



Совет по правам человека

Тридцать седьмая сессия

26 февраля – 23 марта 2018 года

Пункт 3 повестки дня

**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

**Доклад Специального докладчика по вопросу о свободе
религии или убеждений о его миссии в Албанию**

Записка секретариата

Секретариат имеет честь препроводить Совету по правам человека доклад Специального докладчика по вопросу о свободе религии или убеждений Ахмеда Шахида о его миссии в Албанию с 8 по 17 мая 2017 года. В настоящем докладе Специальный докладчик рассматривает политику и практику Албании по поощрению и защите религиозной свободы, плюрализма и гармоничных межконфессиональных отношений. Он также описывает проблемы, с которыми сталкивается страна при обеспечении осуществления в полном объеме и устойчивым образом права на свободу религии или убеждений.



Report of the Special Rapporteur on freedom of religion or belief on his mission to Albania*

Contents

	<i>Page</i>
I. Introduction	3
II. Background and context.....	3
A. Cooperation with United Nations human rights mechanisms	3
B. Religious and belief make-up	4
III. Domestic legal framework	7
IV. Challenges and areas of concern	9
A. Restitution of religious property	9
B. Religious pluralism and community agreements	10
C. Preventing violent extremism	12
D. Religious education	13
E. Situation of religious minorities.....	14
F. Women, gender and sexuality.....	15
V. Recommendations	16

* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on freedom of religion or belief conducted his first official visit to Albania from 8 to 17 May 2017, at the invitation of the Government. This was also the first visit to Albania by the mandate. During his visit, the Special Rapporteur met with numerous government officials and civil society actors¹ in the capital, Tirana, and in other cities, including Korce, Shkoder, Kavaje and Gjirokaster. Discussions focused on the general state of freedom of religion or belief in the country; existing laws, regulations and practices promulgated by the Government to ensure respect for this fundamental right and which promote tolerance; challenges faced by the Government in its quest to ensure the full realization of the right to freedom of religion or belief in Albania; and steps it can take to make sure this happens.

2. The Special Rapporteur appreciated the constructive cooperation extended to him by representatives of various government offices and agencies, which were determinant to the success of his fact-finding mission. On the basis of this first visit, the Special Rapporteur looks forward to developing an ongoing dialogue with Albania aimed at building constructive cooperation conducive to further fostering and strengthening the exercise of freedom of religion and belief in the country in the coming years. Critical to that goal will be the Government's continued commitment and efforts to take into consideration and implement the recommendations made by the Special Rapporteur in the context of the work currently underway to implement relevant recommendations formulated by the wider United Nations human rights system.

3. The Special Rapporteur is also appreciative of the support given by the United Nations country team, which provided critical logistical and technical support both before and during his visit. He is grateful to the individuals who took the time to share their unique and valuable experiences, ideas, what they viewed as best practices, as well as reflections on the challenges of promoting respect for the right to freedom of religion or belief. Those interactions were both useful and constructive, and left the mandate holder with a sense of confidence that, despite challenges which continue to limit, restrict or vitiate the freedom of religion or belief and undermine tolerance among communities around the globe today, religious pluralism and interfaith harmony can and do play an integral role in safeguarding fundamental human rights in Albania and elsewhere.

4. The Special Rapporteur presented the preliminary findings of his country visit to Albania on 17 May 2017. Building on them, the findings, conclusions and recommendations in the present report provide a further, more elaborated assessment, on the basis of which to build and nurture the dialogue and cooperation necessary to foster the right to religion and belief in the country. This assessment focuses on both best practices observed (i.e. the legal and practical aspects of the Albanian experience) — which Albania has committed to deploy to protect and promote religious freedom, pluralism and interfaith harmony — and the challenges Albania faces in ensuring that the right to freedom of religion or belief is fully realized and sustainable.

II. Background and context

A. Cooperation with United Nations human rights mechanisms

5. Albania is party to all the core human rights treaties and was a member of the Human Rights Council in the period 2015–2017. The Committee against Torture considered the second periodic report of Albania in 2012, and the country's rights record was reviewed by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights

¹ During his visit, the Special Rapporteur met with representatives from numerous government agencies working on issues relating to the right to freedom of religion or belief, along with the United Nations country team in Albania. The mandate holder also met with members of civil society, including faith communities, their leaders and advocates, and other relevant individuals and organizations, including human rights activists and defenders.

in 2013. In July 2016, the Committee on the Elimination of Discrimination against Women reviewed the country's related rights record. Throughout, Albania has constructively and in a self-critical manner engaged with the Committees reviewing its human rights policies and practices.

6. The Government had its second universal periodic review in April 2014. Out of 171 recommendations, Albania accepted 167 and took note of 4 (on the prohibition of discrimination based on nationality, on discrimination against "Egyptian" communities, on differentiated treatment for national and ethnolinguistic minorities and on the protection of national minorities with regard to ensuring the teaching of and instruction in their mother tongue). None of the recommendations were directly related to freedom of religion or belief. The third universal periodic review of Albania is scheduled for May 2019.

7. Albania issued a standing invitation to the special procedures mandate holders in 2009 and has since been visited by the Special Rapporteur on extrajudicial, summary or arbitrary executions (in 2010), the Special Rapporteur on the human rights of migrants (2011) and the Working Group on Enforced or Involuntary Disappearances (December 2016). The complaints mechanism within the special procedures mechanism allows mandate holders to intervene directly with Governments on behalf of individuals or about issues of concern based on allegations of violations of human rights that fall within the scope of their mandates by means of letters of allegations, urgent appeals and other communications. The Special Rapporteur on the right to freedom of religion or belief has not sent any communications to the Government.

