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宗教或信仰自由问题特别报告员阿斯玛·贾汗吉尔的报告 \*

增 编

对土库曼斯坦的访问 \*\*

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\* 迟交。

\*\* 本报告的内容提要以所有正式语文分发，报告本身载于附件，只以提交时所用语文和俄语分发。

## 内 容 提 要

宗教或信仰自由问题特别报告员从 2008 年 9 月 4 日至 10 日应土库曼斯坦的邀请对该国进行了访问。

在她对该国的访问中，特别报告员对于土库曼斯坦社会层面上普遍的宽容和宗教和谐气氛感到惊喜，但是，该国对于宗教组织和集体的宗教表达形式仍然存在猜疑。在过年 8 年里，本任务机制曾收到一些报告，指称该国政府主管部门对个人和群体的宗教活动实行逮捕、恐吓、骚扰和限制。尽管自 2007 年以来，情况已有很大好转，但是经官方登记和未经登记的个人和宗教群体依然受到密切监视，而且在表达其宗教信仰自由方面仍然面临一些困难。特别报告员依然关注到土库曼斯坦政府当局对于宗教的登记、礼拜场所、宗教用品、宗教教育和宗教皈依行为实施了法律和政策限制。这些法律及法律的执行在一些情况下构成了对表达个人宗教或信仰的自由以及对诸如对结社自由和言论自由的权利实行了不适当的限制。

特别报告员在其结论和建议中强调指出，颁布和实施不适当地限制宗教或信仰自由的法律并不能为土库曼斯坦政府当局所表达的关注提供有效而长期的解决办法，该国当局的担忧是，宗教和谐的气氛可能会受到外来极端群体的破坏，但是特别报告员强调指出，宗教或信仰领域的立法是十分敏感的工作，在这一领域里，模棱两可的或过度严厉的法律条款都有可能造成紧张态势，并导致多种问题，而不是解决这些问题。此外，这些条款有可能会受到执法机关和地方行政机构的任意诠释或对独断权的滥用以及歧视。据此，特别报告员促请该国政府审查土库曼斯坦涉及到思想自由和宗教组织的既已修订的法律，从而使之不再侵犯个人和群体行使宗教或信仰自由的权利。她特别建议从法律中删除对未登记的宗教活动的限制，以及对宗教用品、教育和服饰的不适当限制。同样，该国政府应当确保宗教社区在对建造、开放、租用或使用宗教礼拜场所方面面临阻碍。关于“宗教事务委员会”，特别报告员认为，该理事会应该包含少数派宗教的代表，并成为引导性而不是监督性的机制。关于依良心拒服兵役的问题，特别报告员建议该国政府对那些出于宗教信仰拒服兵役的人提供替代性非军事的方式承担职责。她并促请该国政府对司法机构开展改革，以便对剥夺宗教或信仰自由的事件提供切实有效的法律纠正和赔偿方式。最后，她建议向执法人员和地方政府的代表提供适当的培训，使之进一步了解包括宗教或信仰自由在内的国际人权标准。

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION  
OR BELIEF, ASMA JAHANGIR, ON HER MISSION TO TURKMENISTAN**

**(4 TO 10 SEPTEMBER 2008)**

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## **I. INTRODUCTION**

1. The Special Rapporteur on freedom of religion or belief, Asma Jahangir, carried out a mission to Turkmenistan from 4 to 10 September 2008, at the invitation of the Government. The visit was undertaken 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 is grateful for the good cooperation extended to her by the Government of Turkmenistan. In Ashgabat, she met with the President of Turkmenistan; the Minister of Foreign Affairs; the Minister of Justice; the Minister of Education; the Minister of Culture, TV and Radio Broadcasting; the Deputy Minister of Internal Affairs; the Deputy Minister of Defence; the Deputy Minister of National Security; and the Head of the Main State Tax Service. The Special Rapporteur also had meetings with the Chairperson of the Parliament; the Chairperson of the Supreme Court; the General Prosecutor; the Deputy Chairpersons of the Presidential Council on Religious Affairs; and the Director of the National Institute on Democracy and Human Rights. In addition, the Special Rapporteur held consultations with representatives of regional and local authorities. These included the mayor of the Dashoguz region, the mayor of the city of Dashoguz, the mayor of the Balkanabat region, the mayor of the city of Turkmenbashi, as well as regional and local representatives of the Council on Religious Affairs.

3. In addition, the Special Rapporteur was able to collect first hand information and materials on the state of freedom of religion or belief in the country, inter alia, by meeting members of various religious communities, both registered and unregistered. The interlocutors included religious leaders and members of Sunni Islam, the Russian Orthodox Church, Shi'a Islam, the Baha'i community, the Hare Krishna community, the Roman Catholic Church and several Protestant Churches, including the Jehovah's Witnesses. She also met with representatives of the Organization for Security and Co-operation in Europe and foreign Embassies in Turkmenistan. She wishes to thank religious representatives and other interlocutors for the information and opinions they shared with her.

4. The Special Rapporteur would like to thank the authorities for their invitation and cooperation. Her visit to Turkmenistan was the first official mission carried out by a special procedures mandate-holder and she hopes that other special procedures mandate-holders will follow. The Special Rapporteur also wishes to express her appreciation to the United Nations Office in Turkmenistan for its outstanding logistical support provided before, during and after the mission.

## **II. POLITICAL AND HISTORICAL BACKGROUND**

5. Turkmenistan was part of the Union of Soviet Socialist Republics for 67 years before proclaiming its independence on 27 October 1991. The Special Rapporteur was reminded time and again by her interlocutors that Turkmenistan had been spared from open inter-ethnic or inter-religious conflict despite being at the heart of a highly volatile region.

