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公民权利和政治权利，包括宗教不容忍问题

宗教或信仰自由问题特别报告员
阿斯玛-贾汗吉尔提交的报告

增 编 2

对法国的访问*
(2005年9月18日至29日)

* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以原文和法文分发。

内 容 提 要

2005年9月18日至29日，宗教或信仰自由问题特别报告员对法国进行了访问。她在报告中着重指出，法国政府普遍尊重受到有关国际条约保护的宗教或信仰自由权，不过，仍有一些令人关切的领域。

特别报告员承认，建立在政教分离原则基础上的社会组织形式保障宗教或信仰自由的基本权利，但她感到关切的是，在一些情况下，由于对这一原则作了选择性的解释和僵硬的实施，上述权利因此而受到了损害。具体而言，她欢迎法国社会内部目前就1905年《政教分离法》所作的辩论，并认为在目前宗教日益多元化的情况下，对这项法律的实施情况作以透彻的评估是一个基于法治的民主社会所必须开展的进程。

关于邪教团体和某些新的宗教运动或信仰团体的问题，特别报告员认为，政府的政策可能促成了一种对被列入根据一份议会报告而确定的名单的社团普遍怀疑和不容忍的气氛，并对这些社团或团体的一些成员的宗教或信仰自由权产生了负面影响。

不过，特别报告员注意到，近年来法国当局对这种现象采取了一种更加平稳的做法，他们调整政策，包括将跨部级打击“邪教”代表团改为跨部级警惕和取缔邪教活动代表团。不过，她还将继续密切注视这一代表团所开展的各项行动。

特别报告员认为，2004年关于在公立学校携带明显的宗教标志的立法是妥当的，因为其目的是按照儿童最佳利益的原则，保护可能受到压力或被迫披带头巾或携带其他宗教象征的未成年人的自主权。然而，这项法律剥夺了出于自己的宗教信仰而自由选择携带宗教象征上学的未成年人的权利。

此外，教育机构执行这项法律的行为在一些情况下失偏，特别是给穆斯林青年妇女造成了羞辱。据许多人称，这种羞辱只能导致受害者以及与她们周围的人更加激进。此外，当妇女在校外、在大学或在工作场所披带头巾时，这种给头巾盖上烙印的做法挑起了宗教不容忍行为。

特别报告员除其他建议外，还鼓励法国政府采取适当措施，让学校当局、更多地让全体法国民众更好地了解这一法律的确切性质和宗旨。应当说明，携带或展示宗教象征是表现个人的宗教或信仰这一权利必不可少的一部分，只有在具体的情况下才能加以限制。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF
RELIGION OR BELIEF ON HER MISSION TO FRANCE
(18 to 29 September 2005)**

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Introduction

1. From 18 to 29 September 2005, the Special Rapporteur on freedom of religion or belief carried out a visit to France in fulfilment of her mandate, at her request and at the invitation of the Government of France.
2. The Special Rapporteur held the majority of her meetings in Paris but also travelled to Aix-en-Provence, Marseilles, Lyons and Strasbourg. During her visit, she held talks with Government officials, leaders and representatives of religious communities and communities of belief, representatives of non-governmental organizations (NGOs), academics and experts in the field of freedom of religion or belief.
3. The Special Rapporteur wishes to thank the French authorities for their invitation and for the cooperation they extended to her during her visit.
4. She is also grateful for the positive attitude demonstrated by religious representatives during the visit and for the information and opinions that they shared with her. Members of French civil society were also extremely accessible during the entire duration of the visit and provided invaluable assistance in the organization of different meetings.
5. In the present report, the Special Rapporteur does not intend to present a complete and exhaustive picture of the situation of religions and beliefs in France or to provide a thorough analysis of the questions related to religion.
6. The Special Rapporteur intends to concentrate on certain aspects of the status of freedom of religion or belief in France. In particular, she focuses on legislation on conspicuous religious symbols in public schools, the Government policy on the question of cult groups and certain new religious movements or communities of belief, the religious rights of persons deprived of their liberty and acts of religious intolerance.

I. PROGRAMME OF THE VISIT

7. The Special Rapporteur spent eight days in Paris, where she held numerous meetings.
8. At the presidential and governmental level, the Special Rapporteur met Catherine Vautrin, Minister for Social Cohesion and Equality; Brice Hortefeux, Minister for Local Government (Ministre délégué aux Collectivités Territoriales); Blandine Kriegel, Special Adviser to the President for Integration and Human Rights; Didier Leschi, Head of the Central Office for Religion, Ministry of the Interior; Jean de l'Hermitte, Adviser to the Prime Minister on Civil Liberties; Patrick Gerard, Director of the office of the Minister of National Education and members of his staff; Catherine Pautrat and Mauric Barate of Prison Services; Jean-Maurice Ripert, Director of the United Nations Department at the Ministry for Foreign Affairs; and Laurent Stefanini, Adviser on Religious Affairs at the Ministry of Foreign Affairs. The Special Rapporteur regrets that the Minister of the Interior was not able to meet with her.
9. The Special Rapporteur also met Bernard Stasi, former chairman of the Commission on the implementation of the principle of *laïcité*¹ in France (Commission de réflexion sur

l'application du principe de laïcité dans la République, known as the Commission Stasi); Gilles Bottine, Secretary-General of the inter-ministerial mission to monitor and combat sectarian abuse (Mission interministerielle de vigilance et de lutte contre les dérives sectaires, MIVILUDES); Louis Schweitzer, Chairman of the High Authority to combat Discrimination and Promote Equality (Haute Autorité de lutte contre les discriminations et pour l'égalité, HALDE); and Michel Forst, Secretary-General of the National Consultative Commission for Human Rights (CNCDDH).

