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y compris le droit au développement**

Visite au Tadjikistan

Rapport de la Rapporteuse spéciale sur la liberté de religion ou de conviction, Nazila Ghanea*

Résumé

La Rapporteuse spéciale sur la liberté de religion ou de conviction, Nazila Ghanea, s'est rendue au Tadjikistan du 11 au 20 avril 2023. Dans son rapport, elle examine les limitations considérables imposées au droit à la liberté de religion ou de conviction dans ce pays. Elle montre que le Tadjikistan doit évoluer en ce qui concerne la religion ou la conviction et passer du modèle actuel, qui entraîne de nombreuses violations des droits de l'homme, à un modèle qui lui permet de respecter ses obligations en matière de liberté de religion ou de croyance. Pour ce faire, il doit mieux comprendre les deux religions et la liberté de religion ou de conviction, et adopter une nouvelle approche.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original et en russe seulement.



Annexe

Rapport de la Rapporteuse spéciale sur la liberté de religion ou de conviction, Nazila Ghanea, sur sa visite au Tadjikistan

I. Introduction

1. In the present report, the Special Rapporteur on freedom of religion or belief, Nazila Ghanea, reflects the findings from her official visit to Tajikistan from 11 to 20 April 2023. She acknowledges the cooperation the Government extended to her by accommodating most of her requests for meetings and granting her unimpeded access to various institutions, including Vahdat Prison 3/1. She very much regrets that the authorities did not facilitate official meetings in Kūhistoni Badakhshon Autonomous Province. She thanks the Ministry of Foreign Affairs for its coordination.

2. The Special Rapporteur is grateful for the support of the United Nations Resident Coordinator Office and regional presence of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Dushanbe. She appreciated all the constructive meetings held during her visit with interlocutors from government ministries and agencies, civil society organizations, religious associations and communities and with faith-based actors, which gave her an insight into their experience, assessments and visions. She also held meetings with members of the United Nations country team, the diplomatic community in Dushanbe, regional and international human rights organizations, human rights lawyers, journalists and scholars. Civil society members asked to remain anonymous for fear of State reprisals, which speaks volumes about the overall human rights climate in the country.¹ The invitation by the Tajik National University to give a lecture during the visit is appreciated. The Special Rapporteur and her team took note of the report on the mission to Tajikistan carried out by the former mandate holder, Asma Jahangir, from 26 February to 1 March 2007.²

3. According to article 1 of the Constitution, Tajikistan is a secular State. Pursuant to article 26, freedom of religion or belief is upheld. However, as outlined below, despite certain achievements, in Tajikistan the legal environment for freedom of religion or belief has sharply declined since the mandate holder's visit in 2007.

II. Political and historical context

4. Under Soviet auspices, Tajikistan was first created as an Autonomous Republic within Uzbekistan in 1924. It gained the status of a full Soviet Socialist Republic in 1929, including the additional territory of Leninabad (now Sughd Province). After the failed coup in Moscow and declarations of independence by other Central Asian States, Tajikistan proclaimed itself an independent republic on 9 September 1991.

5. In 1992, civil war broke out in Tajikistan between opposing political, regional and religious factions. It is estimated that between 50,000 and 100,000 lives were lost during that war and almost 1 million people were forced to flee their homes. From 1994 to 1997, the United Nations Mission of Observers in Tajikistan monitored the ceasefire agreement between the Government of Tajikistan and the United Tajik Opposition, a coalition of Islamic leaders and secular politicians. Under the auspices of the United Nations, the Government and the United Tajik Opposition concluded the General Agreement on the Establishment of Peace and National Accord in Tajikistan on 27 June 1997. Subsequently, the Mission's mandate was expanded to help monitor implementation of the agreement. The Mission

¹ See <https://www.ohchr.org/en/press-releases/2022/12/tajikistan-human-rights-defenders-face-increasing-threats-climate-fear-says>.

² [A/HRC/7/10/Add.2](#).

accomplished its objectives and was terminated in 2000. The United Nations Tajikistan Office of Peacebuilding operated from 2000 to 2007.

6. Several amendments to the Constitution of 6 November 1994, including the legalization of political parties based on religion, were approved by national referendum in September 1999. This permitted the religiously affiliated Islamic Renaissance Party of Tajikistan to participate in elections and ultimately to be represented in the national legislature. The Islamic Renaissance Party was the only legal Islamic political party in the former Soviet Union until it was banned as “extremist” and “terrorist” in 2015 for alleged involvement in several violent incidents. An additional 56 constitutional amendments were adopted on 22 June 2003, following a referendum.

7. Emomali Rahmon came to power in 1992, during the civil war, and was re-elected for a fifth term of office in the most recent presidential elections, held in 2020. In December 2015, he was declared Founder of Peace and National Unity, Leader of the Nation, entitled to limitless terms of office and given lifelong immunity through constitutional amendments ratified in a referendum.

8. The total population of Tajikistan is estimated at 10 million. It is reported that more than 90 per cent of the population is Muslim, of whom the majority (around 86 per cent) adheres to the Hanafi school of Sunni Islam. Approximately 3 to 4 per cent of Tajik Muslims are Shia Ismaili; most of them live in Kūhisoni Badakhshon Autonomous Province in the east of the country. Of the remaining 10 per cent, the largest Christian group is Russian Orthodox. There are smaller communities of evangelical Christians, Baptists, Roman Catholics, Seventh-Day Adventists, Jehovah’s Witnesses, Lutherans and non-denominational Protestants, as well as Jews, Baha’is, Buddhists and Zoroastrians.

9. The Special Rapporteur notes that the rich culture of Tajikistan, at the crossroads of civilizations over the centuries, is visible in the diversity of its population. The authorities highlight broader geopolitical, strategic, security and economic concerns as rationales for the country’s laws and policies. Those concerns include the situation in Afghanistan after the return of the Taliban to power and the joint 1,400 km border shared with that country, relations with the Russian Federation after the outbreak of the armed conflict in Ukraine, tensions with Kyrgyzstan and economic cooperation with China. The Special Rapporteur also notes that Tajikistan remains the poorest country in Central Asia with a high level of public sector corruption.³

III. International human rights obligations of Tajikistan

10. Since independence in 1991, Tajikistan has ratified seven core international human rights instruments.⁴ According to the Constitution, international legal instruments ratified by Tajikistan form an integral part of the national legal system (art. 10). In the event of a conflict, the norms contained in international legal instruments apply.

11. Article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights, to which Tajikistan is a party, enshrine the universal right to freedom of thought, conscience, religion or belief. In its general comment No. 22 (1993), the Human Rights Committee provided guidance on the obligations of States parties to the Covenant pursuant to article 18.

12. The fundamental right to freedom of thought, conscience, religion or belief includes: (a) the right to have, hold or change one’s theistic, non-theistic, atheistic or non-religious beliefs (*forum internum*); and (b) the right, 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 (*forum externum*). The two aspects of the right are interdependent; both protect people in their ability to think independently and to develop identity while shaping religious

³ Tajikistan is ranked at 150 out of 180 countries in the Corruption Perceptions Index. See <https://www.transparency.org/en/cpi/2022/index/tjk>.