B. Religious and belief make-up

8. The legal, political and social arrangements on which protections for the right to freedom of religion or belief in Albania can be best understood when placed in their historical, national and geopolitical contexts. Several interlocutors stressed that the historical legacy of the Communist era have influenced and shaped the situation of freedom of religion or belief in the country and the Government's current relationship vis-à-vis faith communities. That legacy includes the categorical proscription of religious beliefs and activities by the government of Enver Hoxha and the confiscation of legal holdings and properties that belonged to religious communities. Today, the restoration of holdings that once belonged to religious communities and which were confiscated by the then government or forcibly appropriated remains an area of primary concern for both faith communities and the Government, and both are working towards resolving it in a proper manner. Several officials spoke about the Government's affinity for secularism and its reluctance to get too involved or entangled with the affairs of faith communities.

9. Albania declared its independence from the Ottoman Empire in 1912, but was conquered by Italy in 1939 and occupied by Germany in 1943. Communist partisans took over the country in 1944. Albania allied itself first with the Soviet Union (until 1960), then with China (to 1978). After the Second World War, Communist Party leader Enver Hoxha, through a combination of ruthlessness and strategic alliances, managed to preserve the territorial integrity and peace in Albania over the next 40 years. He did this, in part, by subjecting the population to purges, shortages, repression of civil and political rights, a total ban on religious observance and increased isolation. Albania adhered to a strict policy of independence and Stalinist philosophy, eventually withdrawing from the Warsaw Pact in 1968 and alienating its final remaining ally, China, in 1978.

10. From 1944 to 1991, the communist Government in Albania expropriated private property with no compensation, on a large scale. With the transition towards a market economy and parliamentary democracy since 1991, successive Governments have attempted to take steps to address that situation in keeping with their new commitment to respect the right to property. However, 25 years on, they are still struggling to resolve issues such as the regulation of the use of agricultural land, the privatization of residential apartments, the privatization of State-owned land and facilities, verification of property titles, the development of areas for tourism, and integration of informal constructions.

11. Today, Albania is a functioning democracy. Albania joined the North Atlantic Treaty Organization (NATO) in April 2009 and became a candidate for accession to the European Union in June 2014. In November 2016, the European Commission recommended that Albania open negotiations to accede to the European Union conditional upon the implementation of the judicial reform package that was passed the same year. Additionally, Albania is making progress in addressing the five key reform priorities identified by the European Commission as necessary to integrating into the European Union. That includes key reforms to combat corruption and organized crime, strengthen the judiciary, improve public administration, and advance human rights.

12. The population of Albania was 2,930,187 as of 1 July 2017, based on the latest United Nations estimate. There was a fairly even distribution of the population, with somewhat higher concentrations of people in the western and central parts of the country. According to information received, the ethnic breakdown in Albania is as follows: Albanian 82.6 per cent, Greek 0.9 per cent, others 1 per cent (including Vlach, Roma, Macedonian, Montenegrin, and Egyptian), unspecified 15.5 per cent (2011 estimate). The language breakdown for the country is as follows: Albanian 98.8 per cent (official language derived from Tosk dialect), Greek 0.5 per cent, other 0.6 per cent (including Macedonian, Roma, Vlach, Turkish, Italian, and Serbo-Croatian), unspecified 0.1 per cent (2011 estimate).

13. According to the 2011 census on religious affiliation, 57 per cent of the country's almost 3 million people self-identify as Sunni Muslim, 10 per cent are Roman Catholic, 7 per cent are Orthodox Christian, 8 to 9 per cent belong to other faiths (including Bektashism, a Sufi order whose world headquarters is in Albania) and 14 per cent did not express any religious affiliation. In addition, there are numerous Protestant denominations and other religious groups, including Baha'is, Jehovah's Witnesses and The Church of Jesus Christ of Latter-day Saints (Mormons). It should be noted that many Albanians are reportedly sceptical about the results of the census for various reasons.

14. Notwithstanding the State's constitutional commitment to secularism and neutrality vis-à-vis religion or belief, five religious communities are legally recognized and have entered into agreements with it. These are the country's traditional religious groups, which include Muslims (organized under the Muslim Community of Albania, who are generally Sunni and adherents of the Hanafi school of jurisprudence), Roman Catholics, Orthodox Christians (organized under the Autocephalous Orthodox Church of Albania) and Bektashis (organized under the World Bektashi Main Community). A fifth group, the Protestant Evangelicals (organized under the Evangelical Brotherhood of Albania, also known as VUSH) hold the status of recognized religious community as of 2011. While other religious minority groups are also present in the country and generally enjoy the right to freedom of religion or belief, they are not formally recognized as religious communities by the State and can instead organize themselves under the Non-profit Organization Law.²

15. Among the primary achievements in protecting freedom of religion or belief in Albania is the almost complete reversal of Communist-era policies that were hostile to the exercise of this right, and the authorities' seemingly unique ability to foster tolerance among the country's communities of religious followers and non-believers. The Special Rapporteur notes that, while this dramatic reversal does not mean that challenges to the full realization of the right to freedom of religion or belief are non-existent, there seems to be a consensus among many Albanians, including those who have some grievances regarding their ability to exercise this right, that the Government generally respects the right to freedom of religion or belief and that no serious and systemic shortcomings exist in this area.

16. The Government's sustained efforts to carry out political, social and legal reform since the end of the authoritarian rule in the early 1990s have significantly contributed to the greater promotion and protection of the right to freedom of religion or belief in the country. The Special Rapporteur notes that those reforms have, in turn, led to a revitalization of civil society space for different belief or non-belief communities that has, for the most part, not been accompanied by intolerance or social hostilities that often accompany such rapid change. This phenomenon appears to be reflective of the resilient and inclusive nature of the

² See Section IV below for more information regarding the Non-profit Organization Law.

Albanian identity and of what it means to be Albanian. In this regard, the Special Rapporteur notes that there is a high degree of interreligious marriage and social, political, economic and residential integration, as well as a very low number of reported cases of discrimination based on religion or belief in the country. This suggests that the ethos of living together in mutual respect and harmony is not just a slogan, but a deeply-held value for many Albanians.

