ОРГАНИЗАЦИЯ ОБЪЕДИНЕННЫХ НАЦИЙ **A**

ГЕНЕРАЛЬНАЯ АССАМБЛЕЯ

Distr.
GENERAL

A/HRC/10/8/Add.3
26 January 2009

RUSSIAN
Original: ENGLISH

СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА
Десятая сессия
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 г-жи Асмы Джахангир*

Добавление

МИССИЯ В ИНДИЮ**

---

* Представлен с опозданием.

** Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к настоящему резюме, распространяется в полученном виде только на том языке, на котором он был получен.

GE.09-10464 (R) 050309 060309

Резюме

Специальный докладчик по вопросу о свободе религии или убеждений совершила поездку в Индию с 3 по 20 марта 2008 года по приглашению правительства.

В докладе содержится обзор международных правовых стандартов и внутренней правовой основы свободы религии или убеждений. Специальный докладчик рассматривает вопросы демографии религии и освещает некоторые аспекты, касающиеся положения в области свободы религии или убеждений в стране. Она сосредоточивает внимание на следующих вызывающих обеспокоенность вопросах: положение религиозных меньшинств или меньшинств, имеющих свои убеждения; вопросы справедливости в отношении жертв общинного насилия или лиц переживших его; свобода религии или убеждений в Джамму и Кашмире; отрицательное воздействие законов, касающихся перехода в другую религию во многих штатах; и последствия персональных законов, основанных на религии.

В последней части доклада Специальный докладчик излагает свои выводы и рекомендации. Она отмечает религиозное разнообразие индийского общества и положительное воздействие секуляризации, воплощенной в Конституции, а также высокую степень активности в области прав человека в этой стране. Несмотря на то, что всеобъемлющей правовой основы для защиты свободы религии или убеждений не существует, многие из ее собеседников, особенно из числа религиозных меньшинств, остаются недовольными ее осуществлением. Благодаря федеральному характеру политической системы индийские штаты имеют широкие полномочия, в том числе в области законодательства и порядка. Признавая усилия и достижения центрального правительства, Специальный докладчик обращает внимание на вопросы, вызывающие беспокойство, в том, что касается нетерпимости и дискриминации, основанных на религии или убеждениях, особенно в некоторых штатах. Во многих частях страны организованные группы, заявляющие о своей принадлежности различным религиозным идеологиям, всячески способствуют распространению всепроникающих страхов перед насилием толпы. Ссылаясь на доклад своей предшественницы о ее поездке в Индию (E/CN.4/1997/91/Add.1), Специальный докладчик подчеркивает необходимость эффективного предотвращения политической эксплуатации общинных различий, а также необходимость адекватного рассмотрения вопроса о пропаганде религиозной ненависти, которая вызывается подстрекательством к дискриминации, враждебности или насилию.

Специальный докладчик призывает власти страны принять незамедлительные и эффективные меры для защиты членов религиозных общин от всякого рода нападок и наращивать усилия по предотвращению общинного насилия. Любое конкретное

законодательство в области общинного насилия должно учитывать опасения и обеспокоенность религиозных меньшинств и никоим образом не должно усиливать безнаказанность коммунальной полиции на уровне штата. Хотя расследования крупномасштабного насилия в общинах не должны проводиться поспешно, они должны быть предметом первоочередного внимания и безотлагательных действий со стороны проводящих их групп, работников судебной системы и любой комиссии, которая назначается для изучения положения в этой области. Кроме того, законы и постановления, касающиеся перехода в другую религию, должны быть вновь рассмотрены во многих индийских штатах, поскольку они создают серьезные опасения в том, что касается прав человека, особенно по причине использования расплывчатой и чрезмерно широкой терминологии и дискриминационных положений. Помимо этого, необходимо восстановить право на получение благ от позитивных действий для тех членов касты и племен неприкасаемых, которые перешли в другую религию. Наконец, персональные законы, опирающиеся на религию, должны быть пересмотрены в целях предотвращения дискриминации, основанной на религии или убеждениях, и в целях обеспечения гендерного равенства.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF, ASMA JAHANGIR, ON HER MISSION TO INDIA (3-20 MARCH 2008)

CONTENTS

I. INTRODUCTION

1. Following an invitation by the Government of India, the Special Rapporteur on freedom of religion or belief carried out a country visit to India from 3 to 20 March 2008. During her mission, the Special Rapporteur met with Government officials and political leaders as well as representatives of religious or belief communities, members of civil society and academics. She travelled to Amritsar, Delhi, Jammu, Srinagar, Ahmedabad, Mumbai, Thiruvananthapuram, Bhubaneswar and Lucknow.