⁴ See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=171&Lang=en.

and non-religious convictions and commitments, and allowing them to live their lives accordingly. Manifestations of freedom of religion or belief can be limited only under very strict criteria (see para. 26 below).

13. The Universal Declaration of Human Rights provides that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, including religion (art. 2). The International Covenant on Civil and Political Rights requires States to prohibit advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence; prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on religious grounds; and respect the right of members of religious minorities to profess and practise their own religion (arts. 20, 26 and 27).

IV. Legal and institutional framework on freedom of religion or belief

14. Tajikistan sees itself as a secular State that does not promote any particular religion or belief; secularism constitutes one of the defining characteristics of the State. Indeed, according to the Constitution, Tajikistan is a sovereign, democratic, law-governed, secular and unitary State.⁵

15. The Constitution provides that everyone has the right freely to determine his or her position toward religion, to profess any religion individually or jointly with others or not to profess any, and to take part in religious customs and ceremonies (art. 26). Everyone is equal before the law and the courts. The State guarantees the rights and freedoms of everyone, regardless of nationality, race, sex, language, religious belief, political persuasion, education or social and property status. Men and women have equal rights (art. 17). The Constitution specifically provides that everyone is guaranteed freedom of speech and of the press and the right to use means of mass information, and that State censorship and prosecution for criticism are prohibited (art. 30).

16. The Constitution asserts that public life in Tajikistan shall develop on the basis of political and ideological pluralism, and that no single ideology of a party, social association, religious organization, movement or group may be recognized as the State ideology. Religious unions are separate from the State and may not interfere with State affairs. The creation and functioning of social associations and political parties propagating racism, nationalism, social and religious enmity or encouraging the forcible overthrow of the constitutional system and the formation of armed groups are prohibited. The establishment of religious political parties is prohibited (art. 8).

17. The Freedom of Conscience and Religious Associations Act (2009) regulates freedom of conscience and of religion in Tajikistan.⁶ It guarantees the right to freely choose, disseminate and change religious or other beliefs, as well as to act in harmony with them (art. 4.1) and prohibits incitement to any kind of religious hatred, enmity and conflict, or insult of religious and atheistic feelings of citizens (art. 4.8) However, as explained below, it also imposes numerous restrictions and prohibits large-scale activities by unregistered religious groups (art. 4.9), particularly under the vague category of “mass preaching activities”.

18. In July 2022, Tajikistan enacted its first anti-discrimination law (Act on Equality and Elimination of All Forms of Discrimination). It prohibits both government officials and private citizens from discriminating against individuals on enumerated grounds, and recognizes indirect discrimination and denial of reasonable accommodation.⁷ While the Special Rapporteur was informed that Tajikistan is in the process of harmonizing its

⁵ Constitution of Tajikistan, adopted on 6 November 1994 and amended on 26 September 1999, 22 June 2003 and 22 May 2016, art. 1.

⁶ The Freedom of Conscience and Religious Associations Act repealed and replaced the Religion and Religious Organizations Act (1994).

⁷ Article 143 of the Criminal Code (violation of the equality of citizens) criminalizes violation of human rights, inter alia, on the grounds of religion or belief.

legislation with the new Act and conducting awareness-raising to implement it, she saw no evidence of the application of the Act, instead noting many instances in which discrimination was rife and religious accommodation absent.

19. In August 2023, Tajikistan adopted its National Strategy for the Protection of Human Rights up to 2038 and its implementation plan for 2023–2025. The plan includes the establishment of a working group to change legislation in the area of freedom of religion, strengthen interreligious dialogue and conduct awareness-raising events.

20. The State Policy Framework on Religion was approved on 4 April 2018. Its main purpose is to establish a long-term vision with respect to the protection of religious rights and freedoms, the spread of tolerance and respect for all religions and faiths, and the safeguarding of security, mutual understanding and harmony among the country's religions.

21. The central body responsible for monitoring and regulating religious matters in Tajikistan is the State Committee for Religious Affairs and Regulation of Traditions, Ceremonies and Rituals. It has a broad mandate that includes approving registration of religious associations, children's participation in religious education and dissemination of religious literature. It also reportedly plays a role in the appointment and removal of religious leaders, the construction, maintenance and closure of places of worship and the enforcement of various legal restrictions through fines and imprisonments. The Centre for Islamic Studies, a research institution under the Executive Office of the President, helps formulate the Government's policy on religion. The State's Ulama Council is an Islamic council that operates at the national, regional and district levels in 68 departments. It has a fatwa unit that issues religious rulings and guidance to Islamic religious organizations.

22. The Office of the Commissioner for Human Rights (Ombudsman's Office) has been established as the national human rights institution in Tajikistan and has been granted B status by the Global Alliance of National Human Rights Institutions for its partial compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).⁸ The Office has the function of promoting the ratification of international human rights instruments and the right to visit and inspect all places of deprivation of liberty without hindrance. It is also in charge of processing complaints concerning discrimination.

A. *Forum internum* – the right to have, adopt and change religion or belief

23. Freedom of religion or belief does not allow any limitation whatsoever to everyone's right to have, adopt and change religion or belief. However, this is only one aspect of the right.

24. The Tajik authorities regularly described freedom of religion or belief as an individual and private freedom. In a meeting, officials of the Centre for Islamic Studies asserted that religion should be "moderate", while offering no definition. This subjects religion to majoritarian bias and falls short of the constitutional guarantee that "everyone" shall have the right to profess any religion individually or jointly with others or not to profess any, and to take part in religious customs and ceremonies (art. 26). A selective application of "moderation" reduces the right to freedom of religion or belief to its *forum internum* and results in the violation of many other aspects of the right. It relegates it to the privacy of the home with the immediate family and no further.

B. *Forum externum* – the right to express religion or belief, including with others and in public

25. International law recognizes that the scope of the freedom to manifest religion or belief extends to manifestations that are exercised in public and in community with others, in worship, observance, practice and teaching (International Covenant on Civil and Political

⁸ See <https://waps.ohchr.org/sites/default/files/documents/countries/nhri/StatusAccreditationChartNHRIs.pdf>.

Rights, art. 18 (1)). The freedom to manifest religion or belief encompasses a broad range of acts, including ritual and ceremonial acts giving direct expression to belief, the building of places of worship, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, the freedom to choose religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.⁹ The concept is developed further in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (art. 6), adopted by the General Assembly in 1981.

26. While freedom of religion or belief can be limited in international human rights law, it may be subject only to such limitations “as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others” (International Covenant on Civil and Political Rights, art. 18 (3)). Limitations must also be proportionate, the least intrusive and restrictive measure possible and non-discriminatory.

27. The Tajik authorities widely shared the misguided belief that the freedom to manifest religion or belief can be limited on the grounds of national security. This is explicitly not the case.¹⁰ Neither can it be subject to derogation in times of public emergency that threaten the life of the nation (International Covenant on Civil and Political Rights, art. 4 (2)).