17. Since the right to practice religion was restored, religious institutions in Albania, particularly its traditional religious communities, have received significant attention and support from international religious groups. Albania joined the Organization of Islamic Cooperation in 1992. An Arab-Albanian Islamic Bank was established in Tirana, and approximately 20 Arab Islamic organizations have opened branches in the country. From 1991 to 1996, those organizations were engaged in a process of Islamic education and mosque-building, during which they managed to print and distribute many volumes of Muslim literature in Albanian. The home offices (and therefore the Albanian branches) of many of these organizations have since closed. Other relief and sponsorship programmes were also implemented by those organizations, while some Arab Governments offered scholarships to young Albanian Muslims.

18. Other faiths have also received significant international support. The Catholic Church has been strongly backed by its counterparts abroad, especially in Italy and the Vatican. Examples of significant developments or activities by Catholic institutions in Albania include the restoration of diplomatic relations with the Vatican in 1991, Pope John Paul II's visit to Albania in 1993, the establishment of a great church in the heart of Tirana and the construction of modern churches in the European style, and religious schools, kindergartens, children's villages and hospitals have all boosted Catholicism in Albania.

19. Likewise, the Orthodox community in Albania has established and strengthened its links with counterparts in the region and throughout the world. Since 1991, the Autocephalous Orthodox Church of Albania has been supported by the neighbouring State, the former Yugoslav Republic of Macedonia and the Greek religious institutions; it has rebuilt churches from their foundations and restored or repaired numerous monasteries and churches. Many educational and health institutions have also been newly built and staffed, including the Theological Academy complex in Durrës and the Annunciation diagnostic medical centre in Tirana.

20. Unlike the other traditional faith groups, the Bektashi community has fewer financial resources, despite the fact that its world headquarters are in Tirana. Proceeds generated from regained properties and assistance from followers in Turkey are important sources of income for this community.

21. Although the underlying circumstances and disposition that foster and promote interfaith harmony in Albania are predicated on the country's own unique history, the Special Rapporteur believes that there are many examples of government policies and practices promoting communal engagement that are good examples and can be instructive sources of inspiration for other countries. As will be further discussed in the present report, these examples include: (a) the neutral position of the State towards the religious or belief communities in the country; (b) the positive, respectful and inclusive engagement of religious communities with the State; (c) a robust legal framework that guarantees the right to freedom of religion or belief for all persons, in all its dimensions; (d) the promotion of societal attitudes of mutual respect across different religious and belief communities; and (e) a genuine societal commitment to interfaith solidarity and cooperation.

22. At the same time, while the overall conditions for promoting respect for freedom of religion or belief in Albania are quite substantial, the Special Rapporteur concurs with the views of many interlocutors who expressed the need for caution about the dangers of taking these conditions for granted. The Special Rapporteur notes that concerns in Albania are shaped by ever-changing domestic, regional and international trends, patterns and developments since the onset of reforms in 1990. These changes reflect new political, economic and cultural influences and dynamics, including the arrival of new faith adherents and groups that were not part of the country's traditional social fabric and landscape.

23. This is all the more reason why the conditions in Albania which promote coexistence and mutual respect among various religious groups must be studied, understood and ardently

protected by Government and civil society actors, alike, as well as by the international community. These actors should continue to work together to maintain the ingrained tradition of mutual tolerance, interfaith harmony and pluralism in the country which has proven to be remarkably resilient.

III. Domestic legal framework

24. The cornerstone of the legal framework protecting and promoting freedom of religion or belief in Albania is the Constitution, which guarantees freedom of religion, equality and non-discrimination. According to article 10 of the 1998 Constitution, there is no official religion in Albania; the State is neutral on questions of religion, belief or conscience; and equal protection of the law is guaranteed for all religions. The article calls for religious communities and the State to “mutually respect the independence of one another and work together for the good of each of them and for all.”

25. Despite the State’s religious neutrality, article 10 also allows for religious organizations to gain the status of recognized religious community if they enter into an agreement with the Council of Ministers; such agreements must also be ratified by Parliament. The agreement defines the legal relations, including duties, obligations and benefits (including financial assistance), between the recognized religious community and the State. Article 10 does not, however, identify a process by which a religious organization can gain the status of “community”. To date, only five religious groups have entered into such agreements with the Council of Ministers.

26. A review of agreements signed between the Government and the five recognized religious communities reveals that each agreement is somewhat unique (though many provisions are similar in nature). While a number of the provisions define the rights and benefits that accrue to the community, others identify duties and obligations that the community must exercise vis-à-vis the State. The Catholic Church has had such an agreement with the Government since 2002. In 2009, the Government signed agreements with the Muslim, Orthodox Christian and Bektashi communities — the other three traditional faith communities in Albania. The Government has also signed a bilateral agreement with the Evangelical Brotherhood of Albania (VUSH), a Protestant umbrella organization. Among the advantages of entering into such agreement is official recognition of the community, prioritized property restitution and tax exemptions. Government financial support and State-subsidized clergy salaries were to be implemented based on a law on financing of religious communities that was passed in June 2009. However, in practice, there was little progress on the restitution of religious properties.

27. Four of the five communities that constitute the traditional religious communities in Albania receive financial assistance from the State. One Government representative explained that the assistance was provided to the communities because the State considered that it had an ethical responsibility towards them owing to the hardships they had endured under Communist policies. Another interlocutor opined that financial support underscored the State’s recognition of the historical contributions that those communities have made to nation-building. Others offered a practical reason for the State’s fiscal support of religious communities, noting that such assistance enabled the communities to rebuild their religious infrastructures and also afforded them a degree of independence from other funding sources.

28. Pursuant to article 24 of the Constitution, everyone in Albania is free to choose or change his or her religion or belief and to manifest their beliefs either individually or collectively in private or public life through worship, education, practices or rituals. Article 18 of the Constitution provides that no one may be arbitrarily discriminated against on account of their religion or belief. Family, personal status and other laws regarding burials and cemeteries are almost exclusively regulated by the secular State. The Constitution prohibits religious discrimination and guarantees freedom of conscience, religion and free expression. The Constitution states that individuals may not be compelled to participate or be excluded from participating in a religious community or its practices, nor may they be compelled to make their beliefs or faith public or be prohibited from doing so. The Constitution prohibits political parties or other groups from inciting religious hatred.