2. During her country visit, the Special Rapporteur had the opportunity to meet with several Government officials, including the Ministers of External Affairs, of Minority Affairs and of Culture as well as with the Chief Ministers of Delhi, Jammu and Kashmir, Gujarat, Kerala and Orissa. She also met with the Solicitor General, several Supreme Court Justices and High Court Judges. In Delhi, the Special Rapporteur met with the chairperson and members of the National Commission for Minorities as well as of the National Human Rights Commission. Officials met in Jammu and Kashmir, Gujarat, Maharashtra, Kerala and Uttar Pradesh also included representatives of the states' human rights or minority commissions.

3. In addition, the Special Rapporteur was able to collect first hand information and documents on the state of freedom of religion or belief in India. During her visit, the Special Rapporteur spoke with representatives of various religious or belief communities, including Baha'is, Buddhists, Christians, Hindus, Humanists, Jains, Muslims, Sikhs and Zoroastrians (Parsis). Additional civil society meetings were held with academics, journalists, human rights activists, lawyers and professionals from the visual arts industry. The Special Rapporteur was impressed by the vigour with which many members of civil society organizations and artists, particularly by those affiliated with the film industry, are challenging discrimination based on religion or belief and are proposing concrete means how to overcome religious intolerance.

4. The Special Rapporteur also met with representatives of the United Nations Development Programme; the United Nations Population Fund; the United Nations Development Fund for Women; and the International Labour Organization. The Special Rapporteur is grateful for the logistical support provided by the office of the United Nations Resident Coordinator. She also would like to acknowledge the high level of cooperation received from both the Government and from the people of India.

5. Mr. Abdelfattah Amor, the second mandate-holder, undertook a mission to India in 1996. Therefore, the Special Rapporteur perceived her country visit and this report as an opportunity to follow-up on her predecessor's recommendations[1] and to analyze developments over the past twelve years. In the present report, the Special Rapporteur first outlines the relevant international legal standards and then gives an overview of the domestic legal framework on freedom of religion or belief. The third part refers to the religious demography and highlights selected aspects of the status of freedom of religion or belief in India. Finally, the Special Rapporteur presents her conclusions and recommendations.

II. INTERNATIONAL LEGAL STANDARDS

6. The right to freedom of religion or belief are enshrined in various international legal instruments.[2] These include articles 2, 18-20 and 26-27 of the International Covenant on Civil and Political Rights; article 13 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Elimination of All Forms of Discrimination against Women;[3] article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 2, 14 and 30 of the Convention on the Rights of the Child and article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Apart from the latter, India has ratified all of the other above-mentioned human rights treaties.

7. Furthermore, the Special Rapporteur is guided in her mandate by other relevant declarations, resolutions and guidelines of various United Nations bodies, including those issued by the General Assembly, the Human Rights Committee, the former Commission on Human Rights and the Human Rights Council. Of these instruments, of particular relevance for the

---

[1] See Mr. Amor's report (E/CN.4/1997/91/Add.1) and the reply by the Government of India (A/53/279, annex).

[2] For an overview of the Special Rapporteur's legal framework, see her reports to the Commission on Human Rights (E/CN.4/2005/61, paras. 15-20 and E/CN.4/2006/5, annex) as well as the online digest of her framework for communications (www2.ohchr.org/english/issues/religion/standards.htm).

[3] Upon ratification of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of India declared that it shall abide by and ensure the provision on marriage and family relations (article 16 (1) of the Convention) "in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent". With regard to the principle of compulsory registration of marriages according to article 16 (2) of the Convention, the Government declared that this is "not practical in a vast country like India with its variety of customs, religions and level of literacy".

mandate are articles 2, 18 and 26 of the Universal Declaration of Human Rights as well as the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

III. DOMESTIC LEGAL FRAMEWORK ON FREEDOM OF RELIGION OR BELIEF

8. The Special Rapporteur would like to refer to her predecessor's country report concerning India's legislation in the field of tolerance and non-discrimination based on religion or belief (E/CN.4/1997/91/Add.1, paras. 5-16). In his report, Mr. Amor discussed various provisions of the Constitution of India; the Penal Code; the Unlawful Activities (Prevention) Act 1967; the Religious Institutions (Prevention of Misuse) Act 1988; the Places of Worship (Special Provisions) Act 1991; and the Representation of the People Act 1951.

9. Since 1996, a number of laws pertaining to freedom of religion or belief have been amended and new ones adopted, both at the central and state levels. According to the Unlawful Activities (Prevention) Amendment Act 2004, members of an "unlawful association", which for example has for its object the promotion of enmity between different groups on grounds of religion, can be punished with up to two years' imprisonment. Under specific circumstances, the punishment can be death or imprisonment for life, for example if a member of an unlawful association was in possession of any unlicensed firearms, ammunition or explosive and committed an act that resulted in the death of any person.

