

Distr.: General  
28 December 2009  
Arabic  
Original: English



## مجلس حقوق الإنسان

الدورة الثالثة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية حقوق الإنسان المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما في ذلك الحق في التنمية

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

إضافة

البعثة التي قامت بها المقررة الخاصة إلى جمهورية صربيا، بما في ذلك زيارتها  
إلى كوسوفو\*

\* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير ذاته، الوارد في مرفق الموجز، فيعمم كما ورد  
باللغة التي قُدِّمَ بها فقط.

## موجز

يتضمن هذا التقرير استنتاجات وتوصيات المقررة الخاصة المعنية بحرية الدين أو المعتقد بخصوص البعثة التي أجرتها في الفترة من ٣٠ نيسان/أبريل إلى ٨ أيار/مايو ٢٠٠٩ إلى جمهورية صربيا، بما في ذلك زيارتها إلى كوسوفو<sup>(١)</sup>. ونظراً إلى التاريخ المؤلم الذي عاشته منطقة البلقان بأسرها وإلى شدة ما عاناه الأفراد والمجتمعات من ويلات العنف والأهوال والحروب، تلاحظ المقررة الخاصة أن آثار تلك النزاعات باقية رغم تطوع جميع الطوائف إلى سلم وصلاح دائمين. وهي تلاحظ بأسف أن العنصرية والمسائل الدينية ساهمت في النزاعات الأخيرة. وتؤكد المقررة الخاصة أن إجراء مشاورات بين الأديان على المستوى الشعبي والوطني والإقليمي أمر لا غنى عنه لتعزيز التفاهم والتسامح والاحترام بين مختلف الطوائف وداخلها. وإضافة إلى ذلك، يشكل سيادة القانون وتشغيل المؤسسات الديمقراطية شرطين مسبقين لضمان فعالية تلك الاستراتيجيات التي ترمي إلى تشجيع إقامة حوار حقيقي في كنف بيئة منفتحة وتعددية.

ويركز الجزء الأول من هذا التقرير على حالة حرية الدين أو المعتقد في وسط صربيا وفويفودينا. وتعطي المقررة الخاصة لمحة عن المعايير الدولية ذات الصلة لحقوق الإنسان وعن الإطار القانوني المحلي المتعلق بحرية الدين أو المعتقد وعن التركيبة الدينية للسكان. وبخصوص بواعث القلق في وسط صربيا وفويفودينا، تشير المقررة الخاصة إلى التمييز ضد الأقليات الدينية أو العقائدية؛ والهجمات العنيفة على أماكن العبادة؛ والتوترات بين مختلف الطوائف الدينية؛ وتنفيذ قانون عام ٢٠٠٦ المتعلق بالكنائس والطوائف الدينية. وتوصي المقررة الخاصة بإصلاح هذا القانون، الذي انتقد بسبب تأثيراته التمييزية، لا سيما إزاء الطوائف الدينية التي لا تعتبر "تقليدية". وعلاوة على ذلك، ينبغي أن تتحلى وزارة الشؤون الدينية بمزيد من الشفافية وأن تُسَّط عملية التسجيل كي تكفل لجميع الطوائف الدينية الراغبة في التسجيل وصولاً متكافئاً إلى إجراءات تقديم الطلب ومعاملة متساوية في هذا الإطار. كما تذكّر المقررة الخاصة السلطات بواجب حفاظها على الحياد والتزاهة، وهو ما يحول دون أي تدابير حكومية تعطي الأفضلية لزعيم محدد أو أجهزة معينة من طائفة دينية منقسمة. ولا بد من احترام جميع أماكن العبادة وحمايتها بالكامل، وينبغي أن تتخذ الدولة التدابير المناسبة لمنع جميع أعمال العنف أو التهديدات باستعماله.

(١) ينبغي أن تُفهم جميع الإشارات إلى "كوسوفو"، سواءً أكانت إلى الإقليم أم المؤسسات أم السكان، فهماً يتوافق تماماً مع قرار مجلس الأمن ١٢٤٤ (١٩٩٩) ولا يمس بوضع كوسوفو.

وفي الجزء الثاني من التقرير، تركّز المقررة الخاصة على حالة حرية الدين أو المعتقد في كوسوفو. وبخصوص بواعث القلق المشمولة بولايتها، تشير المقررة الخاصة إلى حوادث العنف والتحريض على الكره العرقي أو الديني، وإلى الجدل القائم بشأن مسألة ارتداء رموز دينية في المؤسسات التعليمية، وإلى التوترات بين الطوائف الدينية وداخلها. وتختتم المقررة الخاصة بالقول إن إعادة بناء مواقع التراث الثقافي والديني المخربة أو المدمرة خلال موجة العنف التي اجتاحت المنطقة في آذار/مارس ٢٠٠٤ لا تزال ذات أهمية قصوى. وهي توصي بأن تتخذ السلطات المختصة إجراءات سريعة وأن تتخذ تدابير مبتكرة للتصدي لممارسات القهر والعنف باسم الدين. وذكرت المقررة الخاصة الزعماء الدينيين أيضاً بمسؤوليتهم عن أداء دور بناء في سبيل تعزيز حرية الدين أو المعتقد على نحو ديمقراطي ونخال من التمييز والتسييس. وأخيراً، ينبغي أن يوجّه المجتمع الدولي برمته رسالة واضحة مفادها أنه لا تسامح مع العنف والتحريض على الكره العرقي أو الديني.

## Annex

### **Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, on her mission to the Republic of Serbia, including visit to Kosovo (30 April – 8 May 2009)**

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Freedom of religion or belief in Central Serbia and Vojvodina .....	1-34	5
A. Introduction .....	1-4	5
B. International human rights standards .....	5-6	5
C. Domestic legal framework on freedom of religion or belief.....	7-14	6
D. Religious demography .....	15-16	8
E. Issues of concern for the mandate.....	17-30	8
F. Conclusions and recommendations.....	31-34	12
II. Freedom of religion or belief in Kosovo .....	35-75	13
A. Introduction .....	35-38	13
B. International human rights standards .....	39-42	13
C. Domestic legal framework on freedom of religion or belief.....	43-47	15
D. Religious demography .....	48-49	16
E. Issues of concern for the mandate.....	50-63	16
F. Conclusions and recommendations.....	64-75	20

## **I. Freedom of religion or belief in Central Serbia and Vojvodina**

### **A. Introduction**

1. On the invitation of the Government, the Special Rapporteur on freedom of religion or belief carried out a mission to Serbia. The Special Rapporteur visited the municipalities of Belgrade, Novi Sad, Subotica, Novi Pazar and Vrnjačka Banja from 30 April to 5 May 2009, pursuant to her mandate, to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles.

2. The Special Rapporteur welcomes the fact that the Government of Serbia has extended, since October 2005, an open invitation to all thematic special procedures mandate holders. She is also grateful for the good cooperation during her visit in April/May 2009. In Belgrade, the Special Rapporteur had the opportunity to meet with several Government officials, including the First Deputy Prime Minister and Minister for Internal Affairs, the Minister for Foreign Affairs, the Minister for Religious Affairs, the Minister for Human and Minority Rights and the Minister for Education. She also held talks with the Chairperson of the National Assembly of the Republic of Serbia, the President of the Supreme Court and the Ombudsman for Human Rights.