10. The Special Rapporteur also had the opportunity to meet Guy Canivet, the President of the Court of Cassation (Premier président de la Cour de Cassation), as well as Regis de Gouttes, Attorney-General to the Court of Cassation.

11. Among representatives of religious communities or other communities of belief, the Special Rapporteur met with Stanislas Lalanne, the secretary-general of the Conference of Bishops of France, Dalil Boubakeur, the Chairman of the French Council for the Muslim Faith (Conseil français du Culte Musulman, CFCM); Fouad Alaoui, General Secretary of the Union of French Islamic Organizations (Union des Organisations Islamiques de France, UOIF); Pastor Jean-Arnold de Clermont, President of the Federation of Protestants of France (Président de la Fédération protestante de France); Monseigneur Emmanuel, See of France and President of the Assembly of Orthodox Bishops of France (Métropolitaine de France et Président de l'Assemblée des évêques orthodoxes de France); a representative of the French Evangelical Alliance (Alliance Évangélique Française); and representatives of the Sikh Community. She also met with representatives of the Church of Scientology and members of the community of Jehovah's Witnesses.

12. The Special Rapporteur also met with representatives of the Union rationaliste, including its Chairperson, Hélène Langevin-Joliot.

13. In terms of civil society, the Special Rapporteur met with Danielle Hervieu-Léger, Chairperson of the Institute for Higher Studies in the Social Sciences (EHESS); Farhad Khosrokhavar, director of studies at EHESS; Dominique Borne, President of the European Institute of Religious Studies (IESR); Henri Pena-Ruiz, philosopher and former member of the Stasi Commission; Soheil Bencheikh, theologian and writer, staff members of Amnesty International (French section); Jean-Pierre Dubois, President of the Human Rights League; Antoine Bernard, Executive Director of the International Federation for Human Rights (FIDH); Fadela Amara, President of Ni putes, ni soumises ("Neither whores, nor submissive"); representatives and members of the Christian Observatory on Secularism (Observatoire chrétien de la laïcité); a representative of Women Living Under Muslim Laws; the Chairperson and members of the French branch of the World Conference of Religions for Peace; a representative of the Movement of Secular North Africans of France (Mouvement des maghrébins laïques de France).

14. In Strasbourg, the Special Rapporteur was received by the local authorities (*mairie* and *préfecture*). She met with Jean Kahn, President of the National Jewish Board of France (Consistoire central de France), members of the Jewish community and a representative of the Representative Council of French Jewish Institutions (Conseil représentatif des institutions juives de France, CRIF), representatives of the Muslim community, representatives of the

NGOs, Monitoring Committee (Comité de vigilance) and the Committee of 15 March (Comité du 15 mars). She also visited the Cronenbourg cemetery which has been the object of acts of desecration.

15. In Aix-en-Provence and Marseilles, the Special Rapporteur met with Bernard Panafieu, Archbishop of Marseilles, Bruno Etienne, Director of the Religious Observatory (Observatoire du religieux), the representatives and members of Hope of Marseilles (Marseille Espérance). In Marseilles, the Special Rapporteur also visited the Prison des Baumettes, where she met with prison personnel and detainees.

16. Finally, in Lyons, the Special Rapporteur was received by the prefect of the Rhône-Alpes region and the Rhône department for a meeting with representatives of religious communities and members of the *préfecture*. She also met with Kamel Kabtane of the Lyons Mosque, Richard Wertenschlag, Grand Rabbi of Lyons and the Rhône-Alpes region and representatives of Women's Views (Regards de femmes).

II. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

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

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

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practise and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

19. The Special Rapporteur would also like to emphasize that in her analysis of the situation in France, she mainly relies on the terms of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, general comment No. 22 (1993) of the Human Rights Committee on article 18 (Freedom of thought, conscience or religion), as well as other relevant provisions of the International Covenant on Civil and Political Rights and international standards.

III. RELIGION AND BELIEF IN FRANCE

20. In the absence of official figures, it is difficult to obtain accurate statistics on the number of people affiliated to different religions in France since there is no obligation to register one's religion.

21. The majority of people in France claim a certain link to the Roman Catholic Church. However, only a minority actively practise the religion. The other Christian denominations in the country include the Protestant community, the Orthodox community and many other smaller Christian groups such as the Evangelical churches.

22. The population of Muslim background is between 4 and 5 million. While it is often reported that they constitute the second-largest religious group, it is extremely difficult to accurately measure the number of them who are effectively practising their religion, including because there is no registration of religious communities. The Muslim population is mainly of Algerian and Moroccan origin but also from Afghanistan, Egypt, India, Islamic Republic of Iran, Lebanon, Pakistan, Syrian Arab Republic (the) and Turkey.

23. At the end of the 1980s, the Government created the Conseil de Réflexion sur l' Islam de France, the first, albeit unsuccessful, attempt at a unified representation of Muslims. Other attempts also failed to bear fruit, including because of the links between French Muslim federations and foreign countries.

24. As a result of significant efforts carried out by the Government, CFCM was created on 23 February 2003 and Dalil Boubakeur, rector of the Great Paris Mosque, was elected as its chairperson. Similarly to other religious communities, CFCM is a body that represents the Muslim religious community and therefore constitutes an interlocutor for the Government.

25. CFCM is the object of much controversy. Many Muslims criticize its position as being too close to the Government and too conciliatory on certain religious issues. Furthermore, many supporters of secularism blame the Government for being too involved in CFCM.