29. Article 131 of the Criminal Code makes any activity that unlawfully prohibits or hinders the activities of religious groups punishable. The Law on Non-discrimination (Law No. 10221/2010), which provides additional protections for the freedom of religion or belief, is compatible with relevant European Union directives. The Law established the Office of the Commissioner (Commission) for Protection from Discrimination, an independent body tasked with receiving, processing and ruling on complaints based on discrimination (including on the grounds of religion or belief). It also provides for the right of every person to: (a) have equality before the law and equal protection by the law; (b) equality of chances, opportunities to exercise and enjoy rights and freedoms and participation in public life; (c) effective protection from discrimination and any form of conduct that encourages discrimination.

30. According to information received, the Commission has provided training to teachers, the police and judges on the Anti-Discrimination Law and on specific issues such as gender equality, the rights of persons with disabilities and hate crimes. The Commission is also developing a methodology for monitoring the judicial system, with specific focus on discrimination in the court process.

31. According to information provided to the Special Rapporteur during a meeting with the Commission, it has only examined three cases since it was established in 2010. In two of those cases (related to women wearing the hijab), the Commission validated the plaintiff's allegation of discrimination on the basis of religion. While there is no law prohibiting the wearing of religious symbols or any particular garment, the Special Rapporteur received reports that some administrators, who supposedly have the right to set standards for "appropriate clothing" in schools, have reportedly placed restrictions on public displays of religious symbols.

32. Although no specific law requires religious communities to register or to obtain a licence for the collective practice of the religion, religious groups must register with local courts as non-governmental organizations (NGOs), as stipulated by the Law on Non-profit Organizations (Law No. 8788/2001), in order to obtain legal recognition as a religious group or entity. Religious movements may acquire the official status of a juridical person by registering with the Tirana District Court under the Non-profit Organization Law, which recognizes the status of non-profit association, regardless of whether the organization has a cultural, recreational, religious or humanitarian character.

33. Registered groups are allowed to organize themselves as associations, centres or foundations, administer their functions and property independently of the State under their statutes or by-laws and have legal personalities which may hold bank accounts, own property and receive partial tax-exempt status as religious organizations. During his visit, the Special Rapporteur met with a few faith groups that were registered under the Non-profit Organization Law and some others that were not registered, but were still able to practice their faith with minimal restrictions. None of the religious groups, whether registered or not, complained that the Government had rejected their applications for greater legal recognition.

34. Relations between the State and the religious communities are regulated by the State Committee on Cults, which was established in 1999 and answers to the Council of Ministers. The Committee is tasked with ensuring protection of the freedom of religion or belief, promoting interfaith harmony and understanding, and monitoring the implementation of the aforementioned agreements between the State and the religious communities.

35. A few of the interlocutors with whom the Special Rapporteur met expressed some concerns about restrictions on the manifestations of religion or belief in the public space, including in and around religious sites now controlled and operated as monuments of culture by the State. The Special Rapporteur notes, however, that the Government has taken some steps to limit the scope of restrictions on public manifestations of religion in Albania, including in relation to the exercise of rites and rituals relating to sacred events. Examples of Government action include recent efforts to provide greater autonomy to religious groups with regard to burial and funeral rites in cemeteries and exemptions granted to groups to hold religious ceremonies in public spaces, including monuments of culture that are important or sacred to them, despite a general prohibition on such practices.

IV. Challenges and areas of concern

36. The Special Rapporteur considers that the observations made and the information gathered during his visit corroborate many of the Government's claims about the many positive achievements in Albania with regard to the right to freedom of religion and interfaith harmony. However, no State or Government is without challenge when it comes to realizing this right, a fact that was readily admitted by the Government of Albania. A number of the challenges observed during the visit are identified below without prejudice. The Special Rapporteur is mindful that the issues enumerated below may not represent an exhaustive list of challenges and potential concerns, but they do illustrate some of the most notable concerns that should be addressed. Those challenges were discussed with the Government at the end of his visit.

A. Restitution of religious property

37. One of the most difficult challenges facing the Government relates to the restitution of property seized from Albanians, including religious communities, during the Communist era (1945–1990). All the traditional religious communities — Muslim, Roman Catholic, Orthodox Christian and Bektashi — expressed concern and frustration over what they perceived to be ongoing delays regarding the State's full or satisfactory restitution or compensation for their communities' lost property.

38. That property, also referred to as objects of cult by the State, include buildings and structures that were once used as places of worship (i.e. churches, cathedrals, mosques or shrines (*teqes*)), but are now owned and/or regulated by the State — often for the enjoyment of all Albanians — and have been declared as monuments of culture by the Ministry of Culture. Such property also includes buildings and structures that were once places of worship, but which have since been demolished or repurposed for public use.

39. Government officials reported that some 16,000 individual property requests or claims (corresponding to 9,000 active case files) have been filed with the Government, and that approximately 700 of those claims (or 400 files) concerned religious property. A small number have either been returned or compensation has been made to their rightful owners. The majority of applications for restitution, however, reportedly remains unaddressed and/or under review. Nearly all the communities affected by seizures conveyed their regret that, while some of the seized property could never be returned (for example, due to demolition or destruction), they were nonetheless seeking some form of compensation for their loss. Some believed that the delays were not a result of logistical or even bureaucratic complexities, but a lack of sufficient political will on the part of the State.

40. A majority of representatives of the Government agencies with which the Special Rapporteur engaged on this issue acknowledged that the restitution process has been a complicated and difficult one. They, however, asserted that new and aggressive steps had recently been initiated to better provide for an equitable and transparent process in an effort to more effectively facilitate restitution or compensation for all valid claims. In that regard, the Property Management Agency informed the Special Rapporteur that, pursuant to the new Law on the Treatment of Property and Finalization of the Process of Compensation of Property, passed in 2016 to establish a more streamlined and effective regulatory framework, all outstanding restitution claims must be adjudicated within three years of the passage of the legislation. The law also requires that judgments on individual claims be implemented within 10 years of their adjudication and establishes a compensation fund worth 3.8 billion leks.