3. In addition, the Special Rapporteur was able to collect first-hand information and documents on the status of freedom of religion or belief in central Serbia and Vojvodina. During her visit, the Special Rapporteur spoke with representatives of various religious or belief communities, including from the Baptist Church, the Evangelical Christian Church, the Hare Krishna community, the Islamic community in Serbia, the Islamic community of Serbia, the Jehovah's Witnesses, the Jewish community, the Montenegrin Orthodox Church, the Pentecostal Church, the Reformed Christian Church, the Roman Catholic Church, the Romanian Orthodox Church, the Serbian Orthodox Church, the Seventh-Day Adventist Church and the Slovak Evangelical Church. In addition, civil society meetings were held with academics, journalists, human rights defenders and lawyers.

4. The Special Rapporteur wishes to thank the religious representatives and other interlocutors for the information and opinions they shared with her. She is also very grateful for the excellent logistical support provided in Belgrade by the office of the United Nations Resident Coordinator.

### **B. International human rights standards**

5. The right to freedom of religion or belief is enshrined in various international human rights instruments.<sup>2</sup> These include articles 2, 18-20 and 26-27 of the International Covenant on Civil and Political Rights; article 13 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 2, 14 and 30 of the Convention on the Rights of the Child; and article 12 of the International Convention on the Protection of the

---

<sup>2</sup> See E/CN.4/2005/61, paras. 15-20 and E/CN.4/2006/5, annex.

Rights of All Migrant Workers and Members of Their Families. Apart from the latter convention,<sup>3</sup> Serbia has ratified all of the other above-mentioned human rights treaties.

6. In addition, various United Nations bodies, including the General Assembly and the Human Rights Council, have issued relevant declarations and resolutions on freedom of religion or belief. Of these instruments, of particular relevance for the mandate are articles 2, 18 and 26 of the Universal Declaration of Human Rights and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

### **C. Domestic legal framework on freedom of religion or belief**

7. According to article 11 of the Constitution, Serbia is a secular State, churches and religious communities are separated from the State, and no religion may be established as a State or mandatory religion. According to its article 21, all direct or indirect discrimination based on any grounds, inter alia on religion, is prohibited. Freedom of thought, conscience, belief and religion as well as the right to retain one's belief or religion or change them by choice are guaranteed by article 43 of the Constitution. Furthermore, no person has the obligation to declare his religious or other beliefs. Parents and legal guardians have the right to ensure the religious and moral education of their children in conformity with their own convictions.

8. Pursuant to article 43 of the Constitution, freedom of manifesting religion or beliefs may be restricted by law only if it is necessary in a democratic society to protect the lives and health of people, the morals of democratic society, the freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent the inciting of religious, national and racial hatred. In addition, activities of political parties aiming at a forced overthrow of the constitutional system and violations of guaranteed human or minority rights, inciting racial, national or religious hatred are prohibited by article 5 of the Constitution.

9. Article 44 of the Constitution states that churches and religious communities are equal and free to organize independently their internal structure, religious matters, to perform religious rites in public, to establish and manage religious schools, social and charity institutions, in accordance with the law. The Constitutional Court may ban a religious community only if its activities infringe the right to life, the right to mental and physical health, the rights of the child or the right to personal and family integrity, public safety and order, or if it incites religious, national or racial intolerance (article 44 of the Constitution).

10. The 2006 Law on Churches and Religious Communities provides for the status of legal entity for churches and religious communities that are registered in accordance with the law. Article 10 of the law explicitly names five "traditional" churches (the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Evangelical Church, the Christian Reformed Church and the Evangelical Christian Church) and two "traditional" religious communities (the Islamic community and the Jewish community) as those which, in Serbia, have historical continuity spanning centuries and whose legal status was gained on the basis of special laws. Article 11 emphasizes that the Serbian Orthodox Church has played an exceptional historical, nation-building and civilizing role in the shaping, preservation and development of the identity of the Serbian people.

---

<sup>3</sup> On 11 November 2004, the State of Serbia and Montenegro signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families but did not ratify it.

11. The procedure for registration of churches and religious communities on the register maintained by the Ministry responsible for religious affairs is stipulated in articles 17 to 25 of the 2006 Law on Churches and Religious Communities. No religious organization may be registered the name of which contains a name or part of a name expressing the identity of a church, religious community or religious organization that has already been entered in the register or has submitted an application for entry beforehand. Pursuant to article 18, religious communities that are not considered “traditional” according to article 10 have to supply a memorandum with the names and signatures of the founders comprising at least 0.001 per cent of adult citizens of Serbia who are resident in Serbia according to the most recent official population census, or foreign citizens with permanent residence on the territory of Serbia.

12. According to article 20 of the 2006 Law, the Ministry responsible for religious affairs may reject an application for registration of a religious organization if its goals, teachings, ceremonies or activities are contrary to the Constitution and public order, or if they endanger the life, health, liberty and rights of others, the rights of children, the right to personal and family integrity or the right to property. In making a decision on an application for entry in the register, the Ministry responsible for religious affairs will also take into account the decision of the European Court of Human Rights as well as administrative or judicial decisions regarding the registration or activities of a specific religious organization in one or more Member States of the European Union. Approval of entry, rejection of application, refusal of entry or deletion from the register may be appealed administratively.

13. The Parliament of the Republic of Serbia adopted a law on the prohibition of discrimination in March 2009. The law defines “discrimination” and “discriminatory treatment” as any unjustifiable differentiation or inequitable treatment, i.e. act of omission regarding persons or groups, as well as their family members or people close to them, performed in an overt or concealed manner, on grounds of, inter alia, religious convictions. According to article 18 of the 2009 law, “discrimination occurs when the principle of freedom of expressing one’s religious beliefs is breached, i.e. if a person or group is denied their right to adopt, maintain, express or change their religious beliefs, or to behave in accordance with their religious beliefs”. Shortly before the adoption of the 2009 law, a second paragraph was added to article 18 of the law, providing that “priests’ or other religious officials’ actions that are in accordance with the doctrine, beliefs or goals of the churches and religious communities” registered under the 2006 Law on Churches and Religious Communities should not be deemed to be discriminatory. Reportedly, pressure by religious and conservative groups regarding issues such as religious conversion and free expression of sexual orientation had led to a temporary withdrawal of the bill from the legislative agenda in early March 2009. An amended anti-discrimination law was finally adopted on 26 March 2009 by a narrow majority.

14. The 2001 Law on the Census of Population, Households and Housing stipulates that no person is obliged to declare his or her religious affiliation and that the census form must contain a note on that subject. In addition, article 18 of the Law on the Protection of Personal Data provides that data on racial origin, ethnicity and religious or other convictions can be collected, processed and rendered for use solely by written consent of the citizen.