6. Turkmenistan is a single-party political system, with the President being both the head of State and the head of Government. The current President of Turkmenistan is H.E. Mr. Gurbanguly Berdimuhammedow. He succeeded the former President for life, H.E. Mr. Saparmurat Niyazov, who died in December 2006. According to article 4 of the 2003 Constitution of Turkmenistan, the State power is divided into the People's Council (Khalk Maslahaty), legislative, executive and judiciary branches. The only national court is the Supreme Court, which does not adjudicate on the constitutionality of laws. All branches of the State, including all representatives at the regional and local levels, as well as judges in all courts, are fully accountable to the President. On 26 September 2008, constitutional amendments, inter alia, abolished the People's Council and transferred its powers to the President and the Parliament.

7. Turkmenistan is made up of five regions, one independent city (the capital Ashgabat), 20 cities, 65 districts, as well as communities and villages. According to the Government, the population was estimated at 6.3 million at the end of 2003 and more than 40 ethnic groups live in Turkmenistan.<sup>1</sup>

### III. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

8. This section provides an overview of the main international legal standards referenced by the Special Rapporteur<sup>2</sup> in carrying out her assessment of the situation regarding freedom of religion or belief in Turkmenistan.

9. Article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights set out the basic elements of the right to freedom of religion or belief. This fundamental right includes freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching. Furthermore, article 2 of the Universal Declaration of Human Rights provides that everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind such as, inter alia, religion. Relevant articles of the International Covenant on Civil and Political Rights include article 20, which obliges States to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; article 26, which prohibits discrimination and guarantees to all persons equal and effective protection

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<sup>1</sup> Ethnic Turkmen make up 94.7 per cent of the population, Uzbeks 2 per cent, Russians 1.8 per cent, and other people (Kazakhs, Azerbaijanis, Armenians, Ukrainians, Tatars, Baluchis, etc.) 1.5 per cent (see CERD/C/441/Add.1, paras. 8 and 12).

<sup>2</sup> For further information on the international legal standards relied upon by the Special Rapporteur in the implementation of the mandate see her previous reports to the Commission on Human Rights (see E/CN.4/2005/61, paras. 15-20 and E/CN.4/2006/5, Annex). The Special Rapporteur has also illustrated the international legal standards with pertinent excerpts of the mandate-holders' findings since 1986 in an online digest which is available on the website of the Office of the High Commissioner for Human Rights (<http://www2.ohchr.org/english/issues/religion/standards.htm>).

against discrimination on religious grounds; and article 27, which provides for the right of members of religious minorities to profess and practice their own religion. Moreover, the Special Rapporteur is guided by general comment No. 22 (1993) of the Human Rights Committee, which interprets the content of article 18 of the International Covenant on Civil and Political Rights.

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

11. The Special Rapporteur is also guided by relevant declarations as well as guidelines by various United Nations bodies, including the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration). Furthermore, the mandate is guided by relevant resolutions of the former Commission on Human Rights and its successor, the Human Rights Council.

#### **IV. LEGAL FRAMEWORK ON FREEDOM OF RELIGION OR BELIEF**

12. Article 5 of the Constitution of 26 September 2008 stipulates that laws and other legal acts contradicting the Constitution have no juridical force. Furthermore, according to article 6, Turkmenistan recognizes the precedence of generally recognized norms of international law. Since its independence in 1991, Turkmenistan has acceded to several core international human rights instruments:<sup>3</sup> the Convention on the Rights of the Child (acceded in 1993) and its two Optional Protocols (acceded in 2005); the International Convention on the Elimination of All Forms of Racial Discrimination (acceded in 1994); the International Covenant on Economic, Social and Cultural Rights (acceded in 1997); the International Covenant on Civil and Political Rights (acceded in 1997) and its two Optional Protocols (acceded in 1997 and 2000); the Convention on the Elimination of All Forms of Discrimination against Women (acceded in 1997); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (acceded in 1999); and the Convention on the Rights of Persons with Disabilities (acceded on 4 September 2008).

13. The right to freedom of thought, conscience and religion is embodied in the Constitution of Turkmenistan. According to its article 11, the State guarantees freedom of religions and confessions and their equality before the law. There is a separation between State and religion; religious organizations may not interfere with State matters or perform State functions. The State educational system is separate from religious organizations and is of a secular nature. In addition, everybody has the right to independently determine his/her attitude toward religion, to profess individually or with others any religion or not to profess any religion, to express and disseminate

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<sup>3</sup> Turkmenistan has not entered reservations or made declarations with respect to any of these human rights treaties with the exception of the Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict.

beliefs related to his/her attitude toward religion and to participate in the practice of religious cults, rituals and ceremonies. According to article 19 of the Constitution, Turkmenistan guarantees the equality of rights and freedoms of a man and citizen and the equality of a man and citizen before the law regardless of their, inter alia, attitude toward religion. In addition, article 30 prohibits the creation and activity of political parties and other public organizations aiming at, inter alia, a violent change of the constitutional structure, allowing violence in their activities, acting against the constitutional rights and freedoms of citizens, propagating war, racial, national or religious enmity. This article also prohibits the creation of paramilitary organizations and political parties based on ethnic or religious criteria.

14. The Law of Turkmenistan on freedom of conscience and religious organizations (“Religious Organizations Law”), adopted on 21 October 2003, spells out the foregoing constitutional provisions in more detail. It replaces the 1991 Law on freedom of conscience and religious organizations and its subsequent amendments in 1995 and 1996. Article 2 recognizes that in case an international treaty to which Turkmenistan is a signatory party sets rules which are different from those contemplated in this Law, the rules of the international treaty shall apply. Religious education is governed by articles 6 and 9. Accordingly, children may be provided religious education at mosques for no longer than four hours a week upon approval of the Council on Religious Affairs and of the parents. Furthermore, providing religious education in private is prohibited. Article 9 also indicates that citizens of Turkmenistan may receive religious education at a specific faculty in the Magtymguly Turkmen State University. Article 11 prohibits the activity of unregistered religious organizations and defines the registration procedure through the Council on Religious Affairs and the Ministry of Justice. The following articles 12 and 14 determine the reasons for refusing to register a religious organization or liquidating it. Such reasons include the non-religious nature of the organization, the interference of the religious organization in family relations that result in the breakup of a family or the propaganda of war and social, racial, national or religious discord. Article 15 and 16 regulate the property of religious organizations and allow them to possess buildings and other property needed to ensure their activities, as well as property that was acquired or created at their own expense. According to article 19, religious organizations have the right to freely establish and maintain accessible places of religious service or religious ceremonies as well as places of pilgrimage. This article also prohibits the wearing of religious costumes in public places, except for priests of religious organizations. Under article 20, citizens of Turkmenistan and religious organizations are allowed to acquire, purchase and use religious literature. Import, export and dissemination of religious literature encouraging religious, national, interethnic and racial discord are however not permitted. Furthermore, delivery and dissemination of religious literature published abroad shall be conducted upon the expert assessment of its content by the Council on Religious Affairs. The mandate of the Council on Religious Affairs is determined by article 7.

