protestant Peace Church, in the town of Chirchik, outside the capital Tashkent, and the capital's Jehovah's Witness congregation were the latest religious communities to be refused registration by the Government. Both communities would now be at risk of prosecution and therefore the possibility of being imposed large fines and jail terms. The reasons given to the Peace Church for the decision on 7 January 2005 reportedly included the claim that their application contained "many grammatical and spelling mistakes." In fact, it was reported that none of the reasons given were specified by Uzbekistan's religion law. Reports indicate that the Tashkent community of the Jehovah's Witnesses had long been denied registration, despite renewed attempts to register since March 2004. Refusal to register a religious community has serious implications. Indeed, the country's law on religions makes the activities of an unregistered religious community subject to prosecution, both as administrative and criminal offences. Reports indicate that, in 2004, only one new non-Muslim religious community was registered by the State.

421. On 11 February 2005, Halima Boltobayeva, a Muslim from Margelan whose husband was in jail, had reportedly been freed after two months in jail and given a one year suspended sentence. Concerns had been expressed that she was framed by prison staff, after she refused to accept their claims that she dressed like a "shahidka", a term reportedly widely used for a female Muslim terrorist. She reportedly wears the hijab headscarf and a long garment that covers her entire body. In order to justify their actions, the prison staff claimed to have found leaflets on her from the banned Islamist group Hizb-ut-Tahrir. However, Ms. Boltova insisted that these leaflets were planted. The Prosecutor had reportedly demanded that she receive a three year jail sentence, which demand Judge Zainuddin Begmatov did not accept. Judge Begmatov, who presided at all three sessions of the trial, imposed the one year suspended sentence for Ms. Boltobayeva's alleged breaching of both article 25 of the Criminal Code (preparation for a crime or attempt to commit a crime) and article 159 (undermining the constitutional order).

422. Reports indicated that no investigation was conducted into the actions of the prison staff.

423. According to the information received, the Uzbek Government was limiting the number of adult Muslims who could go on the haj, or pilgrimage, to Mecca as required by Islam. In 2004, only 4,200 of the more than 6,000 Uzbek citizens who wanted to make the pilgrimage were allowed to go. The numbers were reportedly controlled under an agreement between Saudi Arabia and Uzbekistan, by which the Saudis only issue haj visas to Uzbeks whose names were on a list drawn up by representatives of the State Committee for Religious Affairs and the state-controlled muftiate, or Islamic religious leadership. Uzbek state control was further ensured as Uzbek Muslims reportedly have to travel to Saudi Arabia by air using only the state-run Uzbek Airways. The cost of these flights would be prohibitively expensive for most Uzbeks. The minority Shia Muslim community also experienced problems in making the haj with Sunnis.

424. The Special Rapporteur was also informed that there had been an increase in trials in which Muslim religious convictions form part of the case against devout Muslims. Uzbekistan had reportedly imprisoned two followers of Sufi Islam in February 2005. Indeed, reports indicated that, on 17 February, the Tashkent regional criminal court sentenced **Abdurashid Toshmatov** and **Nurali Umrzokov** to six years imprisonment. They were reportedly both accused of breaching articles 159 (undermining the constitutional order) and 244-1 (preparation or distribution of materials containing a threat to public security and public order) of the Criminal Code. It was reported that it was clear during the trial that both Muslims were adherents of the Sufi Naqshbandi order. It was alleged that Hizb-ut-Tahrir leaflets were planted on them during their arrest and that they were tortured while in detention in an attempt to extract a confession from them. Concerns had been expressed that the case against the two men was completely fabricated and that they had no connection to the banned Islamist Hizb-ut-Tahrir movement whatsoever.

425. On 14 February 2005, Tashkent City Criminal Court sentenced **Ismatullo Kudratov**, **Dilshod Yuldashev**, and **Batyr Yuldashev** to 7 years' imprisonment, **Hasan Asretidinov** to 6 years, **Abdullo Nurmatov**, **Negmajan Ermatov** and **Karim Ziyayev** to five and a half years, **Eamberdiyev** to five years, all under article 244-2, part 1 of the Criminal Code (forming religious extremist organisations). The eight men were reportedly accused of studying Islam from the position of Wahhabism. It was reported that the court recognized that their only guilt was that they studied Islam together and adhered to the Hanbali school of Islam. Reports indicated that they had made no attempt to change the country's religious life by spreading their views to other Muslims. The meetings of the eight men were allegedly a sort of "club" of like-minded people, who discussed religion and read the Koran. Unlike traditional Uzbek Muslims, these Muslims regarded the veneration of mazars and extravagant weddings and funerals as deviations from Islam.