26. The Jewish community is an important religious minority in France, accounting for approximately 600,000 people, but reportedly only a portion of them actively practise their religion.

27. Other religious communities or communities of belief include Buddhists, Jehovah's Witnesses, Sikhs, the Church of Scientology and many others.

28. Finally, according to some estimates, 6 per cent of the population has no religious affiliation. Some of these persons have created associations but they sometimes complain about lack of access to the media for expressing another conception of life and the world.

IV. LEGAL FRAMEWORK AND THE PRINCIPLE OF SEPARATION OF CHURCH AND STATE IN FRANCE

A. The Law on the Separation of Church and State of 1905

29. The French Constitution guarantees freedom of religion. According to its article 2, “France is an indivisible, secular, democratic, and social Republic. It ensures the equality of all citizens before the law, without distinction as to origin, race, or religion. It respects all beliefs.” Furthermore, article 77 (3) of the Constitution guarantees the principle of equality: “All citizens shall be equal before the law, regardless of their origin, race or religion. They shall have the same duties.”

30. The Law on the Separation of Church and State (loi concernant la séparation des Églises et de l’État) of 9 December 1905, which is the primary piece of legislation relevant to the issue of religion, provides for the separation of powers of the State and the Church.² This law removes the principle of recognized religions and stipulates that the State does not subsidize any religion. This rule is the object of many exceptions, the main one being that the principle is not applicable to most overseas territories³ or, for historical reasons, the three districts of Alsace-Moselle, where the main religions are subsidized and their clergy are salaried.

31. The 1905 law also guarantees freedom of religion as it makes provisions for France to ensure freedom of conscience and guarantee the free practise of religions.

32. This law is also the foundation of the principle referred to by the French as *laïcité*,⁴ which governs the place of religions in the country and maintains a totally secular public sector. While the word *laïcité* is sometimes perceived as a symbol of opposition to religion, many of the Special Rapporteur’s interlocutors stressed that the principle had evolved over time⁵ and that it encompassed freedom of religion or belief, while at the same preventing it from influencing the public sphere.

33. Other interlocutors consider that the context of France today is dramatically different from the one of 1905, with dozens of different religious communities and that France ought to further develop the concept of *laïcité* to better suit the increasing religious pluralism. According to them, Government policies should therefore be adapted accordingly.

34. In this context, some are of the opinion that the law needs to be interpreted widely enough to accommodate both collective and individual rights to freedom of religion or belief. However, the law has acquired a very special status and therefore proposals for revision or reform have met a lot of resistance. Nevertheless, the law has been interpreted over time, including for conciliatory purposes in a mutual agreement between France and the Holy See in 1923-1924.

35. Religions do not have to register but may register as a “1905 association” (association of worship which are exempt of tax but which are limited to religious activities) or a “1901 association” (cultural association which is not tax exempt but may engage in non-profit commercial activities).

B. Freedom of conscience and neutrality in public services

36. The principle of the separation of Church and State implies two principles in the public services, which are not the object of formal legislation but are based on the jurisprudence of the Council of State (the administrative jurisdiction).

37. The principle of equality guarantees the freedom of conscience of civil servants. According to this principle, religion cannot be a criterion in the recruitment process and civil servants do not have to disclose their religious affiliation.

38. However, as a consequence of this principle, the civil servant is obliged to respect a duty of neutrality which means that he or she should abstain from any act that would challenge his neutrality. This includes the prohibition of wearing religious symbols while at work in public services, in particular when in a position of direct contact with the public.

39. Some interlocutors highlighted the often extreme ways in which this principle has been applied. It was raised, *inter alia*, that access to employment in public services was *de facto* barred for members of certain religious communities who consider the display of religious symbols as being an essential part of their faith. Moreover, it was also pointed out that the principle of neutrality in public services was sometimes wrongly applied to the public. In some of these cases, in addition to the judiciary, mechanisms such as HALDE have successfully intervened and proven to be a satisfactory remedy.

V. FREEDOM OF RELIGION OR BELIEF AND RELIGIOUS TOLERANCE

40. Besides a few reported instances that may constitute violations of the right to freedom of religion or belief, most religious communities are generally satisfied with the level of freedom of religion or belief in France.

41. In terms of places of worship, the majority of complaints were received from the Muslim community, which was pointing to the shortage of mosques in France. This problem is allegedly partly due to the complexity of the legislation on the building of places of worship and the length of the related procedures. Some groups have also voiced concerns about difficulties related to burial places.

42. Regarding the level of religious tolerance within French society, the opinions are slightly more nuanced. Despite real efforts made by civil society in the field of interfaith dialogue,⁶ including by the French branch of the World Conference of Religions for Peace, there is still room for an important margin of improvement towards religious harmony.

43. On the basis of the information that has been provided to the Special Rapporteur, in particular with regard to cases of racism, anti-Semitism or xenophobia, it is difficult to make a distinction between those acts that have targeted certain groups or individuals primarily because of their religious beliefs and other types of acts. It is however indisputable that a proportion of these acts were directly related to the religion of the victims.

44. CNCDH reported in 2005 that acts of racism, anti-Semitism and xenophobia had nearly doubled from 833 in 2003 to 1,565 in 2004. However, according to the National Police (Ministry of the Interior), such acts numbered 974 in 2005. Among these acts, the largest proportion concerns acts of anti-Semitism. A number of acts of religious intolerance, including threats and insults, made against Muslim communities were also reported to the Special Rapporteur. During the course of her visit, the Special Rapporteur visited a cemetery in the vicinity of Strasbourg in which a number of tombs, including Jewish and Muslim tombs, had been desecrated.