15. The 2003 Religious Organizations Law was modified in 2004 through several amendments and presidential decrees. As a result, the numerical threshold for registration was reduced from five hundred members to five in March 2004. A difference was also established between religious groups, which shall consist of no more than 50 citizens, and religious organizations, which shall consist of no less than 50 citizens. Moreover, the Ministry of Justice was no longer required to publish in the local media a list of registered religious organizations. In addition, whereas unregistered religious activity was regarded as a criminal offence, it became an administrative offence in May 2004. Hence, according to article 205 of the Code of Administrative Offences, leaders who refuse to register their communities, leaders or participants

who engage in unregistered religious activity, leaders and members of registered religious organizations who conduct youth work or activity not directly related to religious worship, and those who violate the regulations on conducting religious ceremonies and processions, will face fines of between five and ten months' minimum wages. Article 205 also provides that members of registered or unregistered religious communities who receive support from any source without recording it officially may be fined between ten to twenty months' minimum wages and have the donation confiscated.

16. In addition, Rules for Registration of Religious Organizations were adopted in 2004. Based on the Religious Organizations Law, these rules establish the applicable registration fees; determine what documents need to be submitted by religious organizations for their registration; define with more precision the registration procedure; and address the issue of liquidation of religious organizations as well as the drafting and keeping of registration materials.

17. With regard to the issue of conscientious objection to military service, several domestic provisions are relevant. Article 45 of the Constitution provides that the defence of Turkmenistan is a sacred duty of everyone and that general military service is established for male citizens of Turkmenistan. In the Criminal Code, article 219 (1) stipulates that evasion of call-up to military service in the absence of legal grounds to an exemption from this service is punished by corrective work or imprisonment of up to 2 years. Article 219 (2)-(3) punishes those who fake illness to evade military service or who refuse to fight during a war. In addition, article 16 (3) of the Conscription and Military Service Act stipulates that those who have served two sentences for evasion are thereafter exempt from military service.

18. During her country visit the Special Rapporteur was informed by several Government officials that the Religious Organizations Law would be amended, so as to be further improved. At the time of her visit, no new draft was yet ready. She was told that amendments to the actual legislation would only be considered after the completion of reforms in the Constitution at the end of September 2008.

## **V. RESPECT FOR FREEDOM OF RELIGION OR BELIEF**

### **A. Overview**

19. While religious practice was generally discouraged during the Soviet era, there has been a tightly controlled revival of Islam since the independence of Turkmenistan. The Special Rapporteur was for instance informed that while only four mosques were operating in Turkmenistan at the time of the Soviet Union, more than four hundred mosques had been built since 1991. The redefinition of Turkmenistan's national identity has been done through the promotion of a moderate understanding of Islam based on Turkmenistan's national and religious traditions.

20. Although no official statistics regarding religious affiliation are available and the degree of religious observance varies widely, it is estimated that more than 90 per cent of the population are Sunni Muslims and that the Hanafi school of thought is the most influential in Turkmenistan. The Russian Orthodox Church constitutes the largest religious minority. Other religious communities include Baha'i, Baptists, Hare Krishna, Jehovah's Witnesses, Protestants, Roman Catholics and Shi'a Muslims. During her visit, the Special Rapporteur was impressed by the high



level of tolerance in the society with regard to the religious diversity that exists in Turkmenistan. She noticed that an important portion of Turkmenistan's population displays a dispassionate, yet respectful, attitude towards religion. This attitude is conducive to the climate of religious harmony which prevails in Turkmenistan's society and inter-religious violence is uncommon.

21. Over the past eight years, the mandate has however received reports of serious violations of freedom of religion or belief allegedly perpetrated by the authorities and the Special Rapporteur has sent a number of communications to the Government in this regard.<sup>4</sup> There were reports of arrests, intimidation, harassment and restrictions on the religious activities of individuals and groups. During her visit, the Special Rapporteur was told by virtually all of her interlocutors that the situation has much improved since 2007. Nevertheless, individuals and religious communities still face a number of difficulties when manifesting their freedom of religion or belief. There continue to be reports - though fewer - that unregistered and registered religious organizations are under tight scrutiny. Reportedly, the authorities have summoned certain believers, investigated their religious convictions and pressured them to leave their jobs. Problematic legislative provisions and arbitrary or abusive implementation need to be addressed at all levels and there remains tight state control on all religious communities. In the following, the Special Rapporteur will focus on her main issues of concern such as registration of religious organizations, the role of the Council on Religious Affairs, places of worship, religious material, religious education, proselytism and conscientious objection.

## **B. Registration**

22. According to article 11 of the Religious Organizations Law, the registration of a religious organization is conducted by the Ministry of Justice upon the application submitted by the Council on Religious Affairs. At the time of the visit of the Special Rapporteur, there were 122 registered religious organizations, of which 94 were Sunni Muslim, 13 were Russian Orthodox, 5 were Shi'a Muslim, and 10 were from other religious communities, such as Bahai, Baptist, Hare Krishna and Protestant. In addition, five applications submitted by the Council on Religious Affairs were being considered by the Ministry of justice and three other applications were being reviewed by the Council on Religious Affairs.