Response from the Government dated 2 August 2005

426. The Government informed that the import of religious relics into Uzbekistan is covered by Cabinet of Ministers decision No.131 of 23 March 1999 regulating the import and export of cultural property. In this connection, the competent bodies in

Uzbekistan have not dealt with the import into Uzbek territory of the relics of two saints of the Russian Orthodox Church.

427. On 7 October 2004, Tashkent Province Justice Department received an application to register the Protestant Peace Church. It informed that the application contained several violations of the Regulations on processing applications to officially register religious organizations. There was no indication of when the Charter had been approved by the Organization's General Assembly and the Charter did not list the members of the Governing Body. Moreover, in contravention of existing legislation, the executive of another religious organization had approved the Charter. As a result of these violations, the Protestant Peace Church was denied registration and was notified of this decision in writing. The relevant authorities received a second application on 12 April 2005, which was also denied due to breaches of the Freedom of Conscience and Religious Organizations Act.

428. On 24 December 2004 the Tashkent City Justice Department received an application from an initiative group in Tashkent's Yakkasarai district to register the Jehovah's Witness religious organization. The application revealed a number of serious breaches of the Freedom of Conscience and Religious Organizations Act and the Regulations on processing applications to officially register religious organizations. The documents had not been drafted in accordance with the regulations and other essential documents had not been enclosed. As a result, the application was denied.

429. An investigation by the competent authorities has revealed that the allegations regarding Halima Boltobayeva have no basis in fact. The Government informed that on 20 November 2004, Ms. Boltobaeva arrived at Penal Institution No.64/46 in Navoy Prison, to visit her husband who was sentenced to seven years' deprivation of liberty by Akhunbabaev District Court on 19 November 1999. She was searched by the prison officers who found brochures and leaflets published by Hizb-ut-Tahrir in condensed milk jars. The material called for the destruction of the constitutional order and the overthrow of the authorities. As a result, criminal proceedings were initiated against her on 23 November 2004 and she was remanded in custody. She was subsequently convicted under Article 25, 159(1) and 72 of the Criminal Code. She was given a suspended sentence of three years' deprivation of liberty.

430. The claim that Ms. Boltobaeva was framed by prison officers is based on questionable sources. Her guilt is evidenced by the confiscation of the literature from her possession, as confirmed by five witnesses, expert opinion and other elements of the case file. Furthermore, the case file contains no evidence of any unlawful actions on the part of the employees of the penal institution and Ms. Boltobaeva did not submit any complaints to the prosecutorial agencies during the investigation or the trial.

431. The Government informed that since independence, more than 50,000 Uzbek pilgrims have made the haj to the holy places in Saudi Arabia and roughly 35,000 have made the little pilgrimage, or Umrah. The Muslim Board of Uzbekistan and the Saudi Arabian Ministry of Pilgrimage Affairs conclude bilateral agreements on

pilgrimages. Accordingly, 5,000 pilgrims are due to travel from Uzbekistan to Saudi Arabia in 2006. There are no restrictions on pilgrimages.

432. The Uzbek Government arranges essential assistance for pilgrims. Uzbek pilgrims fly to Saudi Arabia on charter flights laid on by the Uzbek khavo iullari air company, which has the best fleet of aircraft in the region. Ticket prices are kept as low as possible and special teams of cooks and doctors fly to Saudi Arabia to attend to their needs. Regarding the claims that Shiite Muslims face restrictions in making the haj, it may be safely said that no such complaints have been received when pilgrims have left for Saudi Arabia during the post-independence period.

433. In the course of an inquiry conducted by the competent bodies, the reports of increasing trials against devout Muslims were found to be without substance. The Government confirmed that on 17 February, Tashkent regional criminal court convicted Abdurashid Toshmatov and Nurali Umrzokov and sentenced them to six years' imprisonment. The judgment stated that Abdurashid Toshmatov and Nurali Umrzokov were found guilty of storing and disseminating material containing religious extremism, separatism and fundamentalism. The material called for unconstitutional change to the political system, the seizure of power and the removal of the authorities.

434. The guilt of the two men is confirmed by evidence including the confiscation of the literature from their possession, witness testimony, expert opinion and other elements of the case file. The Government further informed that the case file contains no evidence that any physical or mental pressure was applied to the convicted persons. The two men did not submit any complaints to the prosecutorial agencies during the preliminary investigation or the trial. The Government informed that on appeal the sentences of the two men were commuted to three year's deprivation of liberty at an open prison.