10. According to article 26 of the Indian Constitution, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion, subject to public order, morality and health. Diverse personal status laws exist governing all family relationships such as marriage and divorce, maintenance, custody of children, guardianship of children, inheritance and succession, adoption etc. There are five broad sets of personal status laws: one for Hindus, Buddhists, Jains and Sikhs as well as separate laws for Christians, Jews, Muslims and Zoroastrians (Parsis). Hindu and Muslim personal status laws also cater to different schools of thoughts within each community. Family law is a concurrent subject in the Constitution allowing each state as well as the Centre to legislate on it. For example, people residing in the Indian state of Goa are governed by the Portuguese Civil Code of 1867. Furthermore, the school of law applicable to Hindus can also depend on the region from which the person comes. In addition, there is an over-aching secular civil law, the Special Marriage Act 1954, which a person may opt for. All legal norms, like succession etc., will apply according to the law under which a couple marries and all personal status laws based on religion have different sets of rights. For example, Muslim marriages can be polygamous, however, those who convert to Islam after having married under another personal status law cannot avail themselves of the principles of Muslim personal law. There is rich jurisprudence in India,

resolving inequalities within and amongst personal status laws of different communities, especially with regard to women's rights. One of the Directive Principles of State Policy (article 44 of the Constitution of India) stipulates that the "State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". However, this has not been implemented as a uniform civil code raises controversy amongst various religious leaders and faith groups.

11. A number of Indian states have adopted specific laws which seek to govern religious conversion and renunciation. Five states have passed and implemented the so-called Freedom of Religion Acts (Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh). Similar laws have been passed but not yet implemented in two other states (Arunachal Pradesh and Rajasthan). All of these laws stipulate that "no person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion". The term "force" is defined to "include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication". These laws carry penalties of imprisonment and fines with harsher penalties in case children, women or persons belonging to the Scheduled Castes or Scheduled Tribes are forcibly converted. Furthermore, in some states anyone converting another person from one religion to another is required to obtain prior permission from state authorities thirty days before the date of such intended conversion[4] or submit a related intimation.[5] In other states with such laws, anyone intending to change his or her religion needs to give prior notice[6] or intimation after the conversion ceremony.[7]

12. The Constitution (Eighty-Ninth) Amendment Act 2003 established a National Commission for the Scheduled Tribes and a separate National Commission for Scheduled Castes. The latter's duties include investigating and monitoring all matters relating to the safeguards provided for the

---

[4] See section 5 of the Gujarat Freedom of Religion Act 2003; sections 3 and 4 of the Gujarat Freedom of Religion Rules 2008; section 5 of the Chhattisgarh Freedom of Religion (Amendment) Act 2006.

[5] See section 5 of the Arunachal Pradesh Freedom of Religion Act 1978; section 5 of the Orissa Freedom of Religion Rules 1989.

[6] See section 4 of the Himachal Pradesh Freedom of Religion Act 2006; section 3 of the Himachal Pradesh Freedom of Religion Rules 2007.

[7] See section 5 of the Madhya Pradesh Freedom of Religion Act 1968; section 3 of the Madhya Pradesh Freedom of Religion Rules 1969 ("within seven days after the date of such ceremony"); section 5 of the Gujarat Freedom of Religion Rules 2008 ("within ten days from the date of such conversion ceremony").

Scheduled Castes under the Constitution or under any other law or order of the government. For example, article 17 of the Constitution states that "untouchability" is abolished and that its practice in any form is forbidden and punishable in accordance with the law. Furthermore, the Protection of Civil Rights Act 1955 specifically provides for the punishment of anyone who, on the ground of "untouchability", prevents any person from entering a place of public worship which is open to other persons professing the same religion or any section thereof.

13. A new Ministry of Minority Affairs was created on 29 January 2006 to ensure a more focused approach towards issues relating to the minorities and to facilitate the formulation of overall policy and planning, coordination, evaluation and review of the regulatory framework and development programmes for the benefit of the minority communities, including religious ones. The Ministry of Minority Affairs is responsible for the administration and implementation of the National Commission for Minorities Act 1992, the Wakf Act 1995 and the Durgah Khwaja Saheb Act 1955.

IV. RESPECT FOR FREEDOM OF RELIGION OR BELIEF IN INDIA

A. Religious demography

14. India is the second most populous country in the world with more than 1.1 billion inhabitants estimated in 2008. According to the latest official census of 2001, the population of India comprised about 80.5 per cent Hindus, 13.4 per cent Muslims, 2.3 per cent Christians, 1.9 per cent Sikhs, 0.8 per cent Buddhists and 0.4 per cent Jains. About 0.7 per cent either did not state their religious affiliation or belonged to other religions or beliefs, including Bahai's, Jews and Zoroastrians (Parsis).[8] The next official census, which will again include disaggregated data on religious demography, is scheduled to take place in 2011.