## D. Religious demography

15. According to the 2002 official census, the permanent population of central Serbia and the Autonomous Province of Vojvodina consisted of 7.5 million people.<sup>4</sup> Approximately 85 per cent of the population was Orthodox Christians, most being members of the Serbian Orthodox Church. Roman Catholics comprised another 5.5 per cent and Protestants made up around 1 per cent of the population. In addition, 3.2 per cent of the population were Muslims. There is also a small Jewish community, comprising around 0.01 per cent of the population. Another 0.5 per cent was atheists and the religious affiliation of 4.5 per cent of the population was unknown or undeclared in the 2002 official census.

16. The Ministry of Religious Affairs indicated that almost all believers in Serbia were registered as belonging to one of the five “traditional” churches or two “traditional” religious communities. The claim that the believers of “non-traditional” Protestant churches account for only 1 per cent of the Republic of Serbia’s population, however, has been challenged by civil society organizations, which refer to the optional character of the census question and argue that many Protestants hesitated to express their confessional affiliation owing to their fear of suffering consequences.

## E. Issues of concern for the mandate

17. The Special Rapporteur would like to highlight some aspects of the status of freedom of religion or belief in the Republic of Serbia. In the section below, she focuses on the following issues of concern for her mandate: (a) implementation of the 2006 Law on Churches and Religious Communities; (b) discrimination against minority religious or belief communities; (c) places of worship; and (d) intra-religious tensions.

### 1. Implementation of the 2006 Law on Churches and Religious Communities

18. The 2006 Law on Churches and Religious Communities<sup>5</sup> has aggrieved a number of religious communities and groups that are seeking registration or have decided to stay away from it because of discriminatory effects of the law. The law defines seven “traditional” churches and religious communities, which benefit from automatic registration and exemptions with regard to paying administrative and property taxes. Religious communities that are not considered “traditional” have to be re-registered according to the 2006 Law on Churches and Religious Communities. However, there seems to be some lack of clarity with regard to the number of signatures required for “non-traditional” communities in order to apply for registration. The Minister for Religious Affairs stated that the statutory threshold of 0.001 per cent according to the most recent official population census would mean that around 100 people were required for the application. However, members of religious minorities informed the Special Rapporteur that initially only 75 signatures were required and this threshold was raised in 2006 by the Ministry of Religious Affairs.

<sup>4</sup> Statistical Office of the Republic of Serbia, *2002 Census of Population, Households and Dwellings*, Book 3 on “Confession, Mother Tongue and National Identity or Ethnicity According to Age and Gender – Data by Municipalities” (<http://webrzs.statserb.sr.gov.yu/axd/en/Zip/CensusBook3.zip>); the preface highlights that “on the territory of the Autonomous Province of Kosovo and Metohia, the census will be accomplished only when all necessary conditions will be fulfilled.”

<sup>5</sup> Concerning the draft law, see E/CN.4/2005/61/Add.1, para. 210; E/CN.4/2006/5/Add.1, paras. 336-340; and A/HRC/4/21/Add.1, paras. 275-276.



19. Several “non-traditional” communities complained about the denial of legal status by the Ministry of Religious Affairs, sometimes despite court judgements in favour of their registration. Article 19 of the 2006 Law on Churches and Religious Communities is allegedly used by the authorities to arbitrarily prevent the registration of religious organizations whose name contains a name or part of a name expressing the identity of a church, religious community or religious organization which is already registered. The Special Rapporteur is also concerned that the Ministry of Religious Affairs seems to interpret substantive rules of internal laws and orders of “traditional” churches to the detriment of other groups. For example, when rejecting the application for registration of the “Montenegrin Orthodox Church Eparchy for the Republic of Serbia”, the Ministry argued that only a church with a centuries-long continuity and a canonical priesthood could be a constituent part of the universal, ecumenical Christian community, and therefore recognized as an Orthodox church.<sup>6</sup> The Ministry of Religious Affairs claimed that the religious community “Montenegrin Orthodox Church” had never existed and therefore could not have been recognized by other Orthodox churches.<sup>7</sup> In this regard, the Special Rapporteur would like to emphasize that the State has a duty to remain neutral and impartial in exercising its regulatory power and in its relations with the various religions, denominations and beliefs.<sup>8</sup> The autonomy of religious communities is an essential component of pluralism in a democratic society, where several religions or denominations of the same religion coexist.<sup>9</sup>

20. Reportedly, the Romanian Orthodox Diocese of Dacia Felix was registered in April 2009 and accorded equality with other “traditional” churches and religious communities recognized by the 2006 Law on Churches and Religious Communities. Previously, article 2 of the relevant regulations already provided that “with the consent of the Serbian Orthodox Church, the Romanian Orthodox Church’s organizational unit of Banat shall be entered in the register.”<sup>10</sup> The Special Rapporteur would like to emphasize that the State must not condition the granting of certain rights, including the registration of a religious community and the recognition of its legal status, on the agreement of another religious community. However, that appears to be part of the standard approach taken by the Ministry of Religious Affairs.

21. During the Universal Periodic Review session held in December 2008, the Government of Serbia stressed that the question of the law on churches and religious communities should be observed as a transitional law that is subject to changes, and that churches and religious communities could submit complaints regarding its implementation

<sup>6</sup> Ministry of Religious Affairs, decision 080-00-45/2007-01 of 18 June 2008. On 11 December 2009, the Government of Serbia informed the Special Rapporteur that this decision was annulled by the Supreme Court on procedural grounds and that the Ministry of Religious Affairs has called on the applicants to amend the documentation.

<sup>7</sup> Ibid. In its letter of 11 December 2009 to the Special Rapporteur, the Government emphasized that the registration of the Montenegrin Orthodox Church was rejected “not only because of the term ‘Orthodox’ in its name, but also because of the fact that an organizational unit of the Serbian Orthodox Church, the Montenegrin Metropolitanate, would allow the name Montenegrin Orthodox Church, at whose head is also a Metropolitan, to be interchangeable with the organizational unit of the Serbian Orthodox Church causing confusion about that Church, its goals and type of association involved”.

<sup>8</sup> See European Court of Human Rights, judgment of 13 December 2001, application no. 45701/99.

<sup>9</sup> See European Court of Human Rights, judgment of 15 September 2009, application no. 798/05.

<sup>10</sup> Regulations on the content and keeping of the register of churches and religious communities, Official Gazette of the Republic of Serbia, No. 43/2006 of 26 July 2006. See also the report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, doc. 11528 of 14 February 2008, paras. 87-99.

to the Supreme Court (A/HRC/10/78, para. 55). However, the Government also indicated that changes in the law or the bringing of a new law that would allow automatic registration, i.e. recognition of all churches and religious organizations, was difficult to accept as such practice did not exist in European states (A/HRC/10/78/Add.1, para. 34). The Special Rapporteur would like to reiterate her wish that the Government reflect on the 2006 Law on Churches and Religious Communities. At a minimum, the Ministry of Religious Affairs should be more transparent and streamline the registration process in order to ensure equal access and non-discriminatory treatment in the application procedure for all religious communities that wish to register.