41. Some officials indicated that, although the approval of by-laws of the Agency (which was established by the 2016 law) was still under way, a process for examining restitution claims had already been initiated in order to more effectively address requests within the three-year deadline for resolving claims under the 2016 law. Since the establishment of the Agency, the number of staff tasked with working on these claims increased from 90 before the passage of the 2016 law to reportedly approximately 170. A working group was also established by the Agency in August 2016 to deal specifically with religious property.

According to agency officials, the working group has already met with representatives of the relevant religious communities and will continue to do so during the process.

42. It is important to note that in addition to the spiritual value that the religious communities attach to the seized properties, the restitution or compensation they seek is seen as critical to their ability to effectively meet the financial and spiritual needs of their communities, including the need to provide salaries for their clergy. Almost all of the representatives of the country's traditional religious communities with whom the Special Rapporteur met stressed the important link between resolution of their claims and the preservation of independent, vibrant and tolerant religious communities that have existed in Albania for centuries. Several representatives of the Muslim community specifically stated that restitution of their property was also important to reduce its dependency on foreign sources of funding that may promote values and ideologies that were alien to the traditional Albanian religious communities, particularly the Muslim community.

43. The scale, scope and complexity of the challenge faced by the Government in addressing this issue cannot be underestimated. While some suggested that the Government has lacked the political will to address the issue so far, they do not attribute the lack of progress to discrimination on the grounds of religion or belief. At the same time, delays in the restitution of property can cause unnecessary tension as objects deemed holy by certain faith-based communities may currently be occupied, utilized or modified in ways that may offend their former religious owners and worshippers. The Special Rapporteur notes that, despite the Government's pronouncements regarding the new advancements under the 2016 law, its constitutionality has been contested in the courts by political opponents and landowners who claim it does not go far enough in protecting the rights of the dispossessed.

B. Religious pluralism and community agreements

44. As previously noted, the State has recognized and entered into agreements (via the Council of Ministers) with five religious communities in Albania, pursuant to article 10 of the Constitution. These communities are the four traditional religious communities — Roman Catholic (2002), the Autocephalous Orthodox Church of Albania (2009), the Muslim Community of Albania (2009) and the World Bektashi Main Community (2009) — and more recently the Evangelical Brotherhood of Albania (VUSH), a Protestant group (2011). The Special Rapporteur notes that the existing agreement between the Roman Catholic community and the State is actually between Albania and the Holy See.

45. The process for State recognition of religious communities or groups via agreements entered into between the parties appears, on the face of it, to be at odds with the country's constitutional stipulations for a secular and neutral State. More specifically, article 10 of the Constitution appears to create legal differentiation — or perhaps a hierarchy — between religious organizations recognized under the country's Non-profit Organization Law (No. 8788) and those recognized as religious communities and allowed to enter into agreements with the State. This is certainly true for religious groups that are not registered as NGOs or religious communities. It is uncertain whether this apparent hierarchy also produces inequality that may lead to discriminations in the exercise of the right to freedom of religion or belief. At any rate, no such cases were reported to the Special Rapporteur during his visit.

46. Under international human rights law, agreements between States and religious communities cannot be used to restrict the right to freedom of religion or belief of the adherents of these communities or any other group. This position is also acknowledged in article 10 (6) of the Constitution and is clearly mandated by article 24 of the same document. The existence of these agreements raises important questions about the State's desire to preserve the unique characteristics of the country's traditional religious communities and its relationship with them. Put another way, the agreements highlight the potential tension between a decentralized religious landscape characterized by pluralism, inclusion and independence, on the one hand — a situation which is much welcomed and conducive to religious harmony — and potential hegemonic institutions that represent the promotion and interests of the country's traditional religious communities, on the other hand. This situation

requires the Government's attention in terms of ensuring that the agreements do not result in discrimination or restriction on individuals' right to freedom of religion or belief.

47. The tension is perhaps most relevant in the case of the Muslim and Evangelical Protestant communities which, unlike the Catholic and Orthodox churches, do not have unified or centralized governance structures and could potentially represent many different groups, sects, schools of jurisprudence (*fiqh*) or ideological streams that generally self-identify as Muslim or Protestant or Evangelical. The Special Rapporteur notes, for example, that article 2 of the agreement between the Council of Ministers and the Muslim community defines the latter as "an organization of Muslim believers who express, demonstrate and/or practice their conviction, principles and religious practices determined in the sources of the Islamic doctrine, *Religious Legal School 'Hanafi'* and statutes of the Muslim community of Albania (emphasis added)". This definition appears to preclude the inclusion of Muslim groups that do not subscribe to the Hanafi *fiqh*.

48. Additionally, under the current legal framework, there is the question regarding the power that recognized communities may have over adherents that may not wish to come under their influence or organizational umbrella. More specifically, there is an issue regarding whether the communities may effectively exercise veto (or "gatekeeper") powers and prevent religious or belief groups that they oppose or with which they disagree, either on ideological or other grounds, from gaining legal status or being able to practice their faith altogether. Several government officials, including those affiliated with the country's security apparatus, reported that the phenomenon of ethnic Albanian fighters, including some travelling from Albania to Syria,³ the recent convictions of two self-declared imams and six other persons for recruiting foreign terrorist fighters (or inciting them to fight abroad),⁴ and an apparent rise in the number of unregistered mosques built by foreign funding sources, prompted the Government to change its "laissez-faire" policy that allowed religious groups to organize and build new houses of worship.

49. While being careful to note that there were, in fact, a few cases of foreign terrorist fighters going to Syria from Albania, and that the problem of extremist or radical religious groups now appears effectively to be under control, several government officials said that the country's new strategy to counter violent extremism demonstrated the desire for more vigilance. They felt that such vigilance could be accomplished by a systematic effort to legalize all houses of worship in Albania to ensure they have the proper permits to operate and increased reliance on religious communities, including the Muslim community, to effectively vet new groups to ensure that they are legitimate (see section IV (C) below for further information). It was not immediately clear from the conversations with those officials what would happen to groups that refused to cooperate or to accept the authority and control of the traditional communities — that is, whether they would be disbanded and their houses of worship shut down. Government officials themselves recognized the potential challenge that this policy would pose in terms of protecting the right to freedom of religion or belief of those who failed or refused to comply with such confessional regulation.