15. In 1993, the Indian Central Government notified Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) as "minority" communities under section 2(c) of the National Commission for Minorities Act 1992. The National Commission for Minorities is mandated to make recommendations for the effective implementation of safeguards for the protection of the interests of "minorities" by the Central Government or the State Governments as well as to look into specific complaints regarding deprivation of rights and safeguards of the "minorities" and

[8] It is not possible to compare these 2001 figures directly with the data provided in Mr. Amor's report (E/CN.4/1997/97/Add.1, paras. 18-20) since the 1981 official census was not conducted in Assam and the 1991 official census was not conducted in Jammu and Kashmir. The Special Rapporteur would also caution against improper utilization and communal interpretations of the respective communities' growth rates which may ultimately lead to a more polarized and intolerant society.

take up such matters with the appropriate authorities. In 1997, an organization representing a section of the Jain community sought issuance of a direction to the Central Government to also notify Jains as a "minority" community under this provision. However, the Supreme Court in 2005 emphasized that before the Central Government can take decision on claims of Jains as a "minority" community, the identification has to be done on a state basis, also considering the social, cultural and religious conditions of the community in each state.[9]

B. Issues of concern

16. The Special Rapporteur would like to highlight selected aspects of the status of freedom of religion or belief in India. She will focus on the following issues of concern: (1) the situation of religious or belief minorities; (2) justice for victims and survivors of communal violence; (3) freedom of religion or belief in Jammu and Kashmir; (4) the negative impact of laws on religious conversion in several states; and (5) implications of religion-based personal laws.

1. Situation of religious or belief minorities

17. Before and during her mission, the Special Rapporteur received numerous reports of attacks on religious minorities and their places of worship as well as of discrimination against the disempowered sections of the Hindu community. Organised groups claiming adherence to religious ideologies have unleashed an all-pervasive fear of mob violence. Furthermore, concerns have been raised with regard to the social, economic and educational status of minority communities. In order to illustrate the situation of religious minorities, the Special Rapporteur wishes to briefly give some examples.

(a) Christians

18. Widespread violence in the Kandhamal district of Orissa in December 2007 primarily targeted Christians in Dalit and tribal communities. The Special Rapporteur received credible reports that members of the Christian community alerted the authorities and politicians in advance of the planned attacks of 24-27 December 2007. The police, too, had warned Christian leaders about anticipated violence. In its report on the events of December 2007, the National Commission for Minorities confirmed that "destruction on such a large scale in places which are difficult to access could not have taken place without advance preparation and planning".

---

[9] Supreme Court of India, *Bal Patil and Another v. Union of India and Others*, judgement of 8 August 2005.

19. The situation in Orissa has reportedly deteriorated again after 23 August 2008, when Swami Lakhmananda Saraswati, a local leader of the Vishwa Hindu Parishad (VHP), and four other VHP members were killed. Although a Maoist leader had claimed responsibility and the Christian leadership had condemned the killings, organized mobs subsequently attacked Christians in Dalit and tribal communities. By the end of September 2008, more than 40 people had allegedly been killed in Orissa, over 4,000 Christian homes destroyed and around 50 churches demolished. Around 20,000 people were living in relief camps and more than 40,000 people hiding in forests and others places. The Special Rapporteur was profoundly alarmed by the humanitarian situation in relief camps where access to food, safe drinking water, medical care, proper sanitary arrangements and adequate clothing were reportedly lacking.

(b) Muslims

20. Members of the Muslim community in India shared their concerns about the ongoing repercussions of communal violence, for example after the Gujarat massacre in 2002 (below, paras. 34-36). Many of the Muslim interlocutors informed the Special Rapporteur during her mission that a number of them have been arrested on ill-founded suspicion of terrorism. Some of them even encountered problems in finding a lawyer who would be prepared to defend a terrorist suspect. For example, the Lucknow Bar Association reportedly passed a resolution that none of its members should represent the accused of a terrorist act carried out in the state, but the Lucknow Bar Association subsequently reflected on its position. Moreover, many Muslims were disturbed that terrorism was associated with their religion despite various public statements from Muslim leadership denouncing terrorism. There have been complaints about a continuing bias among security forces against Muslims in Jammu and Kashmir who also seem to face difficulties with regard to the issuance of passports and security clearances for employment purposes.

21. However, a large number of her interlocutors, including Muslims, also expressed their concerns about continued radicalization and cross-border terrorism. They lamented that the radicalisation of certain Muslims had an adverse impact on the entire community because communal relations hardened after every act of terrorism carried out by a militant group of Muslims. Some Muslim interlocutors regretted that after such events they were expected to "prove their loyalty to the State of India", which constituted an indignity towards them as Indian citizens.

22. Mr. Amor in his country report had already highlighted the "exploitation of religion for political purposes, which is an alien practice and detrimental to Indian Muslims and to Islam" (E/CN.4/1997/91/Add.1, para. 52). In addition, a large number of official and non-official interlocutors from all communities expressed anguish at the continued operation of militant groups of Muslims carrying out acts of terrorism. A number of people interviewed by the Special Rapporteur were deeply concerned that effective measures were not being taken by the central

Government against such militant groups whom they accused of maintaining links with foreign elements. Others were concerned that militancy itself as well as the counter-terrorism measures adopted by the Government would undermine the enjoyment of human rights.