435. The allegations that eight other individuals referred to in the communication made no attempts to change the country's religious life by spreading their views to other Muslims are without justification. According to the judicial decisions, Mr. Kudratov, Mr. D. Yuldashev, Mr. B. Yuldashev, Mr. Asretdinov, Mr. Nurmatov, Mr. Ziyaev and Mr. Egamberdiev were found guilty on the grounds that between 2002 and 2004 they were involved in the activities of the Wahhabi sect. They met regularly in each other's homes to study extremist literature and other material calling for change to Uzbekistan's political system. The guilt of the convicted persons is confirmed by evidence including the confiscated literature, the testimony of witnesses, expert opinion and other elements of the case file. The Appeals Chamber of Tashkent City Court ruled that the verdicts were justified and upheld them. Mr. Ermatov was granted an amnesty by a Presidential Decree of 1 December 2004.

Communication sent on 8 July 2005 with the Special Rapporteur on torture

436. The Special Rapporteurs brought to the attention of the Government the situation of Mr. **Kural Bekjanov**, a nineteen-year-old Pentecostal Christian from Tashkent, who was arrested on 14 June 2005 and taken to Mirobad District Police Station. He was accused of involvement in the murder of a 65-year-old US citizen of Korean origin, Kim Khen Pen Khin, who had worked with Pentecostal churches in

Tashkent. When the police discovered that he was a Christian, they started beating him. Then he was transferred to the main city police station where he was put in a cell with Muslims. His cellmates also beat him after they found out that he was a Christian. Police tortured him every night for twelve days, inserting needles under his finger nails and threatening him that he would be put on a chair wired up to the electricity. As a result of the torture, his ribs were broken, he lost weight, he had difficulty walking and his fingers and legs were covered with blood. He was held at the main city police station until 29 June 2005. He was then transferred back to Mirobad Police Station, where he was allowed access to a lawyer and where he remained in detention. He was believed to be the main suspect of the murder of Kim Khen Pen Khin. A case was opened under Article 97, part 1, of the Criminal Code.

437. According to the information received, Mr. Bekjanov was not the only Full Gospel church member interrogated in connection with the murder of Kim Khen Pen Khin. It was indeed alleged that the police used the murder as a pretext to question church members about their religious beliefs.

Response from the Government dated 28 November 2005

438. The government informed that the information in the communication was entirely far fetched. **Kural Bekjanov** was placed in the rehabilitation centre in Tashkent City Department of Internal Affairs as he had no papers. After his identity was established he was released on 14 July 2005. **Kural Bekjanov** himself explained that he did not suffer any illegal actions during the period he spent in the rehabilitation centre. He also explained that nobody prevented him from performing his religious duties.

Communication sent on 1 September 2005

439. On 1 June 2005, the prosecutor of the Transport Procuracy of Kungrad 200 kilometers north of Nukus Karakalpakstan, issued warnings to five local Protestants, namely **Lepesbay Amarov, Grigori Kogay, Asilbek Kunekeev, Raushan Matjanova and Gulbahor Orimbetova** for trying to bring Christian literature into the country through Nukus airport.

440. On 16 June 2005, an apartment belonging to a Hare Krishna devotee, **Asa Bekabayeva**, in Bostan on the outskirts of Nukus, was searched by the police. Ninety Hare Krishna books were confiscated.

441. On 17 June 2005, the police conducted a search of the house of **Viktor Klimov**, a Protestant pastor in Gulistan south of Tashkent. They confiscated all his religious literature.

Response from the Government dated 29 November 2005

442. The Government informed that a large quantity of religious literature had been found during a customs inspection at Nukus city airport. The five persons mentioned in the communication were subsequently convicted of Article 227 (violation of customs legislation) and Article 240(1) (violation of legislation on religious organizations) of the Code of Administrative Offences and each fined a sum

of 7,835. The five appealed against the actions of the customs officials and as a result a judicial investigation was conducted. The investigation found the actions of the customs officials to have been lawful.

443. The Government informed that the law enforcement bodies of the Republic of Karakalpakstan had established that Asa Bekabayeva, an English teacher, was instructing pupils about Hare Krishna on her own initiative. She voluntarily handed over 90 books, 3 Hare Krishna audio-teaching cassettes and 13 photographs to the law enforcement bodies. She was warned that she was not entitled to engage in religious instruction with the appropriate permission. She was tried before Ellikalin District Court for an offence under Article 241 (violation of legislation on religious organizations) of the Code of Administrative Offences and was fined a sum of 39,175.