23. As done previously in her report to the Commission on Human Rights (see E/CN.4/2005/61, paras. 55-58), the Special Rapporteur would like to refer to some points of the OSCE/ODIHR Guidelines for Review of Legislation pertaining to Religion or Belief<sup>5</sup> which are of particular relevance when examining the registration issue in Turkmenistan. While it would be

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<sup>4</sup> See A/55/280, paras. 48-52; A/56/253, paras. 68-70; A/57/274, paras. 55-56; A/58/296, paras. 94-98; E/CN.4/2004/63, paras. 97-98; E/CN.4/2005/61/Add.1, paras. 263-281; E/CN.4/2006/5/Add.1, paras. 365-389; A/HRC/4/21/Add.1, paras. 291-307; A/HRC/7/10/Add.1, paras. 250-254.

<sup>5</sup> See Guidelines for review of legislation pertaining to religion or belief, prepared by the OSCE/ODIHR advisory panel of experts on freedom of religion or belief in consultation with the European Commission for democracy through law (available online at [www.osce.org/publications/odihr/2004/09/12361\\_142\\_en.pdf](http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf)).

appropriate to require registration for the acquisition of a legal personality and similar benefits, registration should not be a mandatory precondition for practicing one's religion. Registration procedures should be easy and quick and should not depend on extensive formal requirements in terms of the number of members or the length of existence of a particular religious group. Registration should not depend on the review of the substantive content of the belief, the structure of the faith group and methods of appointment of the clergy. Additionally, provisions which are vague and which grant excessive governmental discretion in giving registration approvals should not be allowed. It is imperative that no religious group be empowered to decide about the registration of another religious group.

24. The fact that the Religious Organizations Law prohibits the activities of unregistered religious organizations stands in contradiction with international human rights standards as well as the principles enshrined in the Constitution of Turkmenistan. Unregistered religious activity is no longer a criminal offence but has become an administrative offence in 2004. The prohibition of unregistered religious activity remains a matter of great concern to the Special Rapporteur. It adversely affects numerous aspects of the freedom to manifest one's religion or belief. Indeed, members of unregistered groups, especially those living outside of Ashgabat and those who are not Sunni Muslim or Russian Orthodox, seem to be under constant threat. They are not permitted to congregate, are unable to find facilities for meetings, and any collective observance is liable to punishment.

25. The Special Rapporteur wishes to reiterate that international human rights law recognizes freedom of religion or belief regardless of registration status. Those who cannot or do not want to register should therefore still be able to manifest their religion or belief both individually and collectively, in private or in public. Any limitations to the freedom to manifest one's religion or belief must not only be prescribed by law but must also be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, according to article 18 paragraph 3 of the International Covenant on Civil and Political Rights. The Human Rights Committee in its general comment No. 22 (1993) emphasizes that paragraph 3 of article 18 is to be strictly interpreted and that restrictions are not permitted on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as "national security". However, article 3 of the Religious Organizations Law states that the practice of freedom of religion shall not be contrary to the established public legal order and that it can be temporarily restricted to ensure national security and to protect public order, life, health, morality, rights and freedoms of other citizens. Consequently, article 3 of the Religious Organizations Law is not in consonance with international law since it includes "national security" as a possible limitation ground.

26. Concerning formal requirements in terms of the number of members or the length of existence of a particular religious group, the Religious Organizations Law does not require a particular religious group to have a lengthy existence in order to be registered and the 2004 Presidential Decree has reduced the number of required members for registration from 500 to 5. It is, however, not clear why the Religious Organizations Law distinguishes between "religious groups" (up to 50 members) and "religious organizations", which shall consist of no less than 50 citizens. Though presumably the latter can be granted legal status, such a distinction adds

unnecessary confusion to the number of members required in order to register a religious organization. In addition, it is not clear which provisions of the Religious Organizations Law apply to religious groups or religious organizations.

27. The authorities have allegedly used the registration process to unduly restrict the right of freedom of religion or belief of members of certain religious communities, in particular of religious minorities. The Special Rapporteur was informed by members of certain religious communities seeking registration that they had often faced obstructions on procedural and/or substantive grounds. For instance, certain religious communities have seen their registration application being repeatedly sent back by officials of the Ministry of Justice requesting additional materials or suggesting amendments to the wording in the charter of the religious community and therefore delaying action on the application. While, according to article 11 of the Religious Organizations Law, decision regarding the registration of a religious community shall be made within three months from the date of the submission of the application, certain applications have reportedly been pending for several years. Other cases of obstruction relate to the requirement that the registration application be signed by all members of the religious organization and should contain their full names, dates of birth and places of residence.<sup>6</sup> The Special Rapporteur would recommend that this requirement be at least limited to the initiators of the religious organizations, since it might in practice be difficult to obtain before registration the signature of all members, especially in large religious communities. Furthermore, those who were not included in the registration application might subsequently face difficulties when taking part in religious activities of their fellow believers. In addition, some members may legitimately wish to keep their religious affiliation confidential.

28. The Special Rapporteur would like to recall that registration procedures shall be applied in a non-discriminatory manner. Therefore, they shall make no distinction between large or small religious communities or between traditional religions and other religions or beliefs. As stated by the Human Rights Committee in its general comment No. 22 (1993), “the terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community”.

29. The case of the small community of Jehovah’s Witnesses living in Turkmenistan is of particular concern to the Special Rapporteur. Although their members have sought to register their community for many years, the Council on Religious Affairs has invoked substantive reasons in order to deny legal status to the Jehovah’s Witnesses. These reasons relate, for instance, to the manner in which Jehovah’s Witnesses disseminate their religious views, to their refusal to serve in the army or to allow any blood transfusions. The Special Rapporteur would like to recall that while limitations on freedom to manifest one’s religion or belief are permissible under certain strict conditions, no limitations may be made to the internal and private

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<sup>6</sup> See article 11 of the Religious Organization Law and the Rules for Registration of Religious Organizations.

realm of the individual's belief (*forum internum*). This is a core element of religious freedom, where the State has no right to interfere. No substantive review of an application should therefore be allowed, since it might lead to a discriminatory and excessively intrusive practice from the authorities. In a secular State like Turkmenistan,<sup>7</sup> the authorities should remain neutral with respect to religious matters and restrict themselves to a formal review of registration applications.