50. The Special Rapporteur notes that the Government's concerns are shaped by ever-changing domestic, regional and international trends, patterns and developments since the onset of reforms in 1990. These changes reflect new political, economic and cultural influences and dynamics, including the arrival of new faith adherents and groups that were not part of the country's traditional religious landscape. While fully acknowledging the State's responsibility for ensuring public safety, its interest in preserving the country's unique religious landscape and the peaceful cohabitation of its diverse religious communities, the Special Rapporteur is concerned that reliance on religious communities to ensure the legitimacy of faith groups, including those outside their influence, can potentially lead to unlawful restrictions on the right to freedom of religion or belief.

³ Reportedly, in 2013, approximately 300 Albanians (from Albania and other parts of the Balkans) had gone to fight in Syria.

⁴ Albanian authorities reportedly have strong evidence that a ring operated by two imams in the suburbs of Tirana was responsible for recruiting 70 fighters who went to Syria and Iraq, predominantly to join Islamic State in Iraq and the Levant and Jabhat al-Nusrah. Some imams have been arrested in that regard in the past three years.

51. Government officials told the Special Rapporteur that such reliance was, in fact, an example of the State's unwillingness to interfere in the internal affairs of religious organizations, including the Muslim community, but to allow them to self-regulate. However, there are legitimate questions regarding whether that type of outsourcing effectively commissions one faith community to regulate the beliefs and activities of another, thereby establishing a monopoly or hegemony of traditional faith groups in the country that excludes, or at the very least, discriminates against minority groups or beliefs. That type of interdependency may ultimately lead to the erosion of the secular wall between religious groups and the State. Moreover, it may undermine the universality of the right to freedom of religion or belief, including the right to freedom from religion, as a human right that belongs to the individual, to be enjoyed alone or in community with others.

52. There is no indication, at this time, that the Government's more stringent approach to new faith groups violates its international obligations to protect the right to freedom of religion or belief. The Special Rapporteur notes that his concerns should not discourage the Government from pursuing its work to engage with faith communities for the purposes of resolving issues of critical concern, including preserving public order and public safety. The challenge is to ensure that these legitimate interests are secured in a manner that is consistent with State obligations to protect the right to freedom of religion or belief. The Special Rapporteur is committed to working with the Government of Albania in the coming months in pursuit of this objective.

C. Preventing violent extremism

53. The phenomenon of foreign fighters going to Syria and Iraq has given increased urgency to the international community's concerns about the role of the western Balkans as a transit and logistics hub for European jihadists travelling to and from the Syrian conflict zone. Islamist radicalization in some western Balkan states is also of rising concern to governments in the countries of the region and beyond. That has created a rise in the number of programmes and partnerships for preventing violent extremism or countering violent extremism between the wider international community and Balkan governments, including Albania, which views cooperation and accommodation to be in its security and political interests given its accession talks with the European Union.

54. During his visit, the Special Rapporteur addressed some of the challenges posed by violent extremism in Albania with Government officials and other stakeholders. More specifically, he met with national counterterrorism and other security officials to discuss the phenomenon of Albanian foreign fighters going to Syria and Iraq. They discussed the trial of several imams and other members of the Muslim community in Albania who were charged, convicted and sentenced to prison for their role in recruiting foreign fighters to go to Syria and Iraq. The Special Rapporteur met with officials of the Ministry of Justice and several security officials who shared information with him regarding the charges that the eight individuals — two imams and six other people — were convicted of and sentenced. While there seems to be general acceptance that the recent trial and the ordeal surrounding it was a successful effort by the Government to deter such forms of extremism and address concerns about the recruitment of foreign terrorist fighters, it should be noted that law enforcement authorities are only one part of a complex network of engagement that is required to lawfully and effectively prevent violent extremism.

55. The Government launched a programme to prevent violent extremism in 2016. The national strategy contains a number of elements that are commendable and necessary, yet the issue of addressing dissent within the Muslim community can be a particular challenge that is amplified by the lack of an ecclesiastical structure in Islam and the Government's policy of managing its relations with members of different religions through leaders of their communities.

56. As noted above, it would be vital that such policies respect the principles of religious pluralism, universality and inclusion of all communities, groups and individuals on an equal footing as long as they are not engaging in violence, incitement to violence, hostility or discrimination, or activities that are considered criminal under international law. That should

be done without granting a veto power on matters of creed to the heads of religious communities. One important way of achieving such inclusion is to foster both intrafaith and interfaith dialogue at the same time. The process of inclusion can also be supported by speeding up the legalization of various houses of worship, based on transparent and non-discriminatory criteria, which would enable them to operate openly rather than clandestinely, and could then facilitate their integration into faith communities and a more inclusive engagement with other communities. Despite widespread legitimate concern about the potential threat of “extreme” or “radical” Islam, the Special Rapporteur is hopeful that there is strong commitment to uphold the unique societal harmony and coexistence that remains a reality in Albania today. The social and economic integration of marginalized communities may also contribute to reducing the fertile ground that nurses extremism drifts.

57. Challenges in this area are undoubtedly difficult, not only for Albania but for every country facing issues of radicalization and violent extremism. The Special Rapporteur is thankful that government officials responsible for implementing the national strategy to prevent violent extremism took the time to meet with him and explain the nuts and bolts of the strategy. He looks forward to engaging with them, along with other important stakeholders, in the coming years, to ensure that their programmes to prevent violent extremism are implemented in a manner that guarantees the protection of fundamental rights, including the right to freedom of religion or belief.

D. Religious education

58. According to the Ministry of Education, public schools are secular and the law prohibits ideological and religious indoctrination. Religion is not taught in public schools. However, according to official figures, 103 associations and foundations affiliated with religious communities, organizations and foundations managed 101 educational institutions, of which 15 were officially religious-affiliated schools. By law, the Ministry of Education must license those schools and the curricula must comply with national education standards. Catholic and Muslim groups operated numerous State-licensed schools and allegedly reported that they have no problems obtaining licences for new schools. The Orthodox Church operated religious schools, a university and educational centres for the training of clerics. The Bektashis also operated religious training centres for clerics.