444. The Government informed that officers from the Department of Internal Affairs conducted an inspection of a named individual's house, during which they discovered and confiscated 20 religious books belonging to Viktor Klimov. The expert examination determined that the literature was permitted only for use in religious organizations. No criminal case was initiated against Viktor Klimov and the confiscated books were returned to their owner.

Observations

445. The Special Rapporteur is grateful for the Government's response. She would like to point to the Concluding Observations of the Human Rights Committee, dated 26 April 2005, (CCPR/CO/83/UZB), paragraph 22: "The Committee notes that the provisions of the Freedom of Conscience and Religious Organizations Act require religious organizations and associations to be registered in order to be able to manifest their religion or belief. It is concerned about de facto limitations on the right to freedom of religion or belief, including the fact that proselytizing constitutes a criminal offence under the Criminal Code. The Committee is also concerned about the use of criminal law to penalize the apparently peaceful exercise of religious freedom and the fact that a large number of individuals have been charged, detained and sentenced and that, while a majority of them were subsequently released, several hundred remain in prison." The Special Rapporteur joins the Human Rights Committee in its recommendation that it should ensure that its legislation and practice are in full conformity with article 18 of the International Covenant on Civil and Political Rights.

446. Moreover, the Special Rapporteur wishes to emphasize that the right to freedom of religion is not limited to members of registered religious communities. As she reminded in her previous report to the Commission on human rights, referring to the OSCE/ODIHR Guidelines for Review of Legislation pertaining to Religion or Belief, "registration should not be compulsory, i.e. it should not be a precondition for practicing one's religion, but only for the acquisition of a legal personality and related benefits" (E/CN.4/2005/61, para. 58).

447. Finally, she reiterates that she is still awaiting an invitation from the Government to carry out a visit in Uzbekistan.

Viet Nam

Communication sent on 25 November 2004 jointly with the Special Representative of the Secretary-General on the situation of human rights defenders

448. The mandate holders had received information related to the Mennonite Church, concerning in particular Reverend Nguyen Hong Quang, General Secretary of the Mennonite Church in Ho Chi Minh City and an activist who defended land rights cases of impoverished farmers, who has already been the subject of an urgent appeal by the Special Representative of the Secretary General on the situation of Human Rights Defenders and the Working Group on Arbitrary Detention on 7 September 2004 and an allegation of the Special Rapporteur on Freedom of Religion on 10 November 2004 (See E/CN.4/2005/61/Add.1, at paragraphs 366 to 370).

449. According to new information received, Nguyen Hong Quang, after a trial that took only four hours and was marred by some procedural shortcomings, was convicted to three years of imprisonment on 12 November 2004 by the people's court of Ho Chi Minh City in connection with his religious convictions and related activities for "resisting persons doing official duty". It was also reported that several of his collaborators, Pham Ngoc Thach, Le Thi Hong Lien, Nguyen Van Phuong, Nguyen Huu Nghia, Nguyen Thanh Nhan received sentences of between 9 and 36 months for the same offense.

Response from the Government dated 6 December 2004

450. The Government indicated that the information and allegations were false. In Vietnam, the rights to freedom of religion or belief and freedom of non-religion or belief are clearly enshrined in the Constitution and laws and are guaranteed in practice. No one shall be arrested or detained merely for religious reasons. Only violators of the law will be punished in accordance with the laws.

451. According to the Government's response, on 25 July 2002, the People's Committee of Binh Khanh Commune, District 2, Ho Chi Minh City took administrative measures against Nguyen Hong Quang as he breached local construction management regulations by illegally building on public property for his personal benefit. Thus, on 8 July 2003, the People's Committee of District 2 issued an order of administrative enforcement to compel Quang to dismantle his non-permitted building. Quang blatantly refused to comply with the order.

452. During the South East Asia Games 22 (SEAGAMES 22) organized in Vietnam from 5 to 14 December 2003, Quang, together with friends and collaborators in Ho Chi Minh City, with money received from Pastor Phan Minh Hoi (an overseas Vietnamese now living in the USA) illegally printed and disseminated publications using the logo of the SEAGAMES 22, breaching the trademark and patent rules and regulations of Vietnam. When detected and duly intervened by the police, Quang instigated his followers to cause public unrest in front of the police station of Nguyen Thai Binh Commune, District 1, Ho Chi Minh City.