30. Among the different reasons for denial of registration or liquidation of a religious organization spelt out in articles 12 and 14 of the Religious Organizations Law, some of them lack clarity. It is difficult to determine what exactly constitutes an offence and this might lead to abusive interpretation or excessive discretion by the authorities. Further, this could result in the imposition of collective sanctions for offences committed by individuals or a small group of individuals within the religious organization. Some examples include denial of registration if the organization fails to be recognised as a religious one (article 12) or the liquidation of an organization if there are interferences into family relationships that result in the break-up of a family (article 14). The Religious Organizations Law also refers to the commitment of "illegal actions" as a basis for liquidating a religious organization. During her mission, the Special Rapporteur was often told by Government officials that there were organizations using religious cover to carry out illegal activities and that these should be denied registration and/or liquidated. In this regard, she wishes to reiterate that the use of registration law is rarely efficient in tackling such criminal activities and that related allegations should be addressed on a case-by-case basis in accordance with the common criminal or civil legislation.

31. Although the Special Rapporteur was told by Ministry of Justice officials that, once registered in Ashgabat, religious organizations have the right to operate on the entire national territory and to establish local branches, it appears that in practice local registration is required in order to carry out religious activities. The Religious Organizations Law contains no provisions on that issue and since local authorities are left with wide discretionary power, registration requirements at the local level are often unclear. As a result, religious organizations have reportedly faced difficulties when trying to obtain local registration. The 2004 presidential decree, which has relieved the Ministry of Justice from the obligation to publish the list of registered religious organizations in the local media, has created further difficulties for religious organizations wishing to establish local branches and having to provide proof of their registration on the national level.

32. While religious organizations which have obtained registration seem to be able to operate with greater freedom, their activities, especially those of religious minorities, are still under great scrutiny on the part of the authorities. For instance, registered religious organizations still require permission from the authorities before holding a special meeting. The Special Rapporteur received reports that some religious communities preferred not to register, in order to avoid exposure to, and interference from, the authorities.

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<sup>7</sup> See article 1 of the Constitution of Turkmenistan.

### **C. The Council on Religious Affairs**

33. According to article 7 of the Religious Organizations Law, the Presidential Council on Religious Affairs is mandated to, inter alia, exercise control over the activities of religious organizations regarding the observance of the Religious Organizations Law; represent, in State authorities, the interests of religious organizations located and operating in Turkmenistan; consider citizen's appeals, letters and complaints related to the activities of religious organizations and take measures on eliminating the revealed shortcomings and violations; and to promote mutual understanding and tolerance among religious organizations practicing various beliefs and operating within and outside Turkmenistan. As mentioned above, the mandate of the Council on Religious Affairs also includes participation in the registration process. It reviews applications before submitting them with a recommendation to the Ministry of Justice.

34. Although the mandate defined above is quite broad, the Council on Religious Affairs seems to have mainly focused on its monitoring role vis-à-vis religious or belief communities. Thus, religious organizations have reported that the Council on Religious Affairs has acted as an arm of the authorities in order to closely control their activities, rather than representing their interests in state authorities, addressing their grievances or promoting mutual understanding and tolerance among them.

35. The Council on Religious Affairs is composed of Sunni Muslims and Russian Orthodox Christians; no other religious minorities are represented therein. Likewise, the Council on Religious Affairs exclusively appoints Sunni Muslim Imams to represent it at the regional level, therefore leaving religious minorities out of the regional and local governmental structures. The Special Rapporteur is of the view that an inclusive body would inspire the confidence of all religious communities in Turkmenistan. It is indeed inappropriate to give a governmental body which only includes Sunni Muslims and Russian Orthodox Christians the powers to decide on the registration of other religious groups.

### **D. Places of worship**

36. Prior to her visit, the Special Rapporteur had received information on difficulties faced both by registered and unregistered religious organizations with regard to the building, opening, renting and use of places of worship. Allegedly, raids by officials of the Ministry of Internal Affairs and of the Ministry of National Security<sup>8</sup> have occurred in order to prevent public and private religious gatherings. Furthermore, places of worship of diverse religious communities have been confiscated or even destroyed and the building and renting of places of worship have also been obstructed by the authorities.

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<sup>8</sup> While there were also reports about the involvement of the Main State Tax Service in these raids, the Special Rapporteur has received assurances by the Government that it was not the case.

37. Since 2007, the situation has generally improved and no more destruction of places of worship seems to have occurred. For instance, the building of a Russian Orthodox church in Dashoguz has recently resumed. It had started in 2003 but had been suspended, apparently on the grounds of technical problems over the use of land, until the local authorities agreed to lift the suspension in 2008.

38. Nonetheless, religious communities are still not free from State interference, regardless of articles 15 and 19 of the Religious Organizations Law, which allow religious organizations to possess buildings, structures under construction and other property needed to ensure their activities, as well as to freely establish and maintain accessible places of religious service or religious ceremonies. In practice, there are still numerous tight restrictions imposed by the authorities on the building, opening, renting and use of such facilities for a number of registered and unregistered religious communities. For instance, some religious communities which do not possess their own places of worship have to rent public venues, such as cafes or restaurants in order to meet. Owners who have once accepted to rent their venues have however been pressured by the authorities to refrain from doing so again. As a result, it has become very difficult for these religious groups to find public meeting places.