23. With regard to the social, economic and educational status of the Muslim community of India, a recent report[10] analysed issues relating to demography, education, health, employment, credit, infrastructure and public programmes. The report for example highlights problems with regard to access to good quality schools in Muslim localities and "communal" content of school textbooks. Furthermore, the share of Muslims in employment in various government departments is abysmally low at all levels. A relatively high number of Muslim workers are engaged in self-employment activity, particularly in urban areas. Some banks have reportedly designated a number of Muslim concentration areas as zones where bank credit and other facilities are not easily provided. The health of Muslims, especially women, is directly linked to poverty and the absence of basic services like clean drinking water and sanitation. The Special Rapporteur would also like to refer to her latest report to the Human Rights Council (A/HRC/10/8, paras. 29-62) in which she analyses the international legal framework and provides some examples of discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights.

(c) Sikhs, Jains and Buddhists

24. Several Sikhs, Jains and Buddhists expressed concerns that they were not treated as distinct religious communities but rather as belonging to Hindu religion. Article 25 of the Constitution contains an explanation that "reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly". Jurisprudence confirms that since the Constitution was framed, Sikhs and Jains have been treated as part of the wider Hindu community with its different sects, sub-sects, faiths, modes of worship and religious philosophies. In various codified customary laws,[11] the definition of 'Hindu' includes Buddhists, Jains and Sikhs.

---

[10] Prime Minister's High Level Committee (Chairperson: Justice Rajindar Sachar), *Social, Economic and Educational Status of the Muslim Community of India - A Report*, November 2006 (available online at http://minorityaffairs.gov.in/newsite/sachar/sachar_comm.pdf).

[11] See for example the Hindu Marriage Act 1955; the Hindu Succession Act 1956; the Hindu Adoption and Maintenance Act 1956; and the Hindu Minority and Guardianship Act 1956.

25. The Supreme Court also stated[12] that "'Hinduism' can be called a general religion and common faith of India whereas 'Jainism' is a special religion formed on the basis of quintessence of Hindu religion." When dealing with the claim of Jains to be considered a 'minority' community, the Supreme Court indicated that [m]inority as understood from constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happen to be in majority and likely to gain political power in a democratic form of Government based on election. […] Statistical data produced to show that a community is numerically a minority cannot be the sole criterion. If it is found that a majority of the members of the community belong to the affluent class of industrialists, businessmen, professionals and propertied class, it may not be necessary to notify them under the Act as such and extend any special treatment or protection to them as minority".

26. Since the identification of minority status has to be done on a state basis, Sikhs also voiced their concerns with regard to their minority rights. While Sikhs represent about 1.9 per cent of India's population according to the 2001 census, the share of Sikhs in the state of Punjab is about 59.2 per cent. The state government granted minority status to the Sikh community and issued a notification in 2001 which permitted the Shiromani Gurdwara Parbandhak Committee (SGPC) to give a 50 per cent quota to Sikh students in colleges run by it. This notification, however, was struck down by the High Court on a petition filed by students who had failed to secure admission to colleges run by SGPC. The High Court decided that "in the State of Punjab, it cannot be held that Sikhs were such a group of persons who apprehended deprivation of their religious, cultural and educational rights by other communities, who were in majority and who were likely to gain political power"[13]. On 15 February 2008, the Supreme Court upheld the High Court's order.

27. Further problems can arise for members of the Scheduled Castes, especially when they want to convert to a different religion, since government benefits for Scheduled Castes are by law limited to Hindus, Sikhs and Buddhists. The Constitution (Scheduled Castes) Order 1950 provided that no person who professes a religion different from the Hindu religion shall be deemed to be a member of a Scheduled Caste. This provision was subsequently amended in 1956

---

[12] Supreme Court of India, *Bal Patil and Another v. Union of India and Others*, judgement of 8 August 2005.

[13] High Court of Punjab and Haryana, *Sahil Mittal v. State of Punjab and Other*, judgement of 17 December 2007.

and 1990 to also include Sikhs and Buddhists.[14] However, the Special Rapporteur's interlocutors pointed out for example that Sikhism and Buddhism did not recognise the caste-system. She was also informed that when a member of a Scheduled Caste left Hinduism and converted to Christianity or Islam, the previous caste status and related social bias would often remain at the social level while the person would legally no longer be eligible to government benefits for Scheduled Castes. In some cases, there are separate churches and cemeteries for members of the Scheduled Castes who converted to Christianity.