45. In addition to efficiently prosecuting the perpetrators, the French authorities have taken a significant number of measures with regard to acts of religious intolerance or hatred, including the protection of a number of places of worship.

46. In terms of judicial mechanisms, there have been some complaints regarding the handling of cases of discrimination on the basis of religion, including because of the difficulties faced by victims in establishing the - religiously - discriminatory character of the acts reported in civil cases and because there is allegedly some reluctance by tribunals to allow compensation for acts of unlawful discrimination.

VI. RELIGIOUS SYMBOLS IN PUBLIC SCHOOLS

47. Since the beginning of the school year 2004/05, in application of Law 2004-228 of 15 March 2004 on "laïcité",⁷ and conspicuous religious symbols in public schools (Loi no 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics), the wearing of conspicuous religious symbols is prohibited in public schools.

A. Background

48. Until March 2004, there was no legislation related to the wearing of religious symbols in schools. In 1989, the State Council (Conseil d'Etat), referring to the right to freedom of expression and the right to publicly manifest one's religion or beliefs, decided that the wearing of symbols intended to show a child's affiliation to a religion in public schools was not necessarily considered incompatible with the principle of the separation of Church and State. It would only constitute a breach of this principle, and therefore be considered illegal, if it was accompanied by proof of proselytizing behaviour or provocation. It distinguished between an "ostentatious (*ostentatoire*) religious symbol" and the "ostentatious wearing of a religious symbol".

49. School administrations found this regime complex and difficult to implement on a case-by-case basis, in the absence of any legislation. Accordingly, educational professionals advocated for the adoption of a law on the issue.

50. As a result, in December 2003, a special commission was appointed by the President and headed by the national ombudsman, Bernard Stasi, to analyse the application of the principle of *laïcité* in France. Among other recommendations, the Commission recommended that a law be drafted banning conspicuous religious symbols (including large Christian crosses, Jewish skullcaps and Islamic headscarves) in State schools.

51. Law 2004-228, which amended the Education Act, was adopted by a large majority in the National Assembly and across party lines. In its article 1, it provides that in public elementary schools, middle schools (*collèges*) and secondary schools (*lycées*), wearing symbols or clothing by which students ostentatiously show a religious identity is prohibited. School rules are to stipulate that any disciplinary procedure must be preceded by dialogue with the student.

52. The assessment of whether a religious symbol constitutes a conspicuous sign is left to the head of the school establishment, a power that is said to have led in some cases to abuse, including in cases where some of the heads decided to ban all manner of head coverings, with even the slightest religious connotation.

B. The reasons behind and arguments supporting the law

53. According to many interlocutors, the reasons behind this legislation go beyond the application of the principle of the separation of Church and State. This legislation is also illustrative of the relationship between the French State and religion, in particular certain practices of the Muslim community.

54. The French religious landscape has dramatically changed since 1905, in part as a result of the immigration of a large amount of people from Muslim backgrounds. Throughout the years, the population of Muslim background has significantly increased and, in many places, has settled in some of the so-called *banlieues* or housing estates. The *banlieues* are the suburbs surrounding France's larger cities, such as Paris and Marseilles. The population of the *banlieues* is often characterized by poverty, high unemployment rates among young people, growing extremism among Muslim youth and an increasing feeling of alienation from French society at large.

55. On 4 October 2002, Sohane Benziane was burnt alive, reportedly for reasons related to her refusal to wear the headscarf. This tragic incident was at the origin of the creation of movements such as *Ni putes, ni soumises*. In this context, the Special Rapporteur met with representatives of different associations defending, inter alia, women's rights. These associations mainly claim that most young women of Muslim background wear the headscarf because they are forced to do so by their family and, in particular, by the male members. They emphasize the individual character of the right to freedom of religion and consider that the exercise of this right, which would include the right to wear the headscarf, should be based on free and individual choice.

56. The associations argue that an increasing proportion of young French citizens of Muslim background want to emancipate themselves from the religion to which they are associated. They are of the opinion that Law 2004-228 has provided them with a legitimate means of reaching this goal.

57. The National Assembly and the Government reportedly considered that this law would constitute a means of protecting young women who were not willing to abide by certain so-called religious norms, including the wearing of the headscarf. The banning of religious symbols at school would enable those young female children to freely choose the way they conduct their lives.

58. Many supporters of the law have also argued that the school is a place where children should learn about the elements that unify them rather than the elements that differentiate them. In this context, they argue that differentiating between pupils on the basis of religion has resulted in some pupils refusing to participate in classes such as biology or swimming classes.

59. The Special Rapporteur noted the inconsistency in the position of certain interlocutors from women's organizations who argued that Islam does not, as such, require women to wear a headscarf whilst at the same time arguing that the law should be applied to the headscarf because it was, in fact, being worn as a religious symbol.

60. Finally, at a meeting with members of staff of the office of the Minister of National Education, the Special Rapporteur was told that the wearing of religious symbols in schools hurt the freedom of conscience of the other children. She was concerned about the intolerant nature of such arguments.

C. Consequences of the implementation of the law

61. It is claimed by the Government that the implementation of the law has actually proved less problematic than expected and most interlocutors have agreed with this conclusion. According to the Minister of National Education, 47 children have been expelled from schools, including three Sikh pupils who had refused to remove their under-turban. French tribunals have usually upheld these expulsions.