V. Manifestation of religion or belief in practice in Tajikistan

A. Worship

28. According to the Freedom of Conscience and Religious Associations Act, religious associations operate in the form of religious communities and religious organizations (art. 10.1). The Act establishes the types of religious community, which include Friday prayer mosques, five-time prayer mosques, *jama'at khanehs* (Ismaili prayer houses), preaching houses and others that are not in contradiction with the law.

29. The Act sets strict limits on the number of mosques and provides that grand (Friday prayer) mosques can be established in areas where the population is between 10,000 and 20,000 people. Five-time prayer mosques can be established in areas where the population is between 100 and 1,000 inhabitants. In practice, that means that, while Muslim men may, at best, be able to attend local mosques for daily prayers, they have to travel long distances for Friday prayers, in effect putting congregational Friday prayer out of reach for most and imposing private practice of this congregational prayer.

30. When the Special Rapporteur proposed that imams who offer the Friday sermon should be considered civil servants, the authorities claimed that, as the pay that such imams receive through State channels is informal and low, it should not be considered a salaried post. The text of the Friday sermon, however, is passed to such imams to read along with any Presidential announcements. In recent years, the State Committee for Religious Affairs and Regulation of Traditions, Ceremonies and Rituals has organized special training courses for such imams and religious leaders and has banned imams trained in countries such as Egypt, the Islamic Republic of Iran, Pakistan and Saudi Arabia from acting as imams in Tajikistan, concluding that this has harmed the religious calm of Tajikistan.

31. The number and regulation of mosques and other places of worship nationwide leads to severe restrictions on the freedom to manifest religion or belief through worship. Thousands of mosques have been refused and closed down through the State Committee for Religious Affairs approval process. At the same time, the largest mosque in Central Asia, funded by Qatar, with a capacity to accommodate 115,000 persons was recently inaugurated in Dushanbe. The large-scale closure of *jama'at khaneh* leaves only three remaining, one in Khorugh, one in Dushanbe and a small one in Jayhun district, which is wholly inadequate for

⁹ Human Rights Committee, general comment No. 22 (1993), para. 4.

¹⁰ See Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, *Freedom of Religion or Belief and Security: Policy Guidance* (2019).

the over 3 per cent of the population that are Ismailis. Restrictions on places of worship also have a strong impact on other religion or belief communities. While surveillance, imposed reporting and intrusion apply across the board, they have a disproportionate and disparate impact on minority religions.

B. Observance and practice

32. The 2017 amendment to the Act on Regulating Traditions, Celebrations and Rituals introduced numerous new restrictions, including the banning of the normal celebratory meals to honour pilgrims returning from the hajj, requiring everyone to respect an undefined national dress and banning the customary offering of food on the third, seventh and fortieth days after a funeral. It also makes the State Committee for Religious Affairs responsible for defining what procedures should be followed for funerals and the subsequent mourning period and makes the Government responsible for organizing all hajj and umrah to Mecca. The Special Rapporteur understands that only men over the age of 40 are permitted to perform the hajj.

33. Several officials asserted that the aim of the amendments was to prevent excessive spending and borrowing for weddings, funerals, childbirth celebrations and festivities. Violations of the Act are recognized as misdemeanours and incur heavy fines. While encouraging financial responsibility is a worthy aim, the restriction on religious practice is worrying. The Special Rapporteur also notes with concern that events should be conducted in the State language, Tajik, and people are required to demonstrate respect for the national dress, including Islamic religious attire. This results in restrictions on the right of minorities to enjoy their own culture and practice, in violation of article 27 of the International Covenant on Civil and Political Rights.

C. Registration of religious associations

34. The Freedom of Conscience and Religious Associations Act requires religious organizations to complete burdensome applications to operate legally. Applicants must secure an attestation from local government officials confirming that at least 10 persons over 18 years old in their locality are members. Applicants must then submit detailed information to the State Committee for Religious Affairs, including the organization's planned activities, founders and structure, and basic tenets and attitudes toward education, family, marriage and health. They must also report on the number of members over the previous five years, providing a charter covering all features of the confession and information on sources of funding and properties (arts. 13–15). Once registered, associations are required to provide an annual report of activities and to cooperate with State monitoring, and specifically to not impede the presence of representatives of the authorized State body at their religious events (art. 19).

35. The Government exercises broad discretion with regard to denying applications and stripping religious organizations of their registration. In 2011 and 2012, amendments to the Code of Administrative Offences and the Criminal Code set new penalties, including heavy fines and long prison terms for religion-related charges such as organizing or participating in “unapproved” religious meetings.

D. Importation, publication and distribution of religious literature

36. Pursuant to the Freedom of Conscience and Religious Associations Act, the Government must approve the production, import, export, sale and distribution of all the religious literature of registered religious groups, which constitutes in effect a ban on religious materials for unregistered religious groups. The Government claims that such literature is examined to prevent incitement to religious hatred. The analysis is carried out by the State Committee for Religious Affairs or its appointed experts, as the authorized State body with the State theological expertise to establish the distinctive features of the religious association and the accuracy of the information about their beliefs and religious activities

(art. 17). The permission of the State Committee to publish or import a religious book also stipulates the number of copies that can be imported. The production, distribution, import or export of religious literature and items of a religious nature which have not passed compulsory prior State censorship is punished (Code of Administrative Offences, art. 474 (1)). Following a meeting with the State Committee for Religious Affairs and the Ulama Council, the Special Rapporteur notes that the process of appointing those religious experts remains unclear and it is highly questionable whether the system can deliver justice in a fair and impartial manner.

37. All the Islamic bookshops in Dushanbe and some publishers that printed Islamic literature were closed down by the State Committee for Religious Affairs in August and September 2022. The Islamic bookshops next to the Central Mosque in Dushanbe were allowed to reopen in early 2023, albeit with a very restricted supply of religious books, as observed by the Special Rapporteur.

E. Religious education

38. The Act on Parental Responsibility for the Education and Upbringing of Children (2011) prohibits persons aged under 18 years from participating in public religious activities, including attending services at public places of worship (art. 8). Under-18s may attend religious funerals and practise religion at home, under parental guidance.

39. Students must take a limited number of general classes on the history of religion at high school. The Ministry of Education sets classroom and curriculum standards and issues licences for religious organizations. The State Committee for Religious Affairs is responsible for monitoring the organizations to ensure implementation of the other legal provisions. According to the Committee, parents may teach religion to their children at home, provided the children express a desire to learn.

40. Grade 9 school children receive 36 hours of education regarding the history of religion. In the first year of university, students receive approximately the same number of hours of mandatory religious knowledge classes, focused on the philosophy and teachings of religions, with textbooks produced by the Ministry of Education in collaboration with the State Committee for Religious Affairs. The Special Rapporteur notes that there was no evidence that the religious groups concerned had been consulted concerning the content relating to them in those textbooks, as merited by article 27 of the International Covenant on Civil and Political Rights.