453. Since early 2003, Quang had continuously disseminated distorted and slanderous documents through Internet with ill-intended contents about the alleged Government's violations of human rights and freedom of religion such as destroying churches, forcing believers to renounce their religion, prohibiting people to practice their belief, arresting and beating religious activists...

454. Worse still, on 2 March 2004, Nguyen Hong Quang and his accomplices chased up and violently assaulted two youngsters, who they claimed to be following after the youngsters had attempted to assassinate them, took away these youngsters' motorbike, caused extreme public chaos and even violently fought against the police. As a result, the police of District 2, Ho Chi Minh City caught 4 persons: Pham Ngoc Thach, Nguyen Thanh Nhan, Nguyen Van Phuong and Nguyen Huu Nghia on charge of "fighting against on-duty public officers". On 8 June 2004, the police of Ho Chi Minh City arrested Nguyen Hong Quang on the same charge.

455. On 12 November 2004, the People's Court of Ho Chi Minh City brought Nguyen Hong Quang and his accomplices to trial on charge of "assaulting on-duty public officers". The Court decided to sentence him to 3 years of imprisonment (in accordance with C, point 2, Article 257 of the Penal Code of Vietnam), Pham Ngoc Thach to 2 years in prison, Le Thi Hong Lien and Nguyen Van Phuong to 1 year in prison, Nguyen Thanh Nhan and Nguyen Huu Nghia to 9 months in jail (in accordance with 1, Article 257 of the Penal Code). The trial was conducted in full and strict observance of legal proceedings of Vietnam.

Additional response from the Government dated 31 August 2005

456. The Government informed the Special Rapporteur that, on the occasion of the 60th anniversary of the National Day, the State President of Vietnam had decided to grant special amnesty to 10,428 inmates, including Mr. Nguyen Hong Quang.

Urgent appeal sent on 10 January 2005 with the Working Group on Arbitrary Detention, the Special Rapporteur on torture, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders

457. The Special Rapporteur brought to the attention of the Government the situation of Ms. **Le Thi Hong Lien**, a 21 year-old teacher for the Vietnamese Mennonite Christian Church, who was the subject of a joint letter of allegation sent by the Special Representative of the Secretary General on the situation of human rights defenders and the Special Rapporteur on freedom of religion or belief on 25 November 2004 (See above).

458. She was detained in the prison infirmary at Chi Hoa Prison, Ho Chi Minh City, where she was suffering from severe mental illness. Prison guards told relatives that they did not have the means to care for inmates with such a severe illness and explained that they had resorted to tying her hands and feet to the bed. She was said to be receiving no treatment for her condition, which was likely to deteriorate further.

459. She was arrested in June 2004 along with a number of other members of the Mennonite community, and was sentenced on 12 November 2004 to 12 months in prison on charges of “resisting a person performing official duty”. These charges reportedly arose from her collaboration with Reverend Nguyen Hong Quang (who was the subject of a communication sent on 25 November 2004), General Secretary of the Mennonite Church in Ho Chi Minh City and an activist, who defended land rights cases of impoverished farmers. It was reported that during her imprisonment she was beaten by prison guards, suffering particularly serious beating by a guard escorting her to and from her trial.

460. In view of the allegations of ill-treatment and denial of appropriate medical treatment, concern was expressed for her physical and mental integrity.

Response from the Government dated 24 January 2005

461. The Government indicated that the information and allegations provided to the Special Rapporteur and contained in the Appeal with regard to Ms. Le Thi Hong Lien were totally untrue. The Government wished to reaffirm that in Vietnam, the rights to freedom of religion or belief and freedom of non-religion or belief are clearly enshrined in the Constitution and laws and are guaranteed in practice. No one shall be arrested or detained merely for religious reasons. Only those who violate the law will be punished in accordance with the laws. Torture and other forms of inhumane treatment and punishments are forbidden. Article 71 of the 1992 Constitution stipulates: “The citizen shall enjoy inviolability of the person and the protection of the law with regard to his life, health, honor and dignity... It is strictly forbidden to use all forms of harassment and coercion, torture, violation of his honor and dignity, against a citizen”. The Penal Code of Vietnam has provisions on penalties for those who infringe upon the above-mentioned rights (Chapter XII). Also, these are strictly observed in practice.