62. It is however difficult to assess the number of pupils who have chosen not to abandon their religious signs. In addition to dismissals, some have removed themselves from the school system by abstaining from registering with a school. Others aged above 16 are no longer obliged to attend school. A few have left France or have registered with private schools, which allowed them to keep wearing their symbols. Finally, a few have enrolled with distance learning systems (Centre national d'enseignement à distance).

63. When assessing the indirect consequences of the law, opinions are much more divided. Although the scope of the new law applies equally to all religious symbols, its application disproportionately affects young Muslim women wearing the headscarf. A large number of these women told the Special Rapporteur about the difficulties they had endured because they had freely chosen to wear the headscarf. Many had been intimidated or humiliated for expressing their personal opinion on the question. Even in cases where young girls were obliged

to wear headscarves by their families, the law is said to have provoked particularly painful situations within the families. Some girls who did not wear the headscarf before the law have decided to wear it when they leave the school as a form of protest. Some informed the Special Rapporteur that they felt torn between loyalty to their religious community and their commitment to women's rights.

64. The adoption of the law is also said to have radicalized a fraction of the Muslim youth and has been systematically used in the *banlieues* and Mosque to disseminate a message of religious radicalism. Some critics of the new law argue that it may have been among the different elements explaining the widespread violence and riots that erupted all around France's *banlieues* in early November 2005.

65. While CFCM was unable to reach a unified position on Law 2004-228 UOIF openly denounced the adoption of the law, although it did ask Muslim girls to comply with it.

66. Another religious minority that has been seriously affected by the adoption of the law is the Sikh community. Their members reported to the Special Rapporteur that displaying religious symbols was an essential part of their faith. They described the painful experiences they endured when their children had to cut their hair, as a result of the rigid application of the law by some educational institutions.

67. The law also appears to have sent the wrong message to a certain portion of the population which has come to believe that the wearing of religious symbols per se, and in particular headscarves, is generally unlawful. As a result of the new law, a portion of the population has come to associate the headscarf solely with gender inequality and oppression. The Special Rapporteur was informed about instances where women were refused access to shops or were insulted in the street because they wore the headscarf. For the same reasons, some women were dismissed from their employment, while others found it difficult to find employment.

68. More generally, some interlocutors criticized the law because, in their opinions it was meant to solve a problem of a more social than religious nature. They consider that the law has had a negative impact on social cohesion and that, instead of prohibiting religious symbols, the school system should teach the peaceful cohabitation of communities and universal values.

D. Human rights law

69. With regard to the compatibility of Law 2004-228 with human rights law and, in particular, the right to freedom of religion or belief, the Special Rapporteur notes that the law constitutes a limitation of the right to manifest a religion or a belief. In this respect, the Special Rapporteur draws attention to the section on religious symbols of her report to the sixty-second session of the Commission on Human Rights on freedom of religion or belief (E/CN.4/2006/5, paras. 36-60).

70. Paragraph 3 of article 18 of the International Covenant on Civil and Political Rights provides for certain such limitations under restrictive conditions. General comment No. 22 (1993) of the Human Rights Committee emphasizes that paragraph 3 of article 18 "... is to be

strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner ... ” (para. 8). So far, there has not been an assessment of the compatibility of this legislation with relevant international standards protecting the right to freedom of religion or belief by a judicial or quasi-judicial international human rights body.⁸

71. However, besides a strict assessment of compatibility with the right to freedom of religion or belief, the law has been the object of careful consideration by the United Nations treaty bodies. The Committee on the Rights of the Child, in its concluding observations on the second periodic report of France, expressed its concern that “the new legislation (Law No. 2004-228 of 15 March 2004) on wearing religious signs in public schools may be counterproductive, by neglecting the principle of the best interests of the child and the right of the child to access to education [...] the Committee recommends that the State party [...] consider alternative means, including mediation, of ensuring the secular character of public schools, while guaranteeing that individual rights are not infringed upon and that children are not excluded or marginalized from the school system [...]. The dress code in schools may be better addressed within the public schools themselves, encouraging participation of children” (CRC/C/15/Add.4, paras. 25-26).

72. In its concluding observations on the fifteenth and sixteenth periodic reports of France, the Committee on the Elimination of Racial Discrimination “recommend[ed] to the State party that it should continue to monitor the implementation of the Act of 15 March 2004 closely, to ensure that it has no discriminatory effects and that the procedures followed in its implementation always place emphasis on dialogue, to prevent it from denying any pupil the right to education and to ensure that everyone can always exercise that right” (CERD/C/FRA/CO/16, para 18).

VII. CULT GROUPS AND CERTAIN NEW RELIGIOUS MOVEMENTS OR COMMUNITIES OF BELIEF

A. Background and measures taken in the 1990s

73. In 1995, further to a series of dramatic incidents involving cult groups, the National Assembly created a commission of inquiry to analyse the question and to propose updated legislation on the issue.

74. Following a number of hearings with administrative authorities, doctors, lawyers, representatives of the Roman Catholic Church and former members or leaders of cult groups, the Commission established a list of criteria according to which a group could be defined as a *secte*,⁹ including mental destabilization, exaggerated financial contributions, the required separation from one’s original environment (in particular, one’s family), offence to physical integrity, the recruitment of children, relatively anti-social discourse, public order offences or attempts to infiltrate public services.

75. The Commission established a list of all those movements or groups which met at least one of the above criteria. The list numbered 173 main groups and 800 subsidiary groups. In this process it was claimed, *inter alia*, that the groups concerned had not been informed in advance that they would be placed on the list or given the opportunity to participate in a hearing. They were also not provided with the reasons justifying their inclusion on the list.