## 2. Discrimination against minority religious or belief communities

22. The distinction made between “traditional” and “non-traditional” religious communities also contributes to a number of questionable practices. One relates to the existence of a privileged role for “traditional” churches and religious communities, for example in respect to their access to, and representation in, public bodies. Members of religious minorities highlighted in this regard that the council of the Republican Broadcasting Agency, which regulates the mass media in Serbia,<sup>11</sup> is currently chaired by a bishop of the Serbian Orthodox Church. This fact was quoted as an indication for the problems faced by minority religious or belief communities.

23. Furthermore, the recently adopted anti-discrimination law provides for specific exemptions of the prohibition of discrimination with regard to actions of priests or other religious officials which are in accordance with the doctrine, beliefs or goals of registered churches and religious communities. Members of civil society organizations emphasized that this exemption was introduced shortly before the adoption of the 2009 Law on the Prohibition of Discrimination in its article 18 due to lobbying efforts by “traditional” churches and religious communities, inter alia, in order to protect priests against charges of discriminating against others on grounds of sexual orientation.

24. The Special Rapporteur was informed that religious instruction classes in the first years of primary and secondary schools were in practice only available for members of “traditional” churches and religious communities. In addition, some children belonging to “non-traditional” religious minorities have reportedly been forced to attend Serbian Orthodox liturgies in the context of school events despite their parents’ clear objection against such activities. In addition, Jehovah’s Witnesses reported that some of their members have lost custody of their children when they were involved in divorce cases with a spouse who was not a Jehovah’s Witness and they alleged that the judgements were biased on the basis of the parents’ religious affiliation.

25. Members of religious minorities also reported that their engagement in humanitarian aid activities during the 1990s was publicly criticized as a concealed approach for “buying souls” and indoctrinating children. In recent years, “non-traditional” religious minorities have been described by police officers, teachers and in the media as “dangerous cults”, “satanic organizations” or “totalitarian sects” without being given any possibility to reply. States should take all appropriate measures to ensure that the child is protected against all forms of discrimination and to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of the parents or legal guardians. At the same, the Special Rapporteur calls upon public officials, teachers and the media to play a more constructive role in promoting religious tolerance. She would like to

---

<sup>11</sup> According to the Broadcasting Law, religious issues are part of the public interest content of the public broadcasting service, which has to respect the spiritual, historical, cultural, humanitarian and educational tradition and importance of churches and religious communities in public life.

refer to General Assembly resolution 63/181, in which the Assembly urges States to step up their efforts to ensure that all public officials and civil servants, including members of law enforcement bodies and educators, in the course of fulfilling their official duties, respect all religions or beliefs and do not discriminate for reasons based on religion or belief, and that all necessary and appropriate education or training is provided.<sup>12</sup>

### **3. Places of worship**

26. The Special Rapporteur was informed about violent attacks against places of worship of different religious communities. In comparison to previous years,<sup>13</sup> the number of attacks appears to be declining since 2007. However, members of religious minorities alleged that the relevant authorities lacked willingness to investigate and convict the attackers. If perpetrators were prosecuted, they were reportedly only charged with violating public order instead of the more serious charge of inciting religious, national and racial hatred. In addition, the police and judicial authorities do not seem to provide the Ministry of Religious Affairs with adequate information on such cases.

27. Members of “non-traditional” religious communities voiced their concerns about problems they are facing in acquiring or using places of worship. Furthermore, they complained about delays and administrative obstruction with regard to building or renovation permits, even though the relevant authority of the local government, in drawing up urban plans, is required by article 32 of the 2006 Law to examine the expressed needs of churches and religious communities for the construction of religious facilities.

28. With regard to restitution of nationalized property, only registered churches or religious communities can benefit from the 2006 Law on the Restitution of Property to Churches and Religious Communities. The Special Rapporteur is concerned that this law only provides for the restitution of property confiscated by the State after 1945. This cut-off date seems to be to the detriment of the Jewish community, most of whose property was seized before 1945 during the Second World War. In this regard, the Special Rapporteur would like to refer to the recommendation of the European Commission against Racism and Intolerance<sup>14</sup> to ensure that all religious communities enjoy the right to restitution of their nationalized property, without any distinction whatsoever and irrespective of the date at which they were deprived of their property. The authorities of the Republic of Serbia indicated that the above-mentioned 2006 law deals only with the restitution of property that was seized from churches and religious communities, whereas the restitution of property belonging to persons from those communities will be regulated by a separate law.

### **4. Intra-religious tensions**

29. The Special Rapporteur was informed about serious intra-religious tensions between the “Islamic community in Serbia”, based in Novi Pazar, and the “Islamic community of Serbia”, based in Belgrade.<sup>15</sup> Conflicts between the opposing fractions of the Islamic

---

<sup>12</sup> See also A/HRC/4/21, paras. 43-47.

<sup>13</sup> A/58/296, paras. 89-90; E/CN.4/2004/63, para. 8; and E/CN.4/2005/61/Add.1, paras. 211-213.

<sup>14</sup> European Commission against Racism and Intolerance, report on Serbia, adopted on 14 December 2007, CRI(2008)25, para. 18.

<sup>15</sup> See also the report by the Council of Europe Commissioner for Human Rights, published on 11 March 2009 (CommDH(2009)8, para. 228): “According to one opinion expressed to the Commissioner, the split had been caused by government intervention. Others argued that the government had been too passive in the face of this crisis. The Minister of Religion himself said that he very much regretted the current schism in the Islamic communities in Serbia, but stressed that the State could and should not interfere with any religious community including the Muslim community.”

community have on several occasions provoked violent attacks, including the use of fire weapons. Subsequently, the authorities have restricted some public gatherings in the Sandzak region due to security reasons.

30. The Minister for Religious Affairs indicated that his Ministry was cooperating with the two communities, which are both registered. This approach seems noteworthy since article 15 of the 2006 Law on Churches and Religious Communities recognizes the Islamic community's legal continuity which it had acquired in compliance with a 1930 Law on the Islamic Religious Community of the Kingdom of Yugoslavia. According to members of civil society organizations, the fact of having registered two Islamic communities shows that the Ministry of Religious Affairs is not consistent in its registration practice with regard to competing strands within a religion. The Special Rapporteur would like to remind the authorities of their duty to remain neutral and impartial, which precludes any State measures favouring a particular leader or specific strands of a divided religious community.

## **F. Conclusions and recommendations**

31. The Special Rapporteur visited some multi-ethnic and multi-religious municipalities in central Serbia and Vojvodina, where an atmosphere of religious tolerance seems to flourish. In this regard, she would like to reiterate that interfaith consultations at the local, national and particularly regional levels are important to promote understanding, tolerance and respect between and among the various communities. In addition, the rule of law and the functioning of democratic institutions are prerequisites for the effectiveness of these strategies, which seek to encourage real dialogue in an open and pluralistic environment. Several State institutions can and should continue to play a pivotal role in healing wounds, contributing to reconciliation and building respect for the principles of human rights, including freedom of religion or belief. The issues of equality and non-discrimination on the basis of religion or belief should be among the Government's priorities.