39. The Special Rapporteur would like to recall that in its resolution 62/157, the General Assembly had urged States to “ensure, in particular, 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”. In addition, the Special Rapporteur stated in her 2005 report to the Commission on Human Rights (see E/CN.4/2005/61, paras. 51-52), that places of worship are an essential element of the manifestation of the right to freedom of religion or belief to the extent that the great majority of religious communities or communities of belief need the existence of a place of worship where their members can manifest their faith. Moreover, unlike other forms of violations of the right to freedom of religion or belief, restrictions on places of worship or other religious sites in many cases violate the right not only of a single individual, but the rights of a group of individuals forming the community that is attached to the place in question.

40. According to article 19 of the Religious Organizations Law, religious services rituals and ceremonies can be, if necessary for ritual reasons, held at homes of citizens. While some religious organizations have been allowed to hold religious meetings in private places, in practice, however, a number of religious meetings in private homes of registered and unregistered communities have actually led to raids and fines. The Special Rapporteur received information on the recent case of a believer who had been summoned by the authorities in Ashgabat, while he was on his way to a private meeting.

### **E. Religious material**

41. While the Religious Organizations Law allows citizens of Turkmenistan and religious organizations to acquire, purchase and use religious material, the Special Rapporteur received information on religious material being confiscated from believers who were summoned and investigated by the authorities, while they were on their way to or attending a religious gathering.

42. Imports of religious material are also tightly controlled. According to article 20 of the Religious Organizations Law, delivery and dissemination of religious literature published abroad shall be conducted upon the expert assessment of its content by the Council on Religious Affairs.

Furthermore, the number of imported copies allowed by the Council on Religious Affairs must not exceed the number of registered group members. During her mission, the Special Rapporteur received reports of restrictions by the authorities on imports of religious books and related literature. In one case, a believer went to the international post processing centre in Ashgabat, where the person expected a parcel from Russia. There, the person was told that since the parcel contained copies of the Bible, the Council on Religious Affairs would have to decide whether the person would be authorized to receive it or not. In addition to cases of confiscation and of restrictions on import which were conveyed to the Special Rapporteur, she also notes that except for copies of the Qur'an, it seems to be difficult to find religious literature in bookshops and libraries.

43. As stated by the Human Rights Committee in its general comment No. 22 (1993), “the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts [...]; the practice and teaching of a religion or belief includes [...] the freedom to prepare and distribute religious texts or publications”. On the same issue, the Special Rapporteur would like to recall that in its resolution 62/157, the General Assembly urged States to ensure “the right of all persons to write, issue and disseminate relevant publications in these areas [of religion or belief]”.

44. The Special Rapporteur is of the view that the whole set of human rights can be enjoyed only in an environment that guarantees freedom and pluralism. As such, the right to freedom of expression constitutes an essential aspect of the right to freedom of religion or belief. Restrictions on religious materials may therefore affect freedom of religion or belief, as well as on freedom of expression, both enshrined in articles 18 and 19 of the International Covenant on Civil and Political Rights.

## **F. Religious education**

45. Religious education appears to be tightly restricted in Turkmenistan, both in the sense of training clergy and of teaching members of religious communities about their beliefs. For instance, with regard to the training of clergy, local and regional imams are appointed by the Council on Religious Affairs provided they have graduated from the Faculty of Theology of the Magtymuly Turkmen State University, which has now been merged with the Faculty of History. The Special Rapporteur was told by the authorities that Hanafism, which appears to be the main current of Islam in Turkmenistan, needed unified understanding and therefore all imams had to be trained in this Faculty, in accordance with article 9 of the Religious Organizations Law. As for other religious communities, training institutions do not seem to exist in Turkmenistan, therefore compelling religious minorities to rely on clergy trained abroad. In this regard, article 8 of the Religious Organizations Law allows religious organizations which have spiritual centres abroad, to perform their rituals and train their priests and other religious personnel in the order established by these centres, provided they do not violate the laws of Turkmenistan. There are, however, reports about restrictions on freedom of movement of members of religious minorities, including for those intending to leave Turkmenistan's territory for the purpose of religious training or to attend religious conferences.

46. The Religious Organizations Law also provides for tight control on the teaching of members of religious communities about their beliefs. Although article 6 of the Religious Organizations Law generally allows for citizens of Turkmenistan to receive religious education

individually or jointly with other people based on their own choice, this same article also more specifically establishes that religious education for children can be provided at mosques, during afterschool hours for no longer than four hours a week, upon approval of the Council on Religious Affairs and of the parents. Furthermore, according to this same article, providing religious education in private is prohibited and shall be subject to liability. Since religious education can only be provided at mosques, it implies that non-Muslim communities are not authorized to have religious classes, either in public or in private. An arbitrary interpretation of the law could prevent parents from imparting religious education to their children in private. This would contravene international human rights standards which guarantee the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

47. The Special Rapporteur expresses concern about the State's interference in religious affairs of the different belief communities in Turkmenistan. She would like to recall that according to article 6 of the 1981 Declaration, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the freedom to train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief and the freedom to teach a religion or belief in places suitable for these purposes. She also would like to refer to the Human Rights Committee's general comment No. 22 (1993), in which it stated that "the practice and teaching of a religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications."

### **G. Proselytism**

48. While both article 11 of the Constitution of Turkmenistan and article 3 of the Religious Organizations Law guarantee the right to express and disseminate views related to religion, the Special Rapporteur noted during her mission that a number of her governmental interlocutors seemed to equate proselytism to a form of coercion on people to convert. In this regard, she received information about one case where members of a religious group were convoked by the authorities in the Ahal region and were told that there had been complaints about their religious activities. Members of this religious group were accused of extending their activities, exerting pressure upon people as well as conducting training and propaganda. The local authorities told them that they did not have the right to express and disseminate beliefs enshrined in the Bible, that they may not share their religious feelings with their families and friends and as members of the democratic society, they had to read the Bible alone. The Special Rapporteur was also informed of other cases including believers being harassed because of them distributing religious material in the streets.