76. In order to analyse the dangers posed by these groups, the Commission mainly based its findings on judicial decisions that had been taken in the past, as well as on the testimonies of former *secte* members. These decisions revealed mainly cases of infringement of physical integrity, sequestration, failure to assist a person in danger or the illegal practice of medicine. It also included cases of violations of family law, defamation, infringement of private life, tax-related offences and violations of labour or social law. However, the commission considered that judicial convictions were not enough to demonstrate the dangers represented by these groups because the victim is not always conscious of the harm caused to him or her and only a few members readily complain. It is also difficult to obtain evidence and existing criminal law reportedly does not cover all the acts that raise concern.

77. The Commission report together with the above-mentioned list was made public in 1996. It was followed by the creation of the Inter-ministerial Observatory on *sectes* (*observatoire ministeriel des sectes*), which was dissolved in 1998 and replaced by the Inter-ministerial Mission to Combat "Sectes". (*Mission interministerielle de lutte contre les sectes*) (MILS). By a decree of 28 November 2002, MILS was replaced by MIVILUDES.

78. Besides governmental bodies, a number of groups have been created at the national or regional level, including by alleged victims, to combat *sectes*. One of these groups was declared of public utility and benefited from financial government support.

79. At the legislative level, after a long process, a new law called the About-Picard Law (named after the two Members of Parliament who proposed the draft) was adopted on 3 May 2001. The law was designed to dissolve those groups or movements which had been convicted several times, as well as to extend the criminal offence of wrongful abuse of an individual's state of ignorance or weakness (*délit d'abus frauduleux de l'état d'ignorance ou de faiblesse*). In addition to the above, the law also extends criminal responsibility for legal entities *personnes morales* and limits the ability of sectarian movements to advertise.

80. On 25 November 2004, on the basis of investigations revealing risks of collective suicides, *inter alia*, the Tribunal correctionnel de Nantes convicted the first person under the About-Picard law and sentenced the leader of a group called Néophare to a suspended sentence of three years' imprisonment for having abused the state of ignorance of four members of the group. The conviction and sentence were confirmed on appeal.

81. More recently, by (government instructions) circulaire of 27 May 2005, the former Prime Minister elaborated on the main tasks of MIVILUDES.

B. Consequences of the measures taken

82. During her visit, the Special Rapporteur met with representatives of some of the religious groups or communities of belief that were included in the 1996 list, including members of the Church of Scientology and Jehovah's Witnesses. Most have recognized some improvement in their situation but cases of unlawful discrimination continued to be raised, including in the school system because of the *anti-sectes* campaign that is often conducted without appropriate guidance, resulting in the stigmatization of a number of children that were said to be members of these groups.

83. The existence and publicity of the list of *sectes* has not affected only freedom of religion or belief. In addition, the mere fact that one is a member of a group on the list has constituted an element for judicial or other decisions that negatively affect an individual's other rights, for example, in child custody cases.

84. There are also a number of ongoing cases, including those related to tax matters, where religious groups or communities of belief have reported instances of discrimination. In this regard, the Special Rapporteur was told that, under the law of 9 December 1905, certain groups or movements can be exonerated from tax as long as they exclusively exercise a religion, an assessment that certain interlocutors have assimilated to a form of recognition of the religious character of a group.

85. Finally, some groups complained about difficulties and obstacles to building places of worship and lack of access to detention facilities.

C. Human rights law

86. The question of cult groups or new religious movements has often been debated in the context of international human rights mechanisms. It is often claimed that measures taken against these groups are in full compliance with human rights law because their purpose is to protect individuals against groups or communities that want to limit their members' right to freedom of conscience.

87. Nevertheless, the question of the fight against *sectes* raises an issue under the right to freedom of religion or belief, as protected by international standards. Following the adoption of the above-mentioned About-Picard Law, the Parliamentary Assembly of the Council of Europe, in its resolution 1309 (2002) emphasized that, "[a]lthough a member State is perfectly at liberty to take any measures it deems necessary to protect its public order, the authorized restrictions on the freedoms guaranteed by [a]rticles 9 (freedom of thought, conscience and religion), 10 (freedom of expression) and 11 (freedom of assembly and association) of the ECHR are subject to specific conditions [...] [and] invite[d] the French Government to reconsider this law ...".

88. Abdelfattah Amor, the Special Rapporteur's predecessor, elaborated on his position on this issue at different times and in relation to different countries. In a 1997 report, Amor stated that "[i]n actual fact, the fairly widespread hostility towards sects can be largely explained by the excesses, the breaches of public order and, on occasion, the crimes and despicable conduct

engaged in by certain groups and communities which trick themselves out in religion, and by the tendency among the major religions to resist any departure from orthodoxy. The two things must be treated separately. Sects, whether their religion is real or a fiction, are not above the law. The State must ensure that the law - particularly laws on the maintenance of public order and penalizing swindling, breach of trust, violence and assaults, failure to assist people in danger, gross indecency, procurement, the illegal practice of medicine, abduction and corruption of minors, etc. - is respected. In other words, there are many legal courses open and they afford plenty of scope for action against false pretences and misdirection. Beyond that, however, it is not the business of the State or any other group or community to act as the guardian of people's consciences and encourage, impose or censure any religious belief or conviction" (E/CN.4/1997/91, para. 99).

D. The current situation

89. The debate on this matter and the different measures that were taken at the governmental and parliamentary level in the second part of the 1990s undermined the right to freedom of religion or belief and raised serious concerns about religious intolerance. In particular, the establishment of a list, as well as the awareness-raising policies that were carried out, raised serious concerns in terms of freedom of religion or belief.