32. In this context, the Special Rapporteur would recommend a reform and proper implementation of the current law on churches and religious communities in order to restore the confidence amongst various communities. It seems vital that the Ministry of Religion is more transparent in its decision-making and strictly abides by the duties of neutrality and impartiality. As outlined in her report to the Commission on Human Rights (E/CN.4/2005/61, para. 58), registration should not be a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits. In the latter case, registration procedures should not be cumbersome and remain uncomplicated so that the procedure itself does not become a stumbling block for registration, for example with regard to the required number of signatures of founders. Registration should not depend on reviews of the substantive content of the belief, the structure or the clergy. In addition, no religious group should be empowered to decide about the registration of another religious group.

33. Concerning places of worship, the Special Rapporteur would like to refer to General Assembly resolution 55/254, in which the Assembly calls upon States to exert their utmost efforts to ensure that religious sites are fully respected and protected in conformity with international standards and in accordance with their national legislation. The Assembly also calls upon all States to adopt adequate measures aimed at preventing all acts or threats of violence, destruction, damage or endangerment, directed against religious sites.

34. The Special Rapporteur noticed that the voices of those individuals who do not profess any religion and those who are dissenters within their communities or

dispassionate about religions are being marginalized. These individuals are neither realistically reflected in the latest census nor given an opportunity to institutionally express their views in matters of religion or belief. A truly pluralistic society is the backbone of a democratic system. Theistic, atheistic and non-theistic believers as well as those who do not profess any religion have an important role to play in building that pluralism.

## **II. Freedom of religion or belief in Kosovo**

### **A. Introduction**

35. The Special Rapporteur wishes to emphasize that all reference in the present report to “Kosovo”, whether to the territory, institutions or population, should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

36. From 5 to 8 May 2009, the Special Rapporteur visited the municipalities of Prishtinë/Priština, Gračanica/Graçanicë, Prizren, Gjakovë/Djakovica and Deçan/Dečani. In Prishtinë/Priština she had the opportunity to meet with the Kosovo Deputy Prime Minister, the Kosovo Minister for Justice and the Kosovo Vice-Minister for Culture Youth and Sports. The Special Rapporteur also held talks with the Chairperson of the Council for Cultural Heritage of the Kosovo Assembly and with the Kosovo Acting Ombudsperson.

37. In order to collect first hand information on the status of freedom of religion or belief in Kosovo, the Special Rapporteur also spoke with leading representatives of various religious or belief communities from the Evangelical Protestant Community, the Islamic community (including the Sufi groups of Helveti Dervish in Prizren and Bektashi in Gjakovë/Djakovica), the Jehovah’s Witnesses, the Roman Catholic Church and the Serbian Orthodox Church (both in Belgrade and in Deçan/Dečani). Further talks were held with members of different civil society organizations and journalists.

38. In addition, the Special Rapporteur met with a number of high-level representatives of international and regional organizations. These meetings included the Special Representative of the Secretary-General for the United Nations Interim Administration Mission in Kosovo (UNMIK), the European Union Special Representative and the Head of Mission in Kosovo of the Organization for Security and Cooperation in Europe. She also met with representatives of the Office of the United Nations High Commissioner for Refugees, the United Nations Children’s Fund, the European Union Rule of Law Mission, the Council of Europe and the Reconstruction Implementation Commission for Serbian Orthodox Religious Sites in Kosovo. The Special Rapporteur’s programme in Kosovo was ably coordinated by UNMIK and the OHCHR stand-alone Office in Kosovo and she is extremely grateful to them for their excellent support.

### **B. International human rights standards**

39. Acting under Chapter VII of the Charter of the United Nations, on 10 June 1999, the Security Council in its resolution 1244 (1999) decided on the deployment in Kosovo, under the auspices of the United Nations, of international civil and security presences. The main responsibilities of the international civil presence include, inter alia, maintaining civil law and order, protecting and promoting human rights, as well as assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.

40. According to UNMIK regulation no. 2001/9 (para. 3.2), the Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in the Universal Declaration on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; the International Covenant on Civil and Political Rights and the Protocols thereto; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the European Charter for Regional or Minority Languages; and the Framework Convention for the Protection of National Minorities of the Council of Europe.

41. In 2004, the Government of Serbia and Montenegro explained its inability to report on the discharge of its own responsibilities with regard to the human rights situation in Kosovo, and suggested that, owing to the fact that civil authority is exercised in Kosovo by UNMIK, the Human Rights Committee may invite UNMIK to submit to it a supplementary report on the human rights situation in Kosovo.<sup>16</sup> The Human Rights Committee noted in 2004 that, in accordance with Security Council resolution 1244 (1999), Kosovo currently remained a part of Serbia and Montenegro as a successor State to the Federal Republic of Yugoslavia, albeit under interim international administration, and that the protection and promotion of human rights was one of the main responsibilities of the international civil presence. It also noted the existence of provisional institutions of self-government in Kosovo that were bound by the International Covenant on Civil and Political Rights by virtue of UNMIK regulation no. 2001/9 and considered that the Covenant continued to remain applicable in Kosovo. The Human Rights Committee encouraged UNMIK, in cooperation with the Provisional Institutions of Self-Government, to provide, without prejudice to the legal status of Kosovo, a report on the situation of human rights in Kosovo since June 1999. Subsequently, the State party also requested the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child to seek information related to the implementation of the respective treaties in Kosovo from UNMIK.<sup>17</sup> The Human Rights Committee and the Committee on Economic, Social and Cultural Rights considered the reports of UNMIK in July 2006 and November 2008, respectively.<sup>18</sup>

42. With regard to the protection of human rights at the regional level, it has been pointed out that, even though the standards contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms must be observed by the Provisional Institutions of Self-Government, the people in Kosovo cannot claim its violation before the European Court of Human Rights.<sup>19</sup> In addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms according to its article 59 is only open to the signature of the members of the Council of Europe. On 9 December 2008, the European Union Rule of Law Mission (EULEX) reached initial operational capacity, taking over parts of the UNMIK role in policing, police monitoring and providing international judges and prosecutors. EULEX works under the general framework of United Nations Security Resolution 1244 (1999), has a unified chain of command to Brussels and reports to the United Nations Security Council.

<sup>16</sup> Concluding observations of the Human Rights Committee concerning Serbia and Montenegro (CCPR/CO/81/SEMO), para. 3.

<sup>17</sup> E/C.12/1/Add.108, para. 9; CRC/C/SRB/CO/1, para. 6; CEDAW/C/SCG/CO/1, para. 7.

<sup>18</sup> CCPR/C/UNK/CO/1 and E/C.12/UNK/1.

<sup>19</sup> See A/HRC/7/28/Add.3, paras. 89 and 136-141.

### C. Domestic legal framework on freedom of religion or belief

43. The Security Council in its resolution 1244 (1999) authorized the Secretary-General “to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo”. UNMIK regulation no. 2001/9 provides that communities and their members shall have the right to preserve sites of religious, historical or cultural importance to the community, in cooperation with relevant public authorities and to operate religious institutions.