49. The Special Rapporteur wishes to recall that peaceful sharing of one's belief is a critical element of the freedom to manifest one's religion or belief, which explains its legal status in international instruments and in the 1981 Declaration. As stated in the section on missionary activities and propagation of one's religion in her 2005 report to the General Assembly (see A/60/399, paras. 59-68), missionary activity is accepted as a legitimate expression of religion or belief and therefore enjoys the protection afforded by articles 18 and 19 of the International Covenant on Civil and Political Rights and other relevant international instruments. Consequently, proselytism and related missionary activities through peaceful means of



persuasion cannot be considered as a violation of the freedom of religion or belief of others if all involved parties are adults able to reason on their own and if there is no relation of dependency or hierarchy between the missionaries and the objects of the missionary activities.

## **H. Conscientious objection**

50. The Special Rapporteur remains very concerned that conscientious objection is considered as a criminal offence in Turkmenistan. Indeed, according to article 219 of the Criminal code, “evasion of call-up to military service in the absence of legal grounds to an exemption from this service is punished by corrective work of up to two years or imprisonment of up to two years”. A number of Jehovah’s Witnesses have been detained in the past years for having refused to perform military service due to their religious beliefs. The Special Rapporteur was informed of a case where a person, who had already been convicted in 2000 to one year of detention for having evaded military service, had to face criminal prosecution for the same offence again in 2007. This individual was, however, pardoned by a Presidential decree in September 2007.

51. With regard to the right to conscientious objection, the Special Rapporteur wishes to refer to a 2006 case<sup>9</sup> in which the Human Rights Committee observed that while the right to manifest one’s religion or belief does not as such imply the right to refuse all obligations imposed by law, it provides certain protection, consistent with article 18, paragraph 3, against being forced to act against genuinely-held religious belief. The Committee also recalled its general view expressed in general comment No. 22 (1993), that to compel a person to use lethal force, although such use would seriously conflict with the requirements of his/her conscience or religious beliefs, falls within the ambit of article 18.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

### **Conclusions**

52. Turkmenistan is a fast progressing country. A high level of tolerance and a climate of religious harmony prevail at the societal level in Turkmenistan; however, there still continues to be mistrust of religious organizations and collective manifestation of religion. The dispassionate attitude, and yet respect, that most citizens display toward religion is conducive to the climate of religious harmony that prevails in Turkmenistan’s society. Fears that this harmony might be disrupted by external extremist groups have, however, led State officials to be suspicious towards certain religious communities, in particular those believers who are not Sunni Muslim or Russian Orthodox. Likewise, officials indicated their concerns that certain groups may undertake illegal activities under religious cover. Yet, the Special Rapporteur would like to emphasize that the enactment and implementation of laws which unduly restrict freedom of religion or belief cannot provide an efficient and long-term solution in order to curb criminal activities which can and must be sanctioned by due process and general laws existing in the country.

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<sup>9</sup> Views of the Human Rights Committee under art. 5, para. 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, communications Nos. 1321/2004 and 1322/2004, *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea* (CCPR/C/88D/1321-1322/2004, para. 8.3).

53. Religion is a complex issue and law-making in this area is equally sensitive. Legislation on religion must conform to international human rights standards. It should be directly related to the objectives it propounds to achieve, such as promoting religious tolerance or facilitating the transparent establishment of religious groups. Vague or excessive legislative provisions in the area of freedom of religion or belief are susceptible to create tensions and give rise to multiple problems rather than solving them.

54. Moreover, such provisions may be subject to arbitrary interpretation or abuse of discretion and discrimination by the law enforcement agencies and local administration. When raising with the authorities various allegations of abuse or harassment of religious communities, the Special Rapporteur noted that law enforcement officials mostly denied any responsibility and instead argued that their task was limited to the implementation of domestic law. As such, they justified their actions as legal even though certain provisions of the law had led to abusive practices. The Special Rapporteur would like to emphasize that the authorities also have to abide by human rights standards. Article 6 of the Constitution of Turkmenistan recognizes the precedence of generally recognized norms of international law. In addition, article 2 of the Religious Organizations Law underlines that if an international treaty to which Turkmenistan is a signatory party sets rules which are different from those contemplated in this law, the rules of the international treaty shall apply.

55. The role of the judiciary is vital for the application of any specific legislation on religious issues. Indeed, all laws have to be interpreted by an independent judiciary, which should guarantee protection and offer means of legal redress for individuals whose rights, including freedom of religion or belief, are violated.

56. The imposition of legal or policy restrictions by the authorities of Turkmenistan on registration, places of worship, religious material, religious education and proselytism do, in some instances, amount to undue limitations to freedom to manifest one's religion or belief, but also to other rights enshrined in the International Covenant on Civil and Political Rights. In the case of restrictions on religious material, proselytism and religious education, there may be repercussions on freedom of expression. With regard to restrictions on places of worship, there may be adverse implications on freedom of association with others. The Special Rapporteur would like to emphasize that the burden of justifying any limitation on freedom of religion or belief lies with the State. Consequently, the authorities need to demonstrate that these tight restrictions are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others and that they exercised this control in a reasonable manner.

57. On registration, the Special Rapporteur wishes to reiterate that the right to freedom of religion or belief is not limited to members of registered communities. Registration should not be a precondition for practising one's religion, although it is appropriate to require registration for the acquisition of a legal personality and related benefits. In the latter case, registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the length of time a particular religious group has existed. Furthermore, registration should not depend on the review of the substantive content of the belief, the structure of the faith group and methods of appointment of the clergy. Finally, no religious group should be empowered to decide on the registration of another religious group.

58. On places of worship, the Special Rapporteur noted that the authorities are particularly concerned at the gathering of individuals, be it for religious purposes or other reasons, which might foster the development of subversive elements. She would like to recall that freedom of association with others is guaranteed by article 29 of the Constitution of Turkmenistan and by article 22 of the International Covenant on Civil and Political Rights, and that it may only be legitimately restricted on grounds specified in this article.