90. Nevertheless, in the last few years the authorities have begun to take measures to redress the balance. The Special Rapporteur notes in this regard the government instructions adopted in May 2005 by the former Prime Minister Jean-Pierre Raffarin and which highlights, inter alia, the somewhat inappropriate (*peu pertinent*) character of the list. She also noted the more balanced approach to the phenomenon adopted by MIVILUDES.

91. However, after she had completed her visit, it was reported to the Special Rapporteur that, following a change in its staff, MIVILUDES was allegedly about to return to a more hard-line position vis-à-vis the *sectes*.

VIII. FREEDOM OF RELIGION IN PRISONS

92. During her mission, the Special Rapporteur gathered information on the status of freedom of religion or belief in prisons and other detention facilities, including by visiting the Prison des Baumettes in Marseilles. In this regard, the French authorities demonstrated a high level of transparency and great cooperation. During the visit to the prison, the Special Rapporteur met with various representatives of the prison personnel and a number of detainees and prisoners from different religious backgrounds.

93. While there were some complaints about the possibilities offered to inmates in order to practise their religion, there was generally a level of satisfaction among them about the respect for freedom of religion in the prison.

IX. CONCLUSIONS AND RECOMMENDATIONS

94. **The Special Rapporteur on freedom of religion or belief was impressed by the expertise that exists in France on the issues relevant to her mandate. The visit was of the**

highest interest because France is a unique model. However, the complexity of the situation means that it is not easy to draw conclusions. Nevertheless, the Special Rapporteur remains convinced that French society will be able to overcome the obstacles as its commitment to fundamental rights runs deep and is the foundation of the Republic.

95. The Special Rapporteur would first like to highlight that the Government of France generally respects the right to freedom of religion or belief, as it is protected by the international treaties to which France is a party. Furthermore, the strength of its judiciary undoubtedly constitutes a guarantee of these main values. However, she wishes to highlight a number of areas of concern.

The principle of *laïcité*

96. The Special Rapporteur notes that the situation prevailing today in France is different from the one which existed at the time of the adoption of the 1905 law on the separation of Church and State (*loi concernant la séparation des Eglises et de l'Etat*), which constitutes the basis of the principle of *laïcité* (which is almost equivalent to secularism) in France. While recognizing that the organization of a society according to this principle may not only be healthy, but also guarantees the fundamental right to freedom of religion or belief, she is concerned that, in some circumstances, the selective interpretation and rigid application of the principle has operated at the expense of the right to freedom of religion or belief.

97. The Special Rapporteur welcomes the fact that the one hundredth anniversary of the law of 1905 has prompted an important debate within French society, and considers that a thorough assessment of its application in the present context of religious pluralism is a necessary process in a democratic society based on the rule of law.

The question of religious symbols in the public school system

98. Law 2004-228 of 15 March 2004 on the wearing of conspicuous religious symbols in public schools is widely supported by the political apparatus as well as by the population. Although the law is intended to apply equally to all persons, the Special Rapporteur is of the opinion that it has mainly affected certain religious minorities, and notably, people of a Muslim background. The Special Rapporteur believes that the wide political support for the law has conveyed a demoralizing message to religious minorities in France.

99. The law is appropriate insofar as it is intended, in accordance with the principle of the best interests of the child, to protect the autonomy of minors who may be pressured or forced to wear a headscarf or other religious symbols. However, the law denies the right of those minors who have freely chosen to wear a religious symbol to school as part of their religious belief.

100. The Special Rapporteur is of the opinion that the direct and, in particular, the indirect consequences of this law may not have been thoroughly considered. Although many interlocutors at the governmental level are satisfied with the results of the implementation of the law, she noticed that the figures are often disputed, including

because the criteria used for the assessment vary. Moreover, the Special Rapporteur considers that aside from statistics, the issue is one of principle.

101. The concerns of the Special Rapporteur are more serious with regard to the indirect consequences of Law 2004-228 in the longer term. The implementation of the law by educational institutions has led, in a number of cases, to abuses that have provoked humiliation, in particular amongst young Muslim women. According to many sources, such humiliation can only lead to the radicalization of the persons affected and those associated with them. Moreover, the stigmatization of the headscarf has provoked instances of religious intolerance when women wear it outside school, at university or in the workplace. Although the law was aimed at regulating symbols related to all religions, it appears to mainly target girls from a Muslim background wearing the headscarf.

102. The Special Rapporteur encourages the Government to closely monitor the way educational institutions are implementing the law, in order to avoid the feelings of humiliation that were reported to her during her visit. She also recommends a flexible implementation of the law which would accommodate the schoolchildren for whom the display of religious symbols constitutes an essential part of their faith.

103. In all circumstances, the Government should uphold the principle of the best interests of the child and guarantee the fundamental right of access to education, as has been recommended by several United Nations treaty-monitoring bodies.

104. Moreover, the Government should take appropriate measures to better inform school authorities, and more generally the French population, about the exact nature and purpose of the law. It should be made clear that the wearing or display of religious symbols is an essential part of the right to manifest one's religion or belief that can only be limited under restrictive conditions. The Government should also promptly provide redress in any situation where persons have been the victim of discrimination or other act of religious intolerance because of their religious symbols, including by prosecuting the perpetrators of such acts in the relevant cases.

Acts of religious intolerance

105. The Jewish community, as well as its members, continue to be the target of a number of acts of religious intolerance. More recently, members of other religious communities, including Muslims, have reported that they were increasingly the victims of acts of religious intolerance. The Special Rapporteur has noted that the Government takes these acts very seriously and rarely underestimates their importance.