44. The 2004 Anti-Discrimination Law, promulgated by UNMIK regulation no. 2004/32, is designed to prevent and combat discrimination, including those based on religion or belief, to promote effective equality and to apply the principle of equal treatment. Its article 6 provides that all persons exercising a public function shall ensure that those parties to whom they award a public contract, loan, grant or other benefit, will sign a document which states that they will act in compliance with the 2004 Anti-Discrimination Law and will respect and promote a non-discrimination policy when carrying out their obligations related to such a public contract, loan, grant or other benefit.

45. UNMIK, by its regulation no. 2006/48, promulgated effective the Law on Freedom of Religion in Kosovo, adopted by the Assembly of Kosovo on 13 July 2006. However, UNMIK also revised article 5, paragraph 4, of the law to read as follows: “All religions and their communities in Kosovo including the Islamic Community of Kosovo, the Serbian Orthodox Church, the Roman Catholic Church, the Jewish Religious community and the Evangelical Church shall be afforded every protection and enjoyment of the rights and freedoms provided by this law.” While this change should have been reflected in the final official text, the Special Rapporteur was informed that the full text of the 2006 Law on Freedom of Religion in Kosovo, as available online at the website of the Assembly of Kosovo, still reflects the initial version of article 5, paragraph 4.<sup>20</sup>

46. Article 1, paragraph 2, of the 2006 Law on Freedom of Religion in Kosovo enumerates the various components of the right to freedom of religion or belief, as also stipulated in article 6 (a) to (i) of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. According to article 4 of the 2006 Law on Freedom of Religion in Kosovo, the right to manifest one’s religion or belief may not be abused by inciting, provoking or stimulating religious or racial intolerance or hatred, by impairing the right to life, the right to physical or mental health, the rights to children or the right to respect for private and family integrity. Its article 5 affirms that there shall be no official religion and that religious communities shall be separated from public authorities. The formation of a religious association which, by name or statute, purports to be officially linked to or recognized by a specific religious community is prohibited by article 6 without the consent of the said community. Religious communities are free in the determination of their religious identity and they shall independently regulate and administer their internal organization.

---

<sup>20</sup> “Religious communities in Kosovo enjoy all the rights with this Law.” (see page 3 of [www.assembly-kosova.org/common/docs/ligjet/2006\\_02-L31\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2006_02-L31_en.pdf)); however, the website also includes a remark that this Law is applicable together with UNMIK regulation no. 2006/48 of 24 August 2006 ([www.assembly-kosova.org/?cid=2,191,197](http://www.assembly-kosova.org/?cid=2,191,197)).

47. Following the declaration of independence<sup>21</sup> by the Kosovo authorities in February 2008, the Assembly of Kosovo passed a constitution for Kosovo on 9 April 2008, which entered into effect on 15 June 2008. The Secretary-General noted in a recent report<sup>22</sup> that Kosovo authorities continued to act on the basis of the “Constitution of the Republic of Kosovo” and made public statements, asserting that they had no legal obligation to abide by Security Council resolution 1244 (1999). At the same time, the Government of the Republic of Serbia as well as many Kosovo Serbs reject the authority of Kosovo institutions derived from the “Constitution of the Republic of Kosovo”. The United Nations has adopted a position of strict neutrality on the question of Kosovo’s status.

#### **D. Religious demography**

48. The lack of a recent official census and the boycott by various communities to past census exercises in Kosovo makes all statistical data approximate. With regard to the religious demography, it is estimated that out of the 2 million people living in Kosovo, about 85 per cent are Muslims, 5 per cent are Serbian Orthodox Christians, 3 per cent are Catholics, 1 per cent are Protestants and 6 per cent belong to other religions or are atheists or agnostics.

49. Many of the Special Rapporteur’s interlocutors pointed to the perceived correlation between ethnicity and religious affiliation, since the majority of Albanians in Kosovo are Muslims with a small Catholic minority, whereas most Serbs living in Kosovo are members of the Serbian Orthodox Church. They referred to significant changes in Kosovo’s religious demography, especially with regard to the proportion of ethnic Albanians and Serbs due to massive displacements before, during and after the military intervention of North Atlantic Treaty Organization (NATO) troops in Kosovo in spring 1999.<sup>23</sup>

#### **E. Issues of concern for the mandate**

50. The Special Rapporteur would like to highlight some aspects of the status of freedom of religion or belief in Kosovo. In this chapter, she will focus on the following three issues of concern: (a) violence and incitement to racial or religious hatred; (b) religious symbols; and (c) intra-religious and inter-religious tensions.

##### **1. Violence and incitement to racial or religious hatred**

51. The Special Rapporteur is worried about acts of violence and incitement to racial or religious hatred perpetrated against Muslims and Serbian Orthodox Christians, respectively.

##### **(a) Situation of Muslims**

<sup>21</sup> On 8 October 2008, the General Assembly adopted resolution 63/3 in which it requested the International Court of Justice to render an advisory opinion on the following question: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”. The advisory proceeding before the International Court of Justice was still ongoing at the time of writing the present report

<sup>22</sup> S/2009/300, paras. 2, 7 and 40.

<sup>23</sup> For figures and further information on the context of internal displacement, see the mission reports of the Representative of the Secretary-General on the human rights of internally displaced persons (E/CN.4/2006/71/Add.5, paras. 8-9 and A/HRC/13/21/Add.1).



52. The Special Rapporteur's mandate is usually confronted with cases of discrimination targeting members of religious minorities in a given society. In Kosovo, however, the vast majority of the population is Muslim, mostly of Albanian ethnicity, who have suffered enormously, indeed as others, from the persecution of the Milošević regime in the 1990s. Discrimination and repression was followed by armed conflict involving the loss of lives, disappearances and abductions, massive displacement and forcible expulsions affecting mainly Kosovo Albanians, but also Kosovo Serbs and members of other ethnic groups. The deterioration of the humanitarian crisis prompted the military intervention in the spring of 1999, the withdrawal of Serbian military and police forces from Kosovo in June 1999, and the subsequent creation of an interim international administration.

53. In this regard, the International Criminal Tribunal for the former Yugoslavia has recently convicted some former high-ranking Yugoslav and Serbian political, military and police officials for crimes against humanity (deportation; other inhumane acts: forcible transfer; murder; and persecutions on political, racial or religious grounds pursuant to article 5 of the Tribunal's Statute) as well as for violations of the laws or customs of war (murder pursuant to article 3). In its judgement of 26 February 2009, the Trial Chamber found that there was a widespread and systematic campaign of violence directed against the Kosovo Albanian civilian population during the course of the NATO airstrikes in 1999, conducted by forces under the control of the Federal Republic of Yugoslavia and Serbian authorities, during which there were incidents of killing, sexual assault, and the intentional destruction of mosques.<sup>24</sup> The Presiding Judge emphasized that the deliberate actions of these forces during this campaign caused the departure of at least 700,000 Kosovo Albanians from Kosovo in the short period of time between the end of March and beginning of June 1999.