28. The legal link between Scheduled Caste status and affiliation to specific religions seems problematic in terms of human rights standards. The Special Rapporteur would like to recall that the Committee on the Elimination of Racial Discrimination noted with concern that Dalits who convert to Islam or to Christianity to escape caste discrimination reportedly lose their entitlement under affirmative action programmes, unlike converts who become Buddhists or Sikhs (A/62/18, para. 179). In 2008, an independent research study commissioned by the National Commission for Minorities found that there is a strong case for offering Muslims and Christians of Dalit origin the same constitutional safeguards already available to Hindu, Sikh and Buddhist Dalits. The report by the National Commission for Religious and Linguistic Minorities, headed by Justice Renganath Misra, recommended to delete paragraph 3 of the Constitution (Scheduled Castes) Order 1950 - which originally restricted the Scheduled Caste net to the Hindus and later opened it to Sikhs and Buddhists - and to make the Scheduled Castes net fully religion-neutral like that of the Scheduled Tribes.

(d) Atheistic and non-theistic believers

29. Humanists, rationalists and other atheistic or non-theistic believers voiced their concerns about the stifling effect of criminal provisions on offences related to religion. Especially the provision against deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious belief (section 295A of the Indian Penal Code) had allegedly been invoked by the administration to harass writers and activists who were criticizing religious bigotry and superstition or who were trying to expose cheating of the gullible. In this regard, the Special Rapporteur would like to refer to her report to the 62nd session of the General Assembly, where she discussed the situation of persons with atheistic or non-theistic beliefs in greater detail (A/62/280, paras. 64-79).

---

[14] See Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1956; Constitution (Scheduled Castes) Order (Amendment) Act 1990.

2. Justice for victims and survivors of communal violence

30. The Special Rapporteur is seriously concerned at the extended timeframe of investigations in cases involving communal riots, violence and massacres such as those which occurred after "Operation Blue Star" in 1984, after the destruction of Babri Masjid in 1992 and after the Godhra train burning incident in 2002. All of these incidents continue to haunt the people affected by them and the system of impunity emboldens forces of intolerance. It is important to draw appropriate lessons from these events in order to prevent the recurrence communal violence.

31. The Special Rapporteur fully agrees with the analysis by the National Commission for Minorities that communal violence is not merely a "law and order" problem but has a serious socio-economic basis and ramifications. Sectarian riots are most likely to occur when the following elements are present: (i) severe long-standing antagonism on religious lines in particular villages and urban localities; (ii) an emotional response of members of religious communities to a precipitating event; (iii) a feeling in the minds of rioters and the larger religious group to which they belong that sectarian violence is justifiable; and (iv) the assessment by the rioters that the reaction from the police to sectarian violence will be either absent or partisan or ineffective.

(a) Communal violence after "Operation Blue Star" (1984)

32. Many of the Special Rapporteur's interlocutors referred to the anti-Sikh riots after the attack by the Indian army on the Golden Temple in Amritsar ("Operation Blue Star") in June 1984 and subsequent to the tragic assassination of Ms. Indira Gandhi on 31 October 1984. During the following four days, nearly 3,000 Sikhs were reported to have been killed. Two commissions and eight committees were set up from 1984 to 2005 in order to identify those responsible for the anti-Sikh riots. However, many families of the victims or survivors voiced their concerns that the main accused were either not charged or were acquitted and that compensation was inadequate. Furthermore, despite a 2004 court judgement in favour of the return of the Sikh religious scriptures, reference material and artefacts, which had been removed from the Sikh reference library in Amritsar by the Indian army in 1984, had reportedly not been returned yet.

33. Further concerns refer to the issue of unidentified bodies. Punjab security forces had secretly cremated thousands of bodies that they had labelled as "unidentified/unclaimed". A report by the Central Bureau of Investigation documented more than 2,000 cases of illegal cremations at crematoria in the Amritsar district. Subsequent claims for compensation filed with

the National Human Rights Commission have been limited to these cases in the Amritsar district, excluding the other twelve districts of Punjab.

(b) Communal violence after the destruction of Babri Masjid (1992)

34. Another example of communal violence and its continuing impact on community relations are the violent clashes in 1992 between Hindus and Muslims after the destruction of Babri Masjid in Ayodhya. Subsequently, riots broke out in several Indian cities and reportedly more than 2,000 people, mainly Muslims, were killed. The Special Rapporteur would like to refer to her predecessor's communications and reports about the background of this issue as well as to the responses sent by the Government of India to the mandate (E/CN.4/1994/79; E/CN.4/1995/91; E/CN.4/1997/91/Add.1; and A/53/279).

35. The Special Rapporteur notes that less than two weeks after the destruction of Babri Masjid, the Central Government appointed a Commission of Inquiry to probe the sequence of events leading to, and all the facts and circumstances relating to, the occurrences in Ayodhya on 6 December 1992. However, this Commission has not yet submitted its final report and its mandate so far has been extended 47 times. Now it is required to conclude its inquiry by 31 March 2009. Many of the Special Rapporteur's interlocutors referred to the tradition of long-standing commissions of inquiry as an example of devaluing justice and keeping tensions simmering.