41. The law allows minors aged between 7 and 18, with the written consent of both parents, to obtain religious instruction provided by a registered religious organization with a State licence, outside mandatory school hours. Such instruction must not duplicate religious instruction that is part of the school curriculum. Only central mosques may set up such educational groups. In October 2016, three years after an official suspension order, the Ministry of Education closed five registered madrasas (Islamic religious schools) in Sughd Province and the only State-approved madrasa in Dushanbe, which had been run by the State Islamic University. The Ministry claimed that was due to non-compliance with the 2015 State Standard of General Education.¹¹ Those schools served about 1,000 students. No madrasas have operated in Tajikistan since then.

VI. Prohibition of incitement to extremism and terrorism

Legislative frameworks and analysis in the light of international standards

42. What drives the highly regulated scope for freedom of religion or belief in Tajikistan is an almost singular focus on the fight against extremism and terrorism. The terms “extremism” and “terrorism” were regularly used interchangeably by the authorities in

¹¹ The Standard was approved by government decree No. 494 of 1 August 2015.

meetings with the Special Rapporteur, and questions regarding the former were often responded to with reference to the latter.

43. Campaigns against extremism and terrorism have led to the closure of mosques and the arrest of Muslims not associated with terrorist or extremist groups, but who simply sought to practise their religion in ways other than those sanctioned by the Government. The expression of deep religious conviction has also been restricted. The overly vague interpretation of extremism allows its arbitrary application and facilitates strict State control of religions and the regulation of religious activities.

44. The Act on Countering Extremism (2020) delineates the organizational and legal bases for countering extremism to protect the rights and freedoms of the person and of the citizen, the foundations of the constitutional order and the sovereignty, integrity and safety of Tajikistan. The law defines extremism as the activities of individuals and organizations aimed at destabilizing or subverting the constitutional order or seizing power. This definition includes inciting religious hatred. In the case of non-criminal incitement to social, racial, national, regional or religious hatred, the Code of Administrative Offences provides for 5 to 10 days' administrative detention or a fine of 50 to 100 "fee units" (the value of which the Government sets each year), equal to 3,000 to 6,000 somoni (\$270 to \$530). The Criminal Code stipulates 2 to 12 years' imprisonment for a crime committed on the same basis, depending on the details of the case. The extremism law specifically mandates increased surveillance and control over religious activities, especially when undertaken by unregistered groups (art. 11 (8)).

45. In December 2021, Tajikistan adopted the Act on Combating Terrorism, which superseded the 1999 counter-terrorism law. It defines basic counter-terrorism principles and establishes the legal and organizational framework of Tajikistan for counter-terrorism efforts. Both this law and the Criminal Code offer overbroad and ambiguous definitions of "terrorist actions", "terrorist crimes" and "terrorist organizations".¹² They include imprecise terms such as "the creation of a danger of harm to life, health or property", "dissemination of a threat in any form and by any means", "significant damage to property" and "socially dangerous consequences" and the "destruction (damaging) of or threat to destroy (damage) property and other material objects of individuals and legal entities". The definitions do not meet the threshold of seriousness required for such acts, notably that the intent is to cause death or serious bodily injury. The counter-terrorism law defines a "terrorist organization" as an organization established for the purpose of carrying out a terrorist activity or which considers the possible use of terrorism in its activity (art. 4). This provision criminalizes activities that have not yet been committed, in contravention of article 15 of the International Covenant on Civil and Political Rights. The overly broad definition of terrorist organizations has had practical implications, including in relation to the ever-growing list of banned groups.¹³

46. The Special Rapporteur does not deny that violent extremism and terrorism can lead to human rights violations, including those committed in the name of religion or belief. Countering violent extremism and terrorism can constitute legitimate grounds for limitations to the manifestation of freedom of religion or belief. Nevertheless, such limitations need to be implemented in a manner that does not risk extinguishing the right to religion or belief itself. In Tajikistan, this balance has not been struck.

47. The objective of fostering respect for and tolerance of all religions and beliefs is a worthy one (Freedom of Conscience and Religious Associations Act). However, the Special Rapporteur wishes to underline that legal provisions addressing incitement must be in line with articles 19 and 20 of the International Covenant on Civil and Political Rights and take into consideration the guidance set out in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, adopted in 2012. The evidentiary requirements and threshold for incitement need to be clear in the law and strictly applied in conformity with human rights

¹² See communication TJK 5/2022, available at

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27787>.

¹³ See https://nbt.tj/upload/iblock/32d/shahsoni_huquqi.pdf (in Tajik).

standards, including due process. The Human Rights Committee has expressed serious concerns in this regard and the Special Rapporteur underscores the dangers that flow from this to freedom of religion or belief.¹⁴

48. The policy framework for combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, outlined in Human Rights Council resolution 16/18, and its follow-up action plan in the Istanbul Process for Combating Intolerance, Discrimination and Incitement to Hatred and/or Violence on the Basis of Religion or Belief would help Tajikistan bring its laws and policies in this area in line with international standards.

49. The Special Rapporteur welcomes the fact that the punishment for incitement to hatred for first time offenders was reduced to a fine. This reduction in punishment is a good practice that should be more widely applied as Tajikistan aligns its laws with its international obligations. The opportunity should also be taken to ensure that criminal punishments and penalties are proportional to and commensurate with the gravity of the crimes.

50. Tajik concerns around religious organizations and movements, religious enmity and the forcible overthrow of constitutional State structures, political parties and armed groups acting against nationalism and religious hatred can only be understood in the light of the civil war of 1992–1997. The shadow of that civil war looms very large over the current laws and practices in Tajikistan relating to freedom of religion or belief. Scope needs to be offered to freedom of religion or belief in Tajikistan. The imagination of the authorities regarding the positive contributions of freedom of religion or belief to a harmonious and rich public life need to grow in appreciation. Religion or belief do not in themselves pose risk factors to societal life, they can serve as active contributors to development, peace and understanding. Respect of freedom of religion or belief enhances security and confidence and itself helps to counter violent extremism.

VII. Particular impacts on various sectors of society

A. Muslims

51. The Hanafi school of Sunni Islam is recognized as having a special role in the development of the national culture and spiritual life of the people of Tajikistan, pursuant to the Freedom of Conscience and Religious Associations Act, and it has a special place in public life and policy. However, the Islamic community as a whole is singled out for special restrictions in the Act. Islamic preaching is permitted only in officially recognized mosques. There are limitations on the number of mosques allowed per head of population, and others have been closed or demolished. While officials have claimed that the closures happened at the request of the mosque congregations, local Muslims have rejected such claims.

52. According to the Government, there are no officially adopted regulatory standards regarding men's beards and women's clothing. However, the authorities reportedly launched an anti-beard campaign in October 2010 and in November 2012, the Ulama Council established the length of men's beards (one fist) and dress standards for women. Younger male teachers are banned from having beards, while teachers over the age of 50 are allowed to have beards of a maximum of 1 cm in length. On 28 April 2023, the head of the national Committee for Youth and Sports reportedly urged bloggers not to grow beards and to refrain from promoting beards online, as they might be interpreted as "an expression of solidarity with terrorist groups" such as the Taliban and they could also pose "a threat to national security and statehood".