54. The Special Rapporteur noted that the people in Kosovo are still struggling with the aftermath of those traumatic times. They are facing a huge challenge in shaping a common future in which the rights of religious minorities must also play a central role. According to the Special Rapporteur's experience, healing comes through justice rather than through revenge or reprisals. It is vital for every society to be based on the rule of law as well as to respect and protect human rights, including freedom of religion or belief.

(b) Situation of Serbian Orthodox Christians

55. The Special Rapporteur was disturbed by the reports she received about looting, arson attacks and violence against Serbian Orthodox believers and their places of worship in March 2004. She was informed that numerous lives were lost and that 4,000 Serbs and Roma were driven out of their homes. 36 Serbian Orthodox Churches, monasteries and other religious sites were damaged or destroyed on 17 and 18 March 2004. The places of worship that were attacked date as far back as the fourteenth century and two of them are listed by UNESCO as major sites of universal significance. In addition, 76 monasteries and churches had already been damaged or destroyed between June and October 1999. The Special Rapporteur's interlocutors also complained that some Serbian Orthodox monasteries and religious sites were being presented by the Kosovo authorities without

---

<sup>24</sup> International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, case no. IT-05-87-T (*Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić*), Trial Chamber judgement of 26 February 2009, available online at [www.icty.org/case/milutinovic](http://www.icty.org/case/milutinovic). Subsequently, appeal briefs have been filed by the Prosecution and the Defence teams.

mentioning their Serbian origin and cultural heritage.<sup>25</sup> There are also long-standing disputes about cadastral records concerning some land surrounding religious sites, for example with regard to Visoki Dečani monastery. In addition, 5,250 tombstones in 254 graveyards were reportedly destroyed and many of the tombs were desecrated by scattering around the bones. Many Serbs and Serbian Orthodox clergy are afraid when moving outside of Serb enclaves since their convoys have reportedly been stoned.

56. The Special Rapporteur was informed by UNMIK that, as at January 2007, a total of 326 individuals<sup>26</sup> had been investigated in municipal and district public prosecutors' offices concerning criminal offences committed during the March 2004 riots in Kosovo. A further 157 charges were handled in Minor Offences Courts resulting in 116 sentences. In addition, as of April 2008, a total of 35 defendants<sup>27</sup> were prosecuted by international prosecutors and convicted of 70 crimes in relation to the events of March 2004, including for aggravated murder, inciting ethnic hatred and causing general danger.

57. The Special Rapporteur's international and local interlocutors were unanimous that they were caught by surprise in 2004 and had not seen any warning signs before the attacks on Serbian Orthodox believers and their religious sites. It is therefore important for all actors involved to remain vigilant in detecting any emerging religious tensions and to be proactive in preventing the recurrence of such violence. In addition, any acts of violence or incitement to racial or religious hatred should be investigated and the perpetrators must be prosecuted and sanctioned. In this regard, the Special Rapporteur was informed that on 30 March 2007, a projectile was fired from a rocket-launcher towards the Visoki Dečani monastery which caused serious damage to the tiled roof covering the wall that surrounds the monastery. Subsequently, a Kosovo Albanian was convicted on 19 September 2008 by the UNMIK district court in Pejë/Peć to a prison sentence of three and a half years.

58. The Special Rapporteur remains concerned about the situation of internally displaced persons who are members of religious minorities. A recent UNHCR report indicates that most of the 210,000 internally displaced persons from Kosovo are from minority communities (Serbs, Roma, Ashkali and Egyptians) and in addition almost 20,000 people are still displaced within Kosovo itself, with some 2,200 living in collective centres.<sup>28</sup> In this context, the Special Rapporteur would also like to refer to the follow-up mission from 28 June to 4 July 2009 by the Representative of the Secretary-General on the human rights of internally displaced persons. In his report (A/HRC/13/21/Add.1), the Representative of the Secretary-General notes that the number of returns to, and within, Kosovo has been disappointingly low, even though a considerable section of the internally displaced persons population still seems willing to exercise their right to return. While security and freedom

<sup>25</sup> UNMIK and other key international players intervened on several occasions subsequent to complaints of the Serbian Orthodox Church that the approach of the Kosovo authorities was aimed at disregarding the cultural and historical identity of Serbian people in Kosovo. However, the Kosovo authorities seem to persistently use the term "Byzantine" cultural heritage for Serbian Orthodox monasteries and patrimonial sites in official reports and public presentations.

<sup>26</sup> A total of 200 individuals have been indicted (of which 134 were convicted, 8 acquitted, 28 cases dismissed and 30 pending), 48 charges were dismissed, 4 are suspended or not being pursued, 35 were transferred to other courts (for instance with regard to minor offences) and 29 cases remain open.

<sup>27</sup> Of these 35 defendants, 14 received prison sentences and 21 received suspended sentences. 16 defendants have filed appeals or announced the intention to do so. One defendant prosecuted by an international prosecutor in relation to the riots was acquitted, and the prosecutor in the case has filed an appeal, which is pending with the appellate court. The verdicts against the remaining 19 defendants are final. Approximately ten cases, which needed further action, are currently handled by EULEX International Prosecutors.

<sup>28</sup> See UNHCR Global Appeal 2010-2011, page 28 ([www.unhcr.org/4b040c559.html](http://www.unhcr.org/4b040c559.html)).

of movement for minority communities in Kosovo has improved, today's chief obstacles to sustainable returns are the entrenched patterns of discrimination, lack of access to employment and livelihoods and too few schools for minorities.

## **2. Religious symbols**

59. The issue of wearing religious symbols in educational institutions has been a matter of controversy. The Kosovo Ministry of Education has prohibited the wearing of headscarves, while the legal basis seems to be unclear. In 2004, the Ombudsperson issued an opinion stating that the prohibition should apply only to teachers and school officials, but not to students. In 2007-2008, the Ombudsperson Institution received a large number of complaints from high school students who had not been allowed by the school authorities to wear headscarves in schools. The Acting Ombudsperson concluded, *inter alia*, that they were discriminated on the basis of their religion or belief and underlined that their fundamental right to exercise their religion was protected by human rights standards. In addition, two women in Prizren complained that they applied for teaching positions in secondary schools but were not hired based on their religious convictions and the fact that they wore headscarves.

60. With regard to the issue of wearing religious symbols, especially in public schools, the Special Rapporteur would like to emphasize that each case has to be decided according to its own circumstances. For an analysis of the applicable legal framework and international case law, the Special Rapporteur would like to refer to her report to the 62nd session of the Commission on Human Rights (E/CN.4/2006/5, paras. 36-60). She would like to reiterate that freedom of religion or belief may be invoked both in terms of the positive freedom of persons who wish to wear or display a religious symbol and in terms of the negative freedom of persons who do not wish to be confronted with or coerced into it.

61. On the one hand, the right to education of pupils who have been expelled for wearing religious symbols and also the rights of parents or legal guardians to organize life within the family in accordance with their religion or belief may be at stake. On the other hand, the authorities may invoke the denominational neutrality of the school system and the desire to preserve religious harmony in schools. However, any limitation must be based on the grounds of public safety, order, health, or morals, or the fundamental rights and freedoms of others; respond to a pressing public or social need; pursue a legitimate aim; and be proportionate to that aim.