59. The capacity of religious communities to train their clergy and provide educational services for their adherents also appears to be an area that deserves particular attention. Several religious communities reported that the training of clergy and the reconstitution of educational infrastructure could be greatly enhanced if access to seized property were restored. Some individuals reported that their efforts to do so had, at times, come at the expense of their independence from international sources of funding. One religious leader noted that the lack of access to seized property had effectively turned the community into “international beggars” since 1990.

60. Not all issues related to religious education are dependent on the availability of funding or other resources. In some cases, the independence of religious communities to operate in this area appears to have been restricted by the Government. For example, according to information received from one religious community, efforts to introduce theologians at a privately-run university owned by the community were obstructed by the Government, allegedly on the grounds that a faculty of theology was inconsistent with the secular commitment of the State.

61. According to information received, the community’s request to teach theology was grounded in the desire to provide tertiary education in the field of theology for lay persons who may subsequently wish to study clerical subjects that could enable them to pursue a faith-based vocation. The community leaders also argued that the opportunity to study theology in the country would contribute to reducing the numbers of students who may travel abroad for further study in theology, and reduce the likelihood that they will be exposed to teachings that may not be compatible with the values and traditions of Albania. The frustrations of the community have been amplified because allegedly, another religious community has been granted permission to teach theology in its private-run university.

62. Information gathered during the visit suggests that the Government is now well advanced in its efforts to introduce education about various religions and the diverse and pluralistic religious landscape in Albania, as part of the civic education in schools. That programme, which is being implemented through a partnership with the United Nations Educational, Scientific and Cultural Organization (UNESCO) and is currently being piloted in 10 urban and rural schools across the country, was conceived within the context of the Government's interest to reinforce good civic education through increased awareness about diversity. The Special Rapporteur understands that prior to launching the programme, the authorities had conducted initial consultations with a range of stakeholders, including members of religious communities, which enabled them to identify some of the concerns and challenges that may arise. Nonetheless, members of faith-based communities expressed concern that more could be done to ensure their inclusive engagement, cooperation and transparency regarding how such educational programmes will be implemented. The Special Rapporteur notes that, if the programme is properly executed, it could contribute to reinforcing the existing climate of interfaith harmony, mutual respect and peaceful coexistence.

E. Situation of religious minorities

63. During his visit, the Special Rapporteur met with representatives of several religious minority groups, including members of national and ethnolinguistic minority groups, in order to understand the intersectionality in relation to freedom of religion or belief and minority identities. He was keen to understand how the legal framework in Albania, especially with regard to implementation, in practice, of the legal differentiation — or perhaps, hierarchy — between “religious organizations” and “religious communities”, has affected the ability of minority religious groups to practice their faith.

64. Although those groups complained about the lack of resources available to them, compared to the traditional religious communities and raised the possibility of elevating their legal status in order to take advantages of fiscal benefits offered by State recognition — including tax exemption — there was no indication that the domestic legal framework had prevented them from exercising their right to freedom of religion or belief. Moreover, the Special Rapporteur's assessment does not suggest that those communities are subjected to discrimination on account of their actual or perceived religious identity by either the State or society at large.

65. The situation seems somewhat more complicated in the case of national or ethnolinguistic minorities in Albania, in particular from Greece and the former Yugoslav Republic of Macedonia. Both of these minorities are legally recognized as national minorities in Albania, along with Montenegrins. Such legal recognition provides them with official status as minorities, and generally allows them to use their language in matters relating to education and the press. Some members of those minority communities expressed frustration at what they allege to be general discrimination, primarily by the State, vis-à-vis their communities. Several members also expressed frustration regarding the way in which the 2011 census was carried out; they alleged that the official figures provided by the State did not reflect the actual populations of their communities and that such underreporting has had a negative effect on their ability to be recognized as national minorities in certain areas of the country.

66. With respect to intersectionality in relation to freedom of religion or belief and minority identities, several members of the community from the former Yugoslav Republic of Macedonia reported that, despite the size of its population and legal recognition as a national minority in several districts in the country — including in and around the city of Korce — it has not been able to convince government officials or the Orthodox Church of Albania — the only officially recognized Orthodox church in Albania — to allow it to establish its own church in the country. While they acknowledged that the Orthodox Church of Albania has allowed clergy from different ethnolinguistic minorities, including from the former Yugoslav Republic of Macedonia, to conduct services in their respective language, their numbers are small compared to the overall number of inhabitants from the former Yugoslav Republic of Macedonia in the country — especially during sacred holidays. The

interlocutors also noted that because the Orthodox Christians from the former Yugoslav Republic of Macedonia use a different Christian calendar from the Orthodox Church of Albania, they are sometimes prevented from carrying out important ceremonies on the appropriate days. A member of the Greek community also expressed concern about the alleged destruction of an Orthodox church in the area of Himara in southern Albania, which he believed was reflective of the general discrimination faced by Greeks in the country.

67. The Special Rapporteur met with representatives of the Egyptian and Roma communities who enabled him to have a better understanding of the ways in which discrimination against members of their communities, which has been acknowledged by both the Government and civil society actors, affects their ability to exercise their right to freedom of religion or belief. It is important to note that most members of the Egyptian and Roma communities often self-identify as belonging to different ethnolinguistic groups. The Special Rapporteur was curious as to whether the general discrimination faced by these groups was motivated — at least in part — by animus on account of religion or belief. His initial impressions suggested that there was *de minimis* interference with their right to freedom of religion or belief, but he noted that more research needed to be done in this area.