53. During her visit to Tajikistan in 2007, the former Special Rapporteur had consultations with the chairperson and several members of the Islamic Renaissance Party of Tajikistan (see para. 6 above). The Party had called for respect of the country's secular Constitution and its international religious freedom commitments and opposed restrictions on beards, headscarves and children attending mosque. After the 2015 ban, some 150 Party members

¹⁴ *Adyrkhayev et al. v. Tajikistan* (CCPR/C/135/D/2483/2014), para. 9.5.

were arrested. They were reportedly mistreated and some of them tortured in detention and denied access to doctors and lawyers. The trial of 13 leading Islamic Renaissance Party members ended in June 2016. Deputy Party leaders Saidumar Husaini and Haritos Mahmadali Rahmonovich Hayit received life terms in prison, while 11 others received sentences as long as 28 years. Due process and human rights concerns were widely expressed in relation to those and other trials relating to Party members and even to their relatives.¹⁵

54. In 2020, the Government reportedly conducted mass arrests and interrogations of Islamic leaders, including prominent Sufi Muslim clerics and many who had received religious education abroad. Furthermore, the Government detained a large number of people accused of membership of the Muslim Brotherhood after it was banned in 2006. Those detained included an Egyptian professor at the Tajik National University who was allegedly identified as the leader of a group of 119 individuals who were, in a high-profile case, sentenced by the Supreme Court in April 2021 to between 5 and 23 years in prison each. Salafis are another group that is particularly targeted, since the authorities do not clearly define the term “Salafi” and apply it widely to Muslims who do not practise their religion or belief in ways that have been approved by the State.

B. Religious or belief minorities and communities

55. All religious groups and organizations, other than those that adhere to the Hanafi school of Sunni Islam, need to apply to the State Committee for Religious Affairs and Regulation of Traditions, Ceremonies and Rituals for registration. Pursuant to the Freedom of Conscience and Religious Associations Act, all exercise of freedom of religion or belief without State permission is illegal.¹⁶ Such “regulation” of relations between the State and religious associations is highly restrictive and has a chilling effect on the environment of freedom of religion or belief. Furthermore, the wording of related laws is extremely unclear, allowing ample room for official arbitrary action.

56. The State Committee for Religious Affairs reports that a total of 4,058 religious associations are registered in Tajikistan, including 66 non-Muslim groups. The Special Rapporteur became aware of at least one group that is seeking reregistration and one that is seeking initial registration. Registration can be withdrawn only by a judgment of the Supreme Court, then reinstated only by a Supreme Court judgment. Application for reregistration has proven very difficult.

57. Registered communities are required to report annually on any financial transfers and all their activities. They receive questionnaires requiring full details of all religious community employees and their families, as well as details of all financial support received from foreign individuals and organizations. One source noted that further information is required only when there is a key change of circumstance, such as change of address. This is another example of the law not always being applied strictly to different groups throughout the country.

C. Women

58. While a variety of dress and hijab codes are followed by women and girls when in public, particular types of head covering are prohibited or restricted on the grounds that they are indicative of foreign cultural influence, extremism or belonging to banned extremist or terrorist groups. Civil servants cannot wear such head and face coverings and women may be restricted from wearing them when entering kindergartens, schools, universities, hospitals or governmental buildings. Some of the authorities consulted denied that there was any such

¹⁵ In its opinion No. 2/2018, the Working Group on Arbitrary Detention found the detention of Mr. Hayit to be arbitrary and called for his immediate release (A/HRC/WGAD/2018/2, paras. 79 and 81). Other opinions of the Working Group relate to the detention of 11 other Party members (A/HRC/WGAD/2019/66) and to a lawyer, Buzurgmehr Yorov, who represented high-level Party officials (A/HRC/WGAD/2019/17).

¹⁶ See OSCE Office for Democratic Institutions and Human Rights, *Freedom of Religion or Belief and Security: Policy Guidance* (2019), in particular chapter 4.1.

law or restriction, indicating that wearing those particular types of head covering was “not our custom” and emphasizing the need to maintain Tajik traditions and customs. Reports confirm that regulations concerning wearing the hijab are enforced, although enforcement is stricter or more lenient depending on the period of the year. Enforcement also differs in different parts of the country. This runs counter to the protection of the freedom to manifest one’s religion or belief.

59. The Ulama Council has issued a fatwa requiring women to pray at home and not attend mosques.¹⁷ Explanations provided during the Special Rapporteur’s visit varied from “it is not our custom as Hanafi Sunni Muslims” to “since children are not allowed in mosques, women stay at home to look after them”. Irrespective, it is not possible for women to pray in mosques, although they can enter mosques as visitors outside prayer times. An exception is the case of Ismaili *jama’at khaneh*, where women and men pray alongside one another in separate columns. However, as indicated above (para. 31), the large-scale closure of *jama’at khaneh* left only three such establishments in Tajikistan.

D. Children and young people

60. The Special Rapporteur notes that the authorities indicated that concern about children and young people being attracted to extremism and terrorism is given as justification for three prohibitions: (a) boys aged under 18 years may not enter mosques;¹⁸ (b) no persons aged under 18 years may participate in any religious ceremonies apart from funerals; and (c) children may not receive any religious education outside the home or from their parents. The only exceptions are that children may receive religious education in specific places licensed for that purpose by the State Committee for Religious Affairs, by a person licensed to provide such education and with the explicit permission of both parents. Central district mosques and grand mosques may operate madrasas that are open only to high school graduates. However, as indicated above (para. 41), there are currently no madrasas operating in the country because none has met the Ministry of Education’s requirements regarding the authorization of the religious organization, approved qualified teachers and an approved curriculum.

61. The result is severe control of children’s freedom of religion or belief. Freedom of religion or belief is for everyone, including children (everyone under the age of 18). The Convention on the Rights of the Child provides that States parties must “respect the right of the child to freedom of thought, conscience and religion” (art. 14). It provides for only the same limitations on that right as those recognized in article 18 (3) of the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child also explicitly recognizes the importance of children’s spiritual well-being and development (arts. 17, 23 (3), 27 (1) and 32 (1)). Those rights and freedoms are reinforced by the recognition of the right of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions and to provide direction in that regard.¹⁹ In Tajikistan, that right has effectively been reduced to the provision of such direction in private homes by the child’s parents or legal guardians, and even then only if the children express a desire to learn, as was emphasized by the State Committee for Religious Affairs. This weighs particularly heavily on persons belonging to religious and belief minorities, as their ability to maintain their culture and religion is even more challenged by such limitations.

62. During the Special Rapporteur’s visit, some interlocutors expressed serious concern that the restriction on religious education, particularly Islamic education, forces it underground. It has the counterproductive effect of pushing those with curious minds towards the Internet, risking making them more prone to violent extremism and terrorism than if the matter were dealt with openly. The authorities express concern about Tajiks who have become attracted to terrorism abroad and list the countries where they have committed

¹⁷ Fatwa 9 of 17 August 2004.

¹⁸ Act on Parental Responsibility for the Education and Upbringing of Children.