462. Ms. Le Thi Hong Lien was put on trial on 12 November 2004 by the People’s Court of Ho Chi Minh City on charge of “assaulting on-duty public officers”. The Court sentenced Ms. Le Thi Hong Lien to a year in prison (in accordance with point 1, Article 257 of the Penal Code). Ms. Lien was serving her prison sentence. Like others, she was entitled to the rights and conditions of inmates. Her right to healthcare and medical treatment was ensured as well as her right to physical and mental integrity.

Additional response from the Government dated 27 April 2005

463. The Government indicated that, on the occasion of the 30th anniversary of the day of 30 April, the President of Vietnam had signed a decision to grant special amnesty for 7820 inmates, including Ms. Le Thi Hong Lien.

Urgent appeal sent on 14 April 2005

464. The Special Rapporteur brought the two following cases to the attention of the Government:

465. **Thich Nguyen Vuong**, a Buddhist monk member of the Unified Buddhist Church of Vietnam (UBCV), was reportedly arrested by the Security Police in Ho Chi Minh City on 11 April 2005. He was stopped on his way home after he visited the UBCV Deputy leader, Thich Quang Do, at the Thanh Minh Zen Monastery. Reports indicated that he protested and claimed that the police had no legitimate reason to arrest him and asked if he could get his papers from the monastery but the police refused to let him do so. Several Buddhists from the Thanh Minh Zen Monastery then went outside and surrounded him. He was therefore able to escape from the police and took refuge in the monastery. Concerns had been expressed that the police were still posted outside the building where Thich Nguyen Vuong remained at the time of the communication in order to arrest him if he ever attempted to leave the place.

466. **Thich Vien Phuong**, another UBCV monk, was also arrested in similar circumstances on 30 March 2005. He was reportedly stopped for a traffic offence after he visited Thich Quang Do and then held in custody for interrogation by security agents who allegedly seized his camera on which there was a message from Thich Quang Do to the United Nations Commission on Human Rights. Reports indicated that Thich Vien Phuong was subjected to several days of intensive questioning before he was released.

Response from the Government dated 14 June 2005

467. The Government indicated that the information and allegations provided to the Special Rapporteur were totally untrue and that the facts were as follows:

468. **Tran Minh Hoang** (Thich Nguyen Vuong), born in 1948, resides at Gia Lam pagoda, Go Vap district, Ho Chi Minh City. On 11 April 2005, the traffic police signaled Hoang while he was riding on motorbike to stop him for committing a traffic offence. Hoang did not obey and attempted to run away. The traffic police prevented him from doing so and recorded his offence. Finding that Hoang had no relevant motorbike documents, the police requested him to take his motorbike to a police station opposite to Thanh Minh Zen Monastery. The police also discovered that the number plate of the motorbike that Hoang was riding on was false. On the way to the police station, Hoang fled into the Monastery. On 19 April 2005, a summon order was issued for Hoang to present himself at the police station so that his offence could be processed. Until now, he has not presented himself to the police.

469. **Nguyen Thanh Tho** (Thich Vien Phuong), born in 1972, temporarily resides at Giac Hoa Pagoda, Binh Thanh district, Ho Chi Minh City. On 30 March 2005, Tho, while riding on motorbike, was stopped by police for a traffic offence. Tho strongly opposed, trying to involve some Buddhist monks to support him in the incident, thus causing public disorder. The police had to take Tho to a police station.

470. Tho was found holding a DVD disc which contained a message from Thich Quang Do slandering the State of Vietnam on religious suppression and human rights violation. The police made a minute on Tho's traffic offence and his unlawful act (in violation of bullet A, point 5, Article 23 of the Decree 36/CP concerning administrative treatments for cultural offences).

471. It is affirmed that Hoang and Tho committed traffic offences and violations of the law. The police treatment they received was in full accordance with the law. However, Hoang and Tho, under their religious cloak, attempted to accuse the administration of persecution on religious grounds.

472. Tran Minh Hoang and Nguyen Thanh Tho now are completely free.

Communication sent on 3 June 2005 with the Special Rapporteur on torture

473. The Special Rapporteurs had received information concerning Degars, a Vietnamese Christian community in the provinces of Gia Lai, Dak Lak, and Dak Nong.