(c) Communal violence after the Godhra train burning incident (2002)

36. With regard to the Gujarat massacre in 2002, the Special Rapporteur met a large number of eyewitnesses as well as people who visited Gujarat during the communal violence and she also received numerous reports, from both official bodies and civil society organisations. The Special Rapporteur also met a former Prime Minister of India and Members of Parliament who visited Gujarat soon after the riots in 2002. The state government reported that, prior to the Godhra train burning incident, Gujarat had witnessed 443 major communal incidents between 1970 and 2002. However, the massacre that took place after the tragic deaths in the Godhra train burning incident on 27 February 2002, is all the more horrifying since at least a thousand people[15] were systematically killed. While the Special Rapporteur notes the controversy about the different conclusions of various public enquiries concerning the question whether the Godhra train burning incident was an accident or a deliberate criminal act, she would like to emphasize that there can be no justification for the large-scale killings and violence after 27 February 2002. In

[15] The state Government of Gujarat indicated that 790 Muslims and 254 Hindus were killed during the communal violence in Gujarat in 2002; however, other sources estimate that more than 2,000 people were killed.

addition, there are credible reports that inaction by the authorities was evident and most of the Special Rapporteur's interlocutors, including politicians, alleged complicity by the state government.

37. While discussing the events with victims, the Special Rapporteur could see their continuing fear which was exacerbated by the distress that justice continues to evade most victims and survivors. A large number of criminal cases relating to the communal violence in 2002 remain un-investigated or have been closed by the Gujarat police and the plight of those internally displaced from their home continues. In addition, there is increasing ghettoization and isolation of Muslims in certain areas of Gujarat, for example in one part of Ahmedabad which is colloquially called "little Pakistan". The assertion of the state government that development by itself will heal the wounds does not seem to be realistic. The Special Rapporteur believes that it is crucial to recognise that development without a policy of inclusiveness of all communities will only aggravate resentments.

38. During her visit to Gujarat, the Special Rapporteur was also disturbed that at various meetings with members of civil society, plain-clothed government agents took names of her interlocutors and also made their presence felt afterwards. On several occasions, the Special Rapporteur had to insist that police officers left the room during her non-governmental meetings. The terms of reference for fact-finding missions by Special Rapporteurs (E/CN.4/1998/45, appendix V) guarantee confidential and unsupervised contact of the Special Rapporteur with witnesses and other private persons. Furthermore, she would like to remind the authorities in Gujarat of the Government's assurance according to these terms of reference "that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings".

(d) The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2005

39. In December 2005, the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill was introduced in the Parliament but has not yet been adopted. The Bill provides for (a) prevention and control of communal violence; (b) speedy investigation and trials; and (c) rehabilitation of victims. Furthermore, the state government could declare an area as communally disturbed under certain conditions. The district magistrate or the competent authority appointed by the state government could take measures such as regulating assembly, directing persons to deposit their arms or searching premises to control communal violence.

40. However, various civil society organizations have criticized the Bill for its failure to dismantle impunity, state collusion or redress gender based crimes. They have also voiced their concern that the sweeping powers given by the Bill to state governments could be misused to intimidate members of the minority community. Furthermore, the National Commission for Minorities made several suggestions[16] for amendments to the Bill. For example it has proposed that those found guilty of involvement in communal violence and indicted by the special courts should be debarred permanently from government jobs and from contesting any public office. In addition, there should be a provision whereby the state government concerned should have to rebuild or cause to have rebuilt the religious property or place of worship damaged or destroyed during sectarian violence. The Bill should also provide for public recognition of non-governmental organizations and individuals who have helped in relief measures in the aftermath of sectarian violence.

(e) Prime Minister's New 15 Point Programme for Welfare of Minorities (2006)

41. The Special Rapporteur would like to acknowledge the Prime Minister's New 15 Point Programme for Welfare of Minorities, which unequivocally states that the prevention and control of communal riots is a basic duty of the State. This programme, as adopted by the cabinet of the central government on 22 June 2006, notes that minority communities have suffered loss of lives and property on account of communal violence in the past decades and that the welfare of minority communities is inextricably linked with the effectiveness of measures adopted to address this issue. It furthermore emphasizes that district and police officials of the highest known efficiency, impartiality and secular record must be posted in areas which have been identified as communally sensitive and riot prone (point 13). With regard to prosecution for communal offences, the programme indicates that special courts or courts specifically earmarked to try communal offences should be set up so that offenders are brought to justice speedily (point 14). Finally, the programme states that victims of communal riots should be given immediate relief and provided prompt and adequate financial assistance for their rehabilitation (point 15).

---

[16] National Commission for Minorities, *Suggestions of the NCM for amendments to "The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005"* (available online at http://ncm.nic.in/suggestion.html).