68. The Special Rapporteur notes that Albania did not fully accept four recommendations made during its second universal periodic review in April 2014. Three of them — relating to the prohibition of discrimination based on nationality, discrimination against the Roma and Egyptian communities and differentiated treatment between national and ethnolinguistic minorities⁵ — were partially accepted. The Government noted (i.e. rejected) one recommendation relating to the adoption of a law on the protection of national minorities, in particular ensuring the teaching of and instruction in their mother tongue.⁶

F. Women, gender and sexuality

69. The Special Rapporteur discussed issues regarding the human rights of women and lesbian, gay, bisexual, transgender and intersex persons in the context of freedom of religion or belief with civil society groups and members of the United Nations country team working on these and related issues, such as the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the United Nations Population Fund (UNFPA) and the World Health Organization (WHO). He noted that legal safeguards in Albania to protect these groups from discrimination, including by individuals motivated on account of religion or belief, seemed to comply with its international legal obligations.

70. The dialogue between the delegation of Albania and the Committee on the Elimination of Discrimination against Women held in July 2016 as part of the Committee's consideration of the State party's fourth periodic report represented the first time that a delegation from Albania participated in its full technical capacity with 18 experts from all relevant line ministries. National human rights institutions and civil society organizations also contributed through shadow reports and participation in the review. Further to the Committee's recommendations, the United Nations has provided support to the Government to prepare an action plan for implementing the recommendations.

71. In May 2015, Parliament — by an overwhelming majority — approved a resolution on protection of the rights and freedoms of persons belonging to the lesbian, gay, bisexual, transgender and intersex community in Albania, in which legal reform based on a 2012–2014 action plan launched by the Ministry of Social Welfare and Youth was recommended. The resolution also requires the Ministry of Education and Sports to provide training to teachers on the rights of lesbian, gay, bisexual, transgender and intersex persons and encourages the Ombudsman to monitor violations of their rights.

72. Several groups and associations of lesbian, gay, bisexual, transgender and intersex persons appeared to be freely operating in the country, and members of the community participated in the Gay Pride Parade that took place without significant problems during the Special Rapporteur's visit. In addition, members of the United Nations country team with

⁵ See A/HRC/27/4, paras. 106.6–106.7 and 106.21.

⁶ *Ibid.*, para. 106.22.

whom the Special Rapporteur engaged expressed general satisfaction with the level of engagement and cooperation they had received from faith leaders in Albania, including all of the recognized religious communities, with regard to facilitating access to services in the areas of reproductive health and family planning.

73. However, civil society actors reported that women and lesbian, gay, bisexual, transgender and intersex persons were subjected to discrimination and abuse by society at large, including members of their families. The Special Rapporteur received reports of high rates of domestic abuse or violence against women (and children), although there was no indication that such abuse was related to any particular faith community. Interlocutors also expressed concern regarding high rates of societal discrimination and abuse against members of the lesbian, gay, bisexual, transgender and intersex community, though again, there did not seem to be a specific correlation between such abuse and any particular faith community. The Special Rapporteur noted, however, that arguments rooted in religious teachings and traditional values were reportedly mobilized by faith-based leaders and secular actors to incite discrimination against lesbian, gay, bisexual, transgender and intersex persons, especially in the context of efforts made by politicians to extend legal protection against discrimination to the lesbian, gay, bisexual, transgender and intersex community.

V. Recommendations

74. **The Special Rapporteur makes the following recommendations to the international community:**

(a) **While it had not been possible to undertake a comprehensive review of the national strategy on the prevention of violent extremism, a number of important elements were identified, especially in the priority areas identified by the Government, such as education, social inclusion and religious diversity. The Special Rapporteur calls on the international partners to continue to support Albania in the implementation of initiatives that advance respectful education of religion to increase awareness; to support projects that can address challenges of social exclusion that fan the flames of extremism and militancy; to continue their engagement to reform the judiciary and general human rights practice;**

(b) **The Special Rapporteur calls on the international community, especially those members engaged in the Istanbul Process for Combatting Intolerance, Discrimination and Incitement to Hatred and/or Violence on the Basis of Religion or Belief and interfaith initiatives, to learn from best practices generated by the Albanian context, especially with regard to sustenance of social harmony, inclusive national identity and interreligious communication.**

75. **The Special Rapporteur makes the following recommendations to the Government of Albania:**

(a) **The Special Rapporteur emphasizes the importance of expediting the restitution of properties and the legalization of houses of worship, and ensuring that they are carried out in a fair and transparent manner with the engagement of all stakeholders;**

(b) **Freedom of religion or belief is interrelated to a number of other human rights, including the rule of law. The Special Rapporteur stresses that reforms that strengthen the rule of law are important to ensure that respect for freedom of religion or belief are sustained, and to strengthen public confidence in the ability of State institutions to ensure fair and equal treatment for all;**

(c) **The Special Rapporteur notes that the proposed programmes to introduce a module on religion as part of civic education in schools is an important part of nourishing and safeguarding interfaith understanding and societal harmony. However, it would be important to ensure that the education programmes are carried out in a transparent manner that sustains public trust and confidence in the educational system;**

(d) **The State should continue to facilitate and encourage interfaith initiatives and activities and contribute to sharing good practice with international partners;**

(e) **While the situation of freedom of religion or belief is generally benign, the Government must address emerging challenges, such as the equal enjoyment of the right to freedom of religion or belief by all individuals, including those who do not subscribe to those religions or interpretations of religion that enjoy recognized or contractual status;**

(f) **One of the most striking features of the situation in Albania is that religion is not used as an identity marker or a basis for political mobilization. It would be important to take steps to strengthen the separation between political mobilization and religion and to nurture the inclusive national identity, while fully respecting the rights of ethnic and linguistic minorities, especially in the context of the changing religious landscape in the country.**

76. **The Special Rapporteur makes the following recommendations to civil society:**

(a) **Religious communities, groups and civil society organizations must continue to ensure that interreligious dialogue is sustained to promote interfaith harmony, inclusion and mutual respect;**

(b) **Civil society actors have a vital role to play in upholding the traditions of inclusion and offering empathy and solidarity across communities, and must ensure that religious difference or religious resources are not mobilized to support hate speech and incitement to discrimination, including in the case of lesbian, gay, bisexual, transgender and intersex communities.**