¹⁹ International Covenant on Civil and Political Rights, art. 18 (4), and Convention on the Rights of the Child, art. 14 (2).

crimes. They do not consider that those persons might have been rendered more vulnerable to such influences because their closed educational upbringing did not allow them to have confidence in their faith. Had they been more secure in their faith, they would have been better able to protect themselves from such tendencies. Some authorities suggested that the policy may be under review, whereas others insisted that the policy is necessary to ensure the “normal physical and mental development” of the child. The result is the severe curtailment of religious education for children in Tajikistan. Even adults need the permission of the State Committee for Religious Affairs and the Ministry of Education to receive religious education outside Tajikistan, and only after receiving religious education inside the country.

63. The Special Rapporteur reiterates that the right of parents to ensure the religious and moral education of their children in conformity with their own convictions and subject to the evolving capacities of the child is a core element of the freedom of religion or belief.²⁰ Any limitation on that right also affects the rights of religious minorities.²¹

64. The Special Rapporteur is concerned about the activities of the pro-Government youth organization Avangard, including reported acts of harassment, intimidation and anti-opposition protest. The organization was founded in 2015 on the initiative and with the assistance of the Tajik police authorities, with the mission of preventing young people from getting involved in extremist and terrorist organizations.

65. The Special Rapporteur also notes the high incidence of child and forced marriages, and the decline in the number of marriages that are officially registered. Tajikistan should establish mechanisms to detect cases of child and forced marriages and ensure that *nikokh* (religious marriages) do not violate the minimum legal age of marriage.²² It is noted that many efforts in this regard are under way.

E. Religious detainees

66. There is a significant number of detainees imprisoned on vague charges relating to publicly promoting extremist activities, organizing an extremist community, organizing activities of an extremist organization, arousing national, racial, local or religious hostility and inciting religious hatred. While the official data on such “religious detainees” or “party prisoners”, as they are referred to, is unknown, it is estimated that approximately 1,500 individuals were detained on terrorism- or extremism-related charges as at 1 January 2022. Hundreds of Muslims have reportedly been imprisoned on accusations of belonging to extremist, terrorist or banned organizations or of exercising the right to freedom of religion or belief. It is hard to know whether those detainees were indeed involved in violence or other crimes or whether they were guilty only of not exercising their faith “moderately”.

67. The Special Rapporteur received reports of religious detainees suffering from beatings, ill-treatment and torture²³ and being denied the right to practise their religion in custody. She expresses serious concern at reported instances of impunity for the torture and ill-treatment of Muslims, including Ismailis, Jehovah’s Witnesses and others. Some prisoners who tried to exercise their freedom of religion or belief while in detention were reportedly punished for praying openly. Most prisons have either a mosque or prayer room, and four prisons have churches. Muslim prisoners are reportedly allowed to pray (including the daily namaz prayers) and read the Qur’an only in the mosque or prayer room; doing so elsewhere can result in two weeks of solitary confinement.

68. The Special Rapporteur was informed that some families face difficulties visiting prisoners and that Muslim prisoners are, regardless of the reason for their imprisonment, frequently denied visits by imams, friends and relatives outside the immediate family. Health facilities in some prisons are reportedly limited, leading to a lack of medicine for prisoners.

²⁰ International Covenant on Civil and Political Rights, art. 18 (4), and Convention on the Rights of the Child, art. 14 (2).

²¹ International Covenant on Civil and Political Rights, art. 27, and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

²² CEDAW/C/TJK/CO/6, paras. 45 (b) and 46 (b) (ii) and (iv).

²³ CCPR/C/TJK/CO/3, para. 31.

69. Many prisoners reportedly do not have access to lawyers or were pressured into pleading guilty, while most lawyers are unwilling to take up the cases of religious detainees because of the risks to the lawyer. Prisoners complain of unfair trials, in which officials who have violated the law or abused their power are not prosecuted or punished. This raises concerns regarding the judicial system, including the independence of judges and lawyers.

70. During her visit, the Special Rapporteur visited Vahdat Prison 3/1, known as the new colony.²⁴ Prisoners who have been sent to that prison on political and religious charges are detained with those convicted on other charges. The prison is divided into 10 units composed of two parts, each for 50 prisoners. With a prison capacity of 1,500, it has 13 mosques. The shaving of beards and heads occurs on arrival in the prison and then on a weekly basis. As noted above (para. 67), prisoners are prohibited from praying anywhere except in the mosque and they are punished if they defy those internal prison rules and regulations, including by being sent to isolation or punishment cells for 10 to 15 days. The surveillance of religious practice extends from outside prison to inside.

71. According to the Human Rights Committee, persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint.²⁵ According to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), “so far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination” (rule 66).

72. Both the Human Rights Committee, in its concluding observations adopted in July 2019, and the Committee against Torture, in its concluding observations adopted in May 2018, called on Tajikistan to implement the Nelson Mandela Rules for all prisoners.²⁶

F. Situation in Kūhistoni Badakhshon Autonomous Province

73. The Pamiri minority of Tajikistan mainly resides in Kūhistoni Badakhshon Autonomous Province, in the south-east of the country. Persons belonging to the Pamiri minority predominantly follow the Ismaili branch of Shia Islam and recognize their spiritual leader as the Aga Khan. Ismaili Muslims worship in centres that also host a wide range of educational and cultural events, in prayer houses or in private homes. They use several minority languages in addition to Tajik and have distinct traditions and practices, one being that women and men pray together in the mosque.

74. Prior to her visit, the Special Rapporteur received information from various sources concerning tensions in Kūhistoni Badakhshon Autonomous Province, including the reported use of lethal and excessive force against protestors in the region in November 2021. That was followed by prolonged Internet shutdowns and subsequent violent attacks and threats against and alleged arbitrary detention and harassment of a large number of Pamiri persons. Reportedly, many peaceful protesters, journalists, bloggers, human rights defenders, religious leaders, entrepreneurs, community leaders, poets and diaspora activists abroad were arrested.²⁷ The situation culminated with a special “anti-terrorism operation” in the region, particularly in the Rushon district in May 2022, which may have resulted in the killing of as many as 40 people.²⁸

75. The Special Rapporteur also received reports that the Government had closed down all Ismaili prayer houses in the region and stopped the educational and cultural activities of

²⁴ The new prison complex in Vahdat was opened recently, following a 2019 riot in the original prison in Vahdat, which resulted in the deaths of three guards and 29 inmates.

²⁵ General comment No. 22 (1993), para. 8.

²⁶ CCPR/C/TJK/CO/3, para. 34 (b), and CAT/C/TJK/CO/3, para. 34 (a).

²⁷ See <https://www.ohchr.org/en/press-releases/2023/07/tajikistan-un-experts-deplore-criminal-proceedings-against-human-rights>.

²⁸ See <https://www.ohchr.org/en/press-releases/2022/05/tajikistan-un-expert-fears-crackdown-against-pamiri-minority-could-spiral>.

the Ismaili Education Centre (opened in 2018) in Khorugh, the regional capital; and that, while the two main Ismaili centres in Tajikistan – in Khorog and in Dushanbe – were open, they could be used only for prayers, as officials had banned educational and cultural activities. No official reason had been given for the closures or notification of how long they would last. However, the State Committee for Religious Affairs and Regulation of Traditions, Ceremonies and Rituals had announced that a group of experts would decide on that. At a meeting held on 14 January 2023 in Khorugh, government officials reportedly told village elders not to allow Ismaili prayers in homes or those found guilty would be fined. Officials had also insisted that local people should remove portraits of the Aga Khan from their homes and that young Ismailis would no longer be allowed to travel to the United Kingdom of Great Britain and Northern Ireland to study at the Institute of Ismaili Studies. The Special Rapporteur notes that the situation described amounts to collective punishment of the Ismailis.