## **3. Intra-religious and inter-religious tensions**

62. There are also disturbing indicators about intra-religious tensions within the Islamic community in Kosovo. In this regard, the Special Rapporteur has received reports about extreme forms of religious practices that are thrust upon other members of the community. There were at least three cases where moderate Muslim religious leaders were allegedly threatened and beaten for opposing radical religious approaches advocated by different groups within the Islamic community in Kosovo. The Special Rapporteur would like to reiterate that freedom to manifest one's religion or belief may be subject to limitations that are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. Violence in the name of religion cannot be accepted. She urges the relevant authorities to take all necessary and appropriate action to combat intimidation and coercion motivated by intolerance based on religion or belief, also inside the communities.

63. In addition, inter-religious tensions continue in Kosovo. Members of small Christian minorities reported that they were encountering abuse, threats and violent attacks from some members of different religions, especially with regard to missionary activities.

Reportedly, local newspapers and websites had also indicated names and contact details of Christian missionaries, requesting them to stop converting Muslims. Furthermore, the Special Rapporteur is concerned about the vulnerable situation of converts who face problems with the community of their former religion. According to international human rights standards, the right to freedom of thought, conscience and religion also includes the freedom to change one's religion or belief. The Special Rapporteur would like to emphasize that theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief are protected.

## **F. Conclusions and recommendations**

64. During her visit, the Special Rapporteur noticed that the scars of the previous decade's conflicts remain, even though all communities yearn for sustainable peace and reconciliation. She is well aware of the painful history of the whole Balkans region and the deep suffering of individuals and communities caused by violence, atrocities and wars. The Special Rapporteur notes that, regrettably, racism and religious issues contributed to the recent conflicts. Indeed, most of her interlocutors emphasized that religious issues in this region are closely interlinked with ethnicity and historical experience.

65. In Kosovo, there have been recent instances of violence and threats directed against religious communities. At the same time, many of her interlocutors told the Special Rapporteur that the society has historically been characterized by a culture of religious tolerance. Yet, as detailed above (see paras. 50-63), there are a number of serious issues of concern with regard to freedom of religion or belief which need to be addressed adequately by the various actors.

66. Consequently, the Special Rapporteur would like to formulate the following recommendations for the consideration of (a) UNMIK and the international presence in Kosovo; (b) the Kosovo authorities; (c) the religious communities and their leaders; and (d) the whole international community.

### **1. Recommendations for the consideration of the United Nations Interim Administration Mission in Kosovo and the international presence in Kosovo**

67. The reconstruction of cultural and religious heritage sites that had been damaged or destroyed during the violence in March 2004 remains of utmost importance. The Special Rapporteur welcomes that a year-long stalemate over the tendering procedures for reconstruction projects was overcome by the parties at a meeting of the Reconstruction Implementation Commission on 12 May 2009, with the participation of representatives of the Kosovo Ministry of Culture, Youth and Sport, the Serbian Orthodox Church, the institutes for the protection of monuments from Belgrade and Prishtinë/Priština, and UNMIK.

68. Furthermore, it is vital to continue efforts in order to ensure safe conditions for the sustainable return of displaced persons, in particular those belonging to religious minorities. The Special Rapporteur would like to refer to the conclusions of the Representative of the Secretary-General on the human rights of internally displaced persons (A/HRC/13/21/Add.1) and she joins his recommendations addressed to the European Union Rule of Law Mission (EULEX) to pay particular attention to housing, land and property cases involving displaced parties to prevent miscarriages of justice.

**2. Recommendations for the consideration of the Kosovo authorities**

69. The Special Rapporteur recommends the relevant authorities to take swift action and devise creative measures to counter the worrying trend of coercion and violence in the name of religion or belief. In addition, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be vigorously investigated and the perpetrators must be prosecuted in accordance with international human rights law. In this regard, article 20, paragraph 2, of the International Covenant on Civil and Political Rights is an important tool for the protection of persons from discrimination, hostility or violence because of their national, racial or religious identity.

70. The Special Rapporteur would also like to refer to the concluding observations of the Human Rights Committee (CCPR/C/UNK/CO/1, paras. 20-21), which was concerned about the widespread discrimination against minorities in Kosovo and noted that members of minority communities have only limited access to the conduct of public affairs. Further efforts should be made to increase the representation of minority communities, including members of religious minorities, in the judiciary and to improve their access to public service.

71. The Kosovo authorities should exert their utmost efforts to ensure that religious sites are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration and destruction. The Kosovo authorities should also aim to foster a culture of tolerance and respect for the diversity of religions and for religious sites, which represent an important aspect of the collective heritage of humankind. In general, further efforts should be made by all actors to improve the communication between the Kosovo authorities and the Serbian Orthodox Church.

**3. Recommendations for the consideration of religious communities and their leaders**

72. One of the tools for promoting religious tolerance is a meaningful inter-religious and intra-religious dialogue, particularly in order to address contentious issues that religious leaders can resolve amicably through negotiations rather than confrontation. The Special Rapporteur would urge a more cooperative attitude in this regard, especially from the leader of the Serbian Orthodox Church in Kosovo. At this critical moment, religious leaders have a responsibility to play a constructive role so that freedom of religion or belief can be enhanced in a democratic, non-discriminatory and depoliticized manner. The religious leaders' public positions have a direct impact on their communities and can have either positive or detrimental effects on religious harmony.

73. Ultimately, dialogue at the grass-roots levels as well as joint meetings or artistic events that bring together from different religious backgrounds may help in building bridges between the communities and seeking reconciliation. In this regard, the General Assembly emphasizes in its resolution 63/181 the importance of a continued and strengthened dialogue among and within religions or beliefs, at all levels and with broader participation, including of women, to promote greater tolerance, respect and mutual understanding. The Assembly also stresses the need to address the rise of religious extremism that affects the rights of individuals, as well as the misuse of religion or belief for ends inconsistent with the Charter of the United Nations and other relevant instruments.

---

**4. Recommendations for the consideration of the international community**

**74. It is vital to send a clear message that violence and incitement to racial or religious hatred will not be tolerated. The Special Rapporteur would like to reiterate the Human Rights Committee's concern (CCPR/C/UNK/CO/1, para. 12) about the continuing impunity enjoyed by some perpetrators of war crimes and crimes against humanity committed prior to the UNMIK mandate and about ethnically motivated crimes perpetrated since June 1999, including those committed in March 2004, as well as the failure to effectively investigate many of these crimes and bring perpetrators to justice.**

**75. One of the lessons learned from the violent conflicts in the past decade is to remain vigilant in detecting any emerging religious tensions and to try defusing them before they suddenly deteriorate and turn violent. In this regard, the Human Rights Council, the system of special procedures and the treaty bodies have an important early warning function. Due attention must also be given to early signs of intolerance that may not be human rights violations themselves, but that may ultimately lead to religious discrimination. The Special Rapporteur on freedom of religion or belief stands ready for any further consultations and follow-up to the present report.**

---