106. Regardless of the underlying reasons for these acts, the Special Rapporteur believes that the Government of France should remain, extremely vigilant and continue to take the appropriate measures to prosecute the perpetrators as well as to provide redress vis-à-vis the victims. The Government may consider ways to facilitate the judicial procedures for those victims in order to provide them with an even more appropriate form of redress.

The question of cult groups and certain new religious movements or communities of belief

107. The Special Rapporteur understands the legitimate concerns regarding the victims of criminal acts that have been committed by certain religious groups or communities of belief. She considers that, in many cases, the Government of France, and its judicial apparatus, have adopted a responsible attitude and provided an appropriate response to the offences committed.

108. However, she is of the opinion that the policy and measures that have been adopted by the French authorities have provoked situations where the right to freedom of religion or belief of members of these groups has been unduly limited. Moreover, the public condemnation of some of these groups, as well as the stigmatization of their members, has led to certain forms of discrimination, in particular vis-à-vis their children.

109. The Special Rapporteur has observed that the government policy may have contributed to a climate of general suspicion and intolerance towards those communities on the list created by the National Assembly in 1996, of movements and groups classified as *sectes*. Moreover, the campaigns and other actions that have been initiated by associations composed, inter alia, of victims of criminal acts committed by these groups, have often been emotional.

110. The Special Rapporteur notes that in recent times the French authorities have adopted a more balanced approach to this phenomenon by adjusting their policy, including through the transformation of the Inter-ministerial Mission to Combat “Sectes” (MILS) into the Inter-ministerial Mission to monitor and combat abuse by sects (MIVILUDES). A number of improvements nevertheless remain to be carried out in order to ensure that the right to freedom of religion or belief of all individuals is guaranteed, and to avoid the stigmatization of members of certain religious groups or communities of belief, including those whose members have never committed any criminal offence under French law.

111. The Special Rapporteur hopes that future actions of MIVILUDES will be in line with the right to freedom of religion or belief and avoid past mistakes. She will continue to closely monitor the various efforts that are carried out by MIVILUDES.

112. The Special Rapporteur urges the Government to ensure that its mechanisms for dealing with these religious groups or communities of belief deliver a message based on tolerance, freedom of religion or belief and on the principle that no one can be judged for his actions other than through the appropriate judicial channels.

113. Moreover, she recommends that the Government monitor more closely preventive actions and campaigns that are conducted throughout the country by private initiatives or Government-sponsored organizations, in particular within the school system in order to avoid children of members of these groups being negatively affected.

114. She urges judicial and conflict resolution mechanisms to no longer refer to, or use, the list published by Parliament in 1996.

On freedom of religion or belief for persons deprived of their liberties

115. While the Special Rapporteur was not able to make a thorough assessment of the status of religious freedom in prisons and other detention facilities, the information that she has obtained during her visit reveals a generally satisfactory level of respect for the religious rights of persons deprived of their liberty.

116. However, she refers the Government of France to her chapter on the freedom of religion or belief of persons deprived of their liberty in her report to the sixtieth session of the General Assembly (A/60/399) for further details about the applicable international standards. She encourages French authorities to further implement the necessary measures in line with the principles set forth in the said report.

Notes

¹ The word “laïcité” in French represents the principle of the separation of Church and State. Although it cannot be directly translated as secularism, its meaning is close.

² The law refers to *églises*, which is “churches”.

³ The law on the separation of Church and State of 1905 does not apply to Guyana, Mayotte, Saint Pierre and Miquelon, French Polynesia, New Caledonia, Wallis and Futuna, Marquises Islands and in French Southern and Antarctic Territories. A regime of separation between the State and Church similar to that of the 1905 law applies in Guadeloupe, Martinique and in the Réunion Islands.

⁴ See note 1 above.

⁵ In a speech of 17 December 2003, President Jacques Chirac declared that “Secularism (laïcité) guarantees freedom of conscience. It protects the freedom to believe or not to believe. It guarantees everyone the possibility of expressing and practising their faith, peacefully and freely, without the threat of the imposition of other convictions or beliefs. It allows men and women from all corners of the globe, from all cultures, to be protected in their beliefs by the Republic and its institutions. Open and generous, the Republic is the place of choice for meetings and exchanges where everyone can give of their best to the national community. It is the neutrality of the public arena which permits the various religions to coexist harmoniously. Like all freedoms, freedom of expression of religious beliefs can be limited only by the freedom of the Other and observance of the rules of life in society. Religious freedom, which our country respects and protects, cannot be hijacked. It cannot undermine the common rule. It cannot impinge on the freedom of conviction of others. It is this subtle, precious and fragile balance, patiently built up over decades, which respect for the principle of secularism ensures. And this principle is an opportunity for France. This is why it is set down in Article 1 of our Constitution [...]”.

⁶ Efforts have also been made in this regard by the French bishops, the French Protestant Federation, the National Jewish Board of France and the Council of French Jewish Institutions, the Conseil français du Culte Musulman and other Muslim organizations.

⁷ See note 1 above.

⁸ While there have been a number of decisions by such bodies, in particular the European Court of Human Rights, on similar questions, the Special Rapporteur will not engage in a comparative analysis but rather refer to the content of her report to the Commission on Human Rights at its sixty-second session (E/CN.4/2006/5, paras 36-60) in which she analyses generally the question of religious symbols.

⁹ The French word *secte* has a negative connotation and includes groups such as cults, but also certain new religious movements or communities of belief. *Secte* cannot be translated by the English word “sect”, which has a different meaning.