76. Upon receipt of the special permission required, the Special Rapporteur's delegation left for Kūhistoni Badakhshon Autonomous Province and stayed there from 15 to 18 April 2023. As the Special Rapporteur's visit request had clearly indicated her strong interest in visiting that Province, she very much regrets that the authorities did not facilitate official meetings and she was thus unable to meet the authorities there. While her delegation reached out to a range of religious and belief communities and faith-based actors in the Province, it was met with widespread reluctance to speak for fear of reprisals. As noted above (paras. 74 and 75), the Special Rapporteur had concerns about information on the situation in the Province that had been cross-checked and strongly confirmed through direct observation on the ground.

77. According to tens of sources, the State Committee for National Security had invited the heads of some 128 local non-governmental organizations (NGOs) to a meeting in Kūhistoni Badakhshon Autonomous Province in spring 2023 and persuaded or forced them to "voluntarily self-liquidate". More than 30 of those NGOs, even those working with children, suspended their activities, and more than 10 NGOs self-liquidated under the pressure exerted. According to the Government, almost 500 NGOs had been liquidated as at 2022. Some 108 were liquidated by court decision and 364 "self-liquidated". More than half the NGOs are reportedly from Kūhistoni Badakhshon Autonomous Province and new organizations in that Province are currently prohibited from registering. The Special Rapporteur expresses her serious concern about the situation there. She notes that the Committee on the Elimination of Racial Discrimination, following its review of the situation in Tajikistan in April 2023, had similar concerns.²⁹

G. Conscientious objectors to military service

78. The Military Duty and Military Service Act provides for mandatory military service with no exemption for conscientious objectors. Conscripts must either serve two years in the armed services or pay a substantial fine and take a month-long course in military preparedness.

79. The Jehovah's Witnesses organization was banned in 2007 and its registration withdrawn, due in large part to the refusal of its followers to perform military service. The organization challenged this decision in court, and on 29 September 2008, Dushanbe Military Court concluded that the ban was justified because: (a) individual Jehovah's Witnesses requested the provision of a civil service as an alternative to military service; (2) Jehovah's Witnesses were distributing religious literature in public places, in houses and on the streets that "had the nature of inciting fanaticism and extremism"; and (c) the activities of Jehovah's Witnesses "may become a cause for fanning religious and denominational antagonism". This decision was affirmed by the Military Division of the Supreme Court on 12 February 2009.

80. In its Views adopted on 7 July 2022, the Human Rights Committee found that none of the reasons put forward by the State party's authorities and courts for banning the Religious Association of Jehovah's Witnesses in Dushanbe and for refusing its reregistration

²⁹ CERD/C/TJK/CO/12-13, paras. 13 and 14. See also paras. 35 and 36.

met the requirements of article 18 (3) of the International Covenant on Civil and Political Rights. The Committee also found that, by refusing to reregister the Association, the State had violated the human rights of the particular Jehovah's Witnesses under article 22 of the International Covenant on Civil and Political Rights. It concluded that Tajikistan was obligated to take appropriate steps to review the conditions for the consideration of the Association's application for reregistration and to take all steps necessary to prevent similar violations from occurring in the future.³⁰

81. In the light of those Views, Jehovah's Witnesses asked for a review of the decision to ban their Association. The matter was before Dushanbe Military Court at the time of the Special Rapporteur's visit. Unfortunately, observers were not allowed into the court room. The subsequent ruling of the Military Court rejected the Views of the Human Rights Committee as a basis for reconsidering the ban. This ruling was upheld by the Military Division of the Supreme Court on 31 August 2023, which concluded that Tajikistan has no obligation to implement the Views of the Human Rights Committee.

82. The delegation also closely followed the case of Shamil Khakimov, a Jehovah's Witness born in 1951. He was arrested by the Tajik authorities in February 2019 following widespread raids on the homes of Jehovah's Witnesses who were meeting for worship. On 10 September 2019, he was jailed for seven years and six months for allegedly inciting religious hatred. He was prosecuted for possessing books, other literature, photos, videos, audio and computer files, and mobile phone data that were seized from him and other community members, which the Prosecutor's Office claimed contain "features of extremist activity". No evidence was reportedly produced that Mr. Khakimov or his community had harmed anyone. Mr. Khakimov's incarceration was characterized by systematic medical neglect by the Tajik authorities, despite multiple reminders from the Human Rights Committee of the State's obligation under international law to provide him with adequate medical care. His sentence was later reduced twice, but the prison administration refused to grant him early release, telling him that this was because he is a Jehovah's Witness. While the Special Rapporteur notes that he was released on 16 May 2023,³¹ his sentence bans him from exercising his freedom of religion and belief until May 2026.

VIII. Moving from religious toleration to freedom of religion or belief

83. Although the Constitution of Tajikistan guarantees freedom of religion or belief, as discussed, the exercise of that right is subject to excessive regulations that pit security against freedom.

84. Given the importance of knowledge and understanding of religious and belief diversity for overcoming negative stereotypes and for living together peacefully and with equality in a religiously pluralistic society, the Special Rapporteur notes an urgent need for regular and comprehensive programmes. They should go beyond schools and extend to the general population. Knowledge and deeper understanding of religions could help people to build resilience against claims of simplistic truth and radical slogans.

85. The Government claims that it promotes "toleration" in order to maintain interreligious harmony. A transition from the "toleration" model to the human rights model cannot be achieved without a positive recognition and appreciation of other rights that are closely linked to religion or belief, such as freedom of expression, freedom of peaceful assembly and association and the right to privacy. This shift will require a holistic approach to human rights in legislation and policy.

³⁰ *Adyrkhayev et al. v. Tajikistan* (CCPR/C/135/D/2483/2014).

³¹ See <https://twitter.com/NazilaGhanea/status/1658534323044114437>.

IX. Conclusions and recommendations

86. The Special Rapporteur notes that, while freedom of religion or belief as a human right is inherent to every human being, it is not recognized in law and in practice in Tajikistan. This poses a fundamental challenge for religious freedom in Tajikistan, especially since it is subordinated to the national or communal interest, and other freedoms are also undermined. She notes that the right to manifest one's faith in public or in private, alone or in a group, is an inalienable right under international law that should not be contingent upon State approval or administrative registration. The right to manifest one's religion includes carrying out actions to persuade others non-coercively about one's religion. State-imposed limitations on freedom of religion or belief cannot be legitimate unless they are not discriminatory and they meet the criteria set out in article 18 (3) of the International Covenant on Civil and Political Rights.