59. The firm control on religious literature, religious education and proselytism exercised by the authorities may, in some instances, contravene article 28 of the Constitution of the Turkmenistan as well as articles 18 and 19 of the International Covenant on Civil and Political Rights. The Special Rapporteur believes that the right to freedom of expression as protected by international standards provides a certain latitude for religious communities in the drafting and dissemination of their literature, even in cases where they do not agree with other religions, provided that they do not amount to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as prohibited by article 20 of the International Covenant on Civil and Political Rights.

60. On proselytism, the Special Rapporteur is of the view that no restrictions or sanctions should be imposed on peaceful missionary activities which do not amount to coercion. While certain missionary activities intend to claim the superiority of a religion over other religions or beliefs and thereby might give the impression that the culture of religious tolerance in Turkmenistan is being challenged, the Special Rapporteur would like to recall that proselytism is itself inherent in religion. Articles 18 and 19 of the International Covenant on Civil and Political Rights protect the right of all religious or belief communities to believe in, express, argue for, and work actively in support of their own truth claims. In a democratic and pluralistic society, the role of the State is therefore to ensure that all religious or belief communities tolerate each other and that they have sufficient space to express their views, even if these appear to be competing or contradictory in some cases.

61. During her mission, the Special Rapporteur was very encouraged by the political will expressed by certain of her official interlocutors to address the issue of conscientious objection and to find a suitable solution. She is aware that the authorities have attempted to accommodate conscientious objectors by offering them military positions which do not involve the use of weapons. Although this demonstrates the willingness on the part of the authorities to offer an alternative to these persons, the Special Rapporteur would like to draw the Government's attention to resolution 1998/77 of the Commission on Human Rights. Accordingly, conscientious objectors should be provided with various forms of alternative service compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature.

62. The right to change one's religion or belief is guaranteed by the Constitution and is generally respected in the tolerant and inclusive society of Turkmenistan. Yet, the Special Rapporteur noted that ethnic Turkmen identity seems to be tightly linked with Sunni Islam and that ethnic Turkmen citizens who chose to convert away from Sunni Islam appear to face more difficulties than citizens from other ethnic backgrounds.

## Recommendations

63. Several provisions of the amended Religious Organizations Law are incompatible with international human rights standards and contradict the Constitution of Turkmenistan in some instances. The Special Rapporteur urges the Government to review the Religious Organizations Law, so that it no longer infringes on the rights of individuals and groups in their exercise of freedom of religion or belief. In doing so, the Government should ensure that interested stakeholders at the national level be included in the reviewing process, in order to offer them the opportunity to provide valuable input to the revised draft legislation. Likewise, the Special Rapporteur is of the view that recommendations of relevant international or regional organizations relating to the revision of the Religious Organizations Law should be considered carefully. The Special Rapporteur remains available if further comments on draft legislation on religious issues are deemed necessary.

64. The Special Rapporteur recommends that the prohibition on unregistered religious activities be removed from the Religious Organizations Law. The registration procedures should be amended so as to be non-discriminatory, especially towards religious minorities. In addition, once registered by the Ministry of Justice in Ashgabat, a religious organization should be entitled to operate on the entire national territory. However, if for formal reasons, regional and local authorities would require registration at their levels, then the registration procedures should not be cumbersome. They should be clear, quick and easy in order to allow branches of religious organizations to operate freely at the regional or local levels.

65. Undue restrictions on religious material, education and attire should also be removed from the Religious Organizations Law. The Special Rapporteur recommends that the Government of Turkmenistan remains neutral on religious matter and does not interfere in religious education. Imams should be allowed to receive religious education in other institutions as well as in the Faculty of History of the Magtymuly Turkmen State University and non-Sunni Muslim religious communities should be allowed to have their own religious training institutions if they so desire. Likewise, the Government should ensure that all religious communities are able to teach members about their beliefs in public or in private. The Special Rapporteur would therefore encourage the Government to revise articles 6 and 9 of the Religious Organizations Law accordingly.

66. The Government should ensure that religious communities incur no obstructions with regard to the building, opening, renting or use of places of worship and that they are not deprived of their places of worship. In cases where such deprivation is justified by lawful reasons and after judicial review, it should provide the religious community concerned with a suitable alternative place of worship. In addition, the Government shall also ensure that religious communities are able to meet in private places of worship without state interference.

67. On the Council on Religious Affairs, although the Special Rapporteur has noticed that its members in Ashgabat have recently adopted a more progressive attitude towards registration of religious minority groups, this change of attitude does not seem to have reached the Council's regional representatives yet. She would like to recommend that the Council on Religious Affairs, both at national and regional levels, change its orientation, so

as to become a facilitating rather than monitoring mechanism. In order to do so, it needs to be autonomous and independent in its character. It also needs to be more representative and should, to that effect, include representatives of religious minorities.

68. The Government should ensure that conscientious objectors in Turkmenistan, in particular Jehovah's Witnesses who refuse to serve in the army due to their religious beliefs, be offered an alternative civilian service which is compatible with the reasons for conscientious objection. As such, the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence. The Special Rapporteur would like to recall that according to the principle of "ne bis in idem", as enshrined in article 14 (7) of the International Covenant on Civil and Political Rights, no one shall be liable to be tried or punished again for an offence for which he or she has already been convicted or acquitted in accordance with the law and penal procedure of each country.

69. The Special Rapporteur urges the Government to initiate reforms in the judiciary, so as to offer effective legal means of redress and compensation for denial of freedom of religion or belief. Moreover, she recommends that the Supreme Court of Justice of Turkmenistan be entitled to determine whether a law is in conformity or not with the Constitution.

70. Finally, the Special Rapporteur recommends that law enforcement officials and representatives of local authorities are provided with adequate training in order to raise awareness about international human rights standards, including on freedom of religion or belief. Law enforcement officials should cease all activities which result in undue limitations on the freedom to manifest one's religion or belief, such as police raids to prevent religious gatherings or arrests of believers who undertake peaceful missionary activities. In case of abusive implementation of the law by officials, the Government should ensure that those responsible are not granted impunity.

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