474. In March and April 2005, government officials in Chu Se, Dak Doa and Ia Grai Districts of Gia Lai province held several long meetings for Montagnards from many villages at district headquarters, during which they warned them not to follow Degar Christianity, and in some cases forced them to sign documents in which they would promise to renounce their belief. There have also been attempts to force several Degar Christians to abandon their belief by threats or other forms of violence. Several pastors and a large number of Christians were arrested and warned not to practice their belief without government approval. During detention several of them were ill-treated. Similar incidents took place in Dak Lak province. There were also allegations that some members of the Degar community were subjected to torture.

Response from the Government dated 25 July 2005

475. The Government indicated that in Vietnam, the rights to freedom of religion or belief and freedom of non-religion or belief are ensured. Article 70 of the 1992 Constitution of Vietnam clearly states: "The citizen shall enjoy freedom of belief and of religion; he can follow any religion or follow none. All religions are equal before the law... No one can violate freedom of belief and religion; no one can misuse belief and religion to contravene the law and the State policies". No one is punished or detained on religious grounds. Only violations of the law will be treated in accordance with the law. In practice, these rights are guaranteed and strictly observed.

476. Like other religions, freedom of practice of Protestantism is respected and ensured throughout the country, including the Central Highlands. Since the passing of the State Decree on Belief and Religion (Nov. 2004) and the Instruction No. 01 by the Prime Minister (Feb. 2005), local governments, especially in the Central Highlands, have been taking further measures to create favourable conditions for local people to exercise their right to freedom of belief and religion.

477. In the Central Highlands, the legal status of 12 Protestant Associations has been recognized; 7 other Associations have been registered for operation; the construction of 2 churches has started; 1 church has been restored in Dak Lak province. Training courses have been held for 82 priests.

478. Some people mistakenly think of "Degars Christianity" as a sect of Protestantism. "Degars Christianity", in fact, is illegally created and disseminated by separatists (most of them are FULRO members) among some ethnic minority groups

in the Central Highlands with a view to inciting acts of overthrowing the legal government and establishing a separatist State in the Central Highlands. This violates the Constitution and laws of Viet Nam. The Government of Viet Nam never allows the use of “Degars Christianity” as a cover-up for the purpose of undermining the national unity, sabotaging the people’s normal life and overthrowing the administration. Local authorities have taken measures to help local people realize the real nature of “Degars Christianity” and advise them to be vigilant at attempts of separation or riots. The information and allegations provided to you and contained in the letter concerning “Degars Christianity” are totally untrue.

Communication sent on 14 October 2005 with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

479. The Special Rapporteurs had received information according to which, on 21 August 2005 local public security police chief, Dinh Van Hoanh, and his deputy, Thai Mai Quan, came to the home of evangelist Dinh Van Hoang, member of the Hre minority, Quang Ngai Province, and told him that Christians were not accepted there. They asked him to sign a paper denying his Christian faith, which Dinh Van Hoang refused. The two officials indicated that he would have to give up his religious faith or face the destruction of his home. When Hoang refused, a mob including war veterans, local defense forces, young people and village chief Dinh Van Xoa forced its way into his house. They demanded once more that he and his wife give up Christianity, which they rejected. So they burned down the house.

480. This was the latest in a series of incidents aiming at forcing Dinh Van Hoang and his family to abandon Christianity. His house had been burned down twice before; also he and his family were beaten and forced to participate in pagan practices in the past; there had been repeated attempts to defame Hoang by the official Viet Nam News Service (accusing him of “luring people to believe in nonsense and refuse to work” and of not having official residence registration). Between 26 and 31 July 2005 authorities in Son Tinh district destroyed the homes of 10 Hre families because they refused to give up their Christian faith.

Response dated 5 January 2006

481. The Government informed that the information contained in the communication was totally untrue. It informed that local people burnt down the house due to personal disagreements. The Local Authority provided assistance to Hoang in rebuilding the house. Hoang subsequently left the locality and went to live in Son Thuong in Quang Ngai province. While he was there, he seized land used by Hre people. As a result, local Hre people set his house on fire on 21 August 2005. The Local Authority provided assistance to Hoang in rebuilding the house.

482. Regarding the allegation that the homes of 10 Hre families were destroyed, the Government informed that as a part of the implementation of Government Programme 134/CP and a plan for socio-economic development in the village, a number of families should have moved to other areas for resettlement. The majority of the families moved voluntarily. As a result of mediation, six of the seven families that did not move voluntarily have now settled in new areas.