87. Even though freedom of religion or belief is guaranteed by the Constitution, it is extensively limited and regulated by the Freedom of Conscience and Religious Associations Act, the Act on Parental Responsibility for the Education and Upbringing of Children, the Act on Regulating Traditions, Celebrations and Rituals, the Criminal Code and the Code of Administrative Offences. These laws set burdensome registration requirements, criminalize unregistered religious activity, set strict limits on the number and size of mosques, stipulate State interference in the appointment of imams and the content of sermons, impose State controls on the content, publication and import of religious materials and prohibit proselytism and missionary activities. The State bans all private religious education that it has not sanctioned and parents are deprived of their right to educate their children according to their convictions. Religious pilgrimage is extensively regulated.

88. (Religious) extremism or radicalization is seen by the authorities as the main challenge for the country. State control of religions, strict surveillance and regulation of religious activities and practices are often justified as necessary to combat extremism and protect public security, regardless of their high human rights cost. Hundreds of people have been imprisoned for up to 15 years or more on vague extremism- or terrorism-related charges.

89. The authorities' pursuit of security does not stand at loggerheads with freedom of religion or belief. Quite the contrary. Widening the scope of freedom of religion or belief will lend confidence, vibrancy and conviction to the people in Tajikistan in both their unity and diversity and protect them from any vulnerability to find appeal in those who call for violations in the name of religion or belief. The Special Rapporteur underlines that there is a need to transition from a toleration model to a universal human rights model with regard to religion or belief. Such a reform process should be participatory, transparent, accountable and sustained with a holistic approach to human rights. What is required is not just the adoption of new laws, but institutional reform backed by a strong political will and a shift in attitude led and encouraged by the Government. It will also require the support of the international community to both the Government of Tajikistan and Tajik civil society to sustain the momentum.

90. Since 2016, Tajikistan has been designated by the State Department of the United States of America as a "country of particular concern" (CPC) for its serious violations of religious freedom. In several meetings, the authorities robustly articulated determination that they should be taken off the CPC designation, and reference was made to a 2022 study on the experience of neighbouring Uzbekistan in this regard. The Special Rapporteur underlines that the entities collaborating with Tajikistan, including the diplomatic community, the United Nations country team, the Organization for Security and Cooperation in Europe, the United Nations Office on Drugs and Crime and others, can have an important role in supporting such a change by making freedom of religion or belief integral to multilateral diplomacy and all bilateral engagements and collaborations.

91. Against this background, the Special Rapporteur recommends the following to the Government of Tajikistan:

(a) In the light of the reported climate of fear among religious communities and human rights defenders, encourage open debate on the meaning of secularism to overcome the current restrictive interpretation and attitudes within the administration and law enforcement agencies. The State should provide space to positively accommodate religious diversity in society without discrimination or fear;

(b) Review the Freedom of Conscience and Religious Associations Act and the Act on Regulating Traditions, Celebrations and Rituals with a view to bringing them into compliance with international standards, in particular article 18 of the International Covenant on Civil and Political Rights;

(c) Review and revise all provisions relating to freedom of religion or belief in the Criminal Code and the Code of Administrative Offences to bring them into conformity with article 18 of the International Covenant on Civil and Political Rights and other relevant international human rights standards;

(d) Allow everyone the freedom to freely manifest freedom of religion or belief without restriction, surveillance, monitoring and fear, and in line with article 18 of the International Covenant on Civil and Political Rights;

(e) Make registration optional and only for the purpose of facilitating the operational functions of religious organizations. Any registration procedures should be quick, transparent, fair and free from undue bureaucratic complications. Non-registered communities must be able to operate free from discrimination and fear of intimidation. Thresholds for registration at the local, regional and national levels should be defined in such a way that minorities can fully operate throughout the country. The ban on proselytism and missionary activities should be overhauled;

(f) Enable persons belonging to religious minorities to maintain their characteristics and enjoy the full spectrum of freedom of religion or belief, including the publishing, printing and importation of literature, the possibility of contributing to the public media, maintaining places of worship, carrying out charitable activities and all the rights pertaining to freedom of religion or belief and persons belonging to minorities enshrined in articles 18 and 27 of the International Covenant on Civil and Political Rights;

(g) Provide viable options to religious or belief communities that, for whatever reason, do not have the status of a recognized religious community or do not wish to obtain that status, to enable them to obtain an alternative form of legal personality that would allow them to carry out their community activities;

(h) Respect the liberty of parents and legal guardians to provide religious education to their children consistent with their convictions and the evolving capacities of the child. Adequate infrastructure should be provided to educational institutions, and private religious schools and similar institutions must be able to function freely and without undue administrative stipulations;

(i) Review the vague definitions of “extremism”, as the overly broad range of offences concerning religious activities have a negative impact on freedom of religion or belief, of expression and of assembly. The current definitions should be replaced by clear and narrow definitions. The Rabat Plan of Action can provide practical guidance in that regard;

(j) Review the cases of all persons imprisoned on vague extremism-related charges (see para. 66 above) and release all prisoners of conscience. A mechanism for redress and compensation for prisoners of conscience must also be established and all relevant State institutions and the Supreme Court should ensure that the measures for rehabilitation and reintegration of former prisoners of conscience include immediate and full reinstatement of their civil, political, economic, social and cultural rights;

(k) Step up its efforts to adopt the legislation necessary to recognize the right to conscientious objection to military service without discrimination as to the nature of

the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection, and to ensure that alternative service is not punitive or discriminatory in nature or duration by comparison with military service;

(l) Recognize freedom of religion or belief as an inherent right for everyone, including prisoners. Ensure that prisoners are treated humanely and allowed access to family, human rights monitors, adequate medical care and lawyers, and the ability to practise their faith. The Nelson Mandela Rules should be consistently applied in all prisons and the Government should ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(m) Carry out a prompt, impartial and transparent investigation into the events that have reportedly taken place in Kūhistoni Badakhshon Autonomous Province since November 2021, in accordance with applicable international standards, take all measures necessary to prevent further escalation of violence in the region, including by responding to the grievances of the Pamiri minority, engage in a constructive and open dialogue with Ismailis and implement conflict-prevention measures that meet international human rights standards, including measures to protect Ismailis;

(n) Strengthen the institutional setting of human rights protection, for instance, by guaranteeing the full independence of the Office of the Commissioner for Human Rights, taking all measures necessary to provide it with sufficient financial and human resources to fully discharge its mandate, and ensuring that it is fully compatible with the Paris Principles;

(o) Take the measures necessary to ensure that the Act on Equality and Elimination of All Forms of Discrimination (2022) is implemented in practice, with the full involvement of all concerned groups of society and other relevant stakeholders, ensure that other groups will be explicitly included in the anti-discrimination law as groups to be protected from discrimination, including LGBTI persons and those who work for their rights, and organize awareness-raising campaigns for State officials and the public on equality and non-discrimination, including the provisions of the law;

(p) Acknowledge that a vibrant civil society and the operation of independent bodies in wider society, especially in places where there is a larger concentration of persons belonging to minorities, is essential to human rights, including freedom of religion or belief. In this respect, take all measures necessary to ensure that civil society organizations can operate freely without undue restrictions, excessive administrative burdens, threats or any other form of persecution.