Communication sent on 19 October 2005

483. The Special Rapporteur brought to the attention of the Government the situation of two Hoa Hao Buddhists, **Tran Van Hoang**, aged 47 and **Tran Van Thang**, aged 36, who were arrested on 25 February 2005, at their home in Dinh Thanh City, Thoai Son District, in the province of An Giang for the distribution of compact discs and tapes containing Hoa Hao teachings. On 27 April 2005, Tran Van Hoang was sentenced to nine months of imprisonment and fined 20 million Vietnamese dong, while Tran Van Thang was sentenced to six months of imprisonment, and fined 10 million dong.

484. The Special Rapporteur requested the Government to indicate which offence Tran Van Hoang and Tran Van Thang were convicted of and to provide information on the law on which the conviction was based.

Response dated 6 January 2006

485. The Government informed that **Tran Van Hoang** and **Tran Van Thang** were arrested for illegally printing and copying CDs and tapes without a permit from the relevant authority. The Government confirmed the sentences handed down to the two and indicated that they had been convicted of “violating regulations on publication and distribution of audio and video tapes and compact discs” under Article 271 of the Criminal Code. The Government informed that the two have now been released as they have served their sentences.

Observations

486. The Special Rapporteur thanks the Government for its replies but remains concerned by the amount of reports that are transmitted to her disclosing alleged violations or unlawful limitations on the right to freedom of religion or belief. She reminds the Government that she would like to visit the country to analyze the progress that has been made further to her predecessor’s visit and recommendations.

487. She would also like to draw the Government’s attention to paragraph 6(d) of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief which provides that, “the right to freedom of thought, conscience, religion or belief includes the freedom to write, issue and disseminate relevant publications in these areas”. Furthermore, paragraph 4 of General Comment 22 of the Human Rights Committee establishes that, “the practice and teachings of religion or belief includes acts integral to the conduct by religious groups of their basic affairs [...] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”

Yemen

Urgent appeal sent on 27 October 2005 with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture

488. The Special Rapporteurs brought to the attention of the Government the situation of Mr. Yahya Al-Daylami, a religious leader of the Shiite Zaydi minority, who was taken into custody in Sa'da by agents of the Political Security Force on 9 September 2004. As this arrest was carried out by force, covertly, and without an arrest warrant, it had been described as abduction rather than an arrest. Since then, he had been held incommunicado at the intelligence detention centre in Sana'a. On 29 May 2005, a special criminal court sentenced Mr. Al-Daylami to death. At the time of the communication, he was awaiting execution, as the death sentence required the approval of the President of Yemen, which was still pending.

489. Mr. Al-Daylami's trial fell short both of international human rights standards and of the standards set forth in Yemen's Constitution. On 30 January 2005, Mr. Al-Daylami's lawyers withdrew from the case having reached the conclusion that the court was unwilling to respect minimum fair trial guarantees.

490. As set out in the court's decision of 29 May 2005, Mr. Al-Daylami was accused and convicted of two offences: "First, he and another person conducted intelligence connections with, and worked for the interest of, a foreign state which will harm the political and diplomatic position of the Republic. Secondly, he in association with others, planned to attack the constitutional authority in order to change and restrict it from exercising its powers and then to change the regime; he established an organization called 'Youth of Sana'a' to achieve this end...." The decision further states: "Such acts are criminal offences according to Articles 21, 128(1) and 129 of the Presidential Decree No. 12 of 1994 relating to Crimes and Penalties." The charges against Mr. Al-Daylami were not further specified. It is alleged that the actual reason for the charges against him are his efforts to motivate the public to peacefully protest against detention campaigns that targeted opposition activists. Mr. Al-Daylami had also delivered speeches during public gatherings where he criticized certain policies of the Government such as the failure to respect the law and to combat corruption.

Response from the Government dated 14 December 2005

491. The Government indicated that all the procedures of arrest of Mr. Yahya Al-Daylami and his colleague Mohamed Miftah have been carried out in a legal manner and under the supervision of the Attorney General. What is more, neither of the two accused persons has submitted any complaint of mistreatment and one of them is still continuously writing from his cell a column in the "Balagh" newspaper which explains that they are not deprived of their fundamental rights including those to receive visitors and keep continuous contact with them.

492. The Government also wished to inform the Special Rapporteurs that the specialized court would have taken instant measures in case of confirmed occurrence of any abuse concerning the procedures of arrest and interrogation especially since the case has come to the appeal phase at the criminal court. In addition, the Government indicated that the judiciary body in the country was totally independent in all the spheres of its competence and no other body can interfere in the judicial affairs.

Observations

493. The Special Rapporteur is grateful for the Government's response.