3. Freedom of religion or belief in Jammu and Kashmir

42. The Special Rapporteur would like to refer to her predecessor's report concerning freedom of religion or belief in Jammu and Kashmir, for example with regard to discrimination experienced by Muslims, the expulsion of Kashmiri Pandits (Hindus) in the 1990s and attacks against places of worship in the context of the armed conflict.[17] Mr. Amor had urged all the parties concerned to act calmly and refrain from exacerbating religious problems so as to ensure that immutable religious principles are not affected by political considerations at the expense of the religious rights of the communities and, more generally, of tolerance and non-discrimination based on religion or belief.

43. The population of Jammu and Kashmir is still divided on religious lines. The Muslim community remains vulnerable to excesses of the security forces, while the entire population is a victim of violence perpetrated by militant groups of Muslims. The Special Rapporteur was told by many of her interlocutors during the mission that tensions in Jammu and Kashmir were decreasing as a result of the de-escalation of violence in recent years. However, there still remains deep bitterness among members of the Muslim and Hindu communities, both against each other and against the Government.

44. Muslims living in Srinagar provided information on several documented incidents relating to extrajudicial executions, torture, enforced disappearances and rape committed by the security forces against Muslims and they alleged that these acts were perpetrated against members of their community due to their religious background. Furthermore, they submitted that many of them had been denied entry into hotels while travelling to other parts of India simply because their passports indicated a Muslim name and Srinagar as their place of birth.

45. A number of Hindu leaders expressed their mistrust of Muslims living in Srinagar. They remain hurt at the use of violence and threats hurled at the Kashmiri Pandits, who were eventually left no option but to be evacuated from Srinagar in the 1990s. While many of the Kashmiri Pandits remain internally displaced,[18] there have also been public statements inviting them to return to Kashmir.

46. Since June 2008, however, it is reported that tensions and violence in Jammu and Kashmir have increased subsequent to a controversy about a transfer of land to the Shri Amarnath Shrine Board, which was constituted in 2000 by the state legislature to oversee the pilgrimage to a

---

[17] See E/CN.4/1997/91/Add.1, paras. 27, 34-36, 48-54, 90 and 98.

[18] At the end of the year 2007, there were reportedly 55,456 Kashmiri migrant families, of whom 34,878 families were living in Jammu and 19,338 families in Delhi (Union Ministry of Home Affairs, Government of India, Annual Report 2007-08, p. 8).

Hindu shrine in the Himalayas. In a press statement of 27 August 2008, the Office of the High Commissioner for Human Rights voiced concerns about the violent protests that had reportedly led to civilian casualties as well as restrictions on the right to freedom of assembly and expression.

4. Negative impact of laws on religious conversion in several states

47. The Special Rapporteur is deeply concerned that laws and bills on religious conversion in several Indian states are being used to vilify Christians and Muslims. The so-called "Freedom of Religion Acts" have been adopted and implemented in the states of Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh. Similar laws have been passed but are yet to be implemented in the states of Arunachal Pradesh and Rajasthan.

48. While these laws appear to protect religious adherents only from attempts to induce conversion by improper means, they have been criticized on the ground that the failure to clearly define what makes a conversion improper bestows on the authorities unfettered discretion to accept or reject the legitimacy of religious conversions. All of these laws include in the definition of *use of force* any "threat of divine displeasure or social excommunication". Moreover, the terms *inducement* or *allurement* are defined to include the offer of any gift or gratification, either in cash or in kind, as well as the grant of any benefit, either pecuniary or otherwise. These broad and vague terms might be interpreted to cover the expression of many religious beliefs. In addition, some provisions are discriminatory in giving preferential treatment to re-conversions, for example by stipulating that returning to the forefathers' original religion or to one's own original religion shall not be construed as conversion.[19]

49. Furthermore, the requirement of advance notice or prior permission seems to be unduly onerous for the individual who intends to convert. Any state inquiry into the substantive beliefs and motivation for conversion is highly problematic since it may lead to interference with the internal and private realm of the individual's belief (forum internum). This approach is aggravated if such a Freedom of Religion Act awards specific protection to the state government and its officers against prosecution or legal proceedings with regard to "anything done in good faith or intended to be done under the Act or any rule made thereunder".[20] Moreover, it seems unclear who may bring an action for, or lodge an appeal against, decisions with regard to the

---

[19] Section 2 of the Chhattisgarh Freedom of Religion (Amendment) Act 2006. However, the state governor has withheld assent to this amendment Act. See also section 2 of the Gujarat Freedom of Religion (Amendment) Bill 2006, which was ultimately withdrawn by the state government on 10 March 2008.

[20] See section 5C of the Chhattisgarh Freedom of Religion (Amendment) Act 2006.

permissibility of a religious conversion. The Special Rapporteur would like to reiterate that any concern raised with regard to certain conversions or how they might be accomplished should primarily be raised by the alleged victim.

50. Even in the Indian states which have adopted laws on religious conversion there seem to be only few - if any - convictions for conversion by the use of force, inducement or fraudulent means. In Orissa, for example, not a single infringement over the past ten years of the Orissa Freedom of Religion Act 1967 could be cited or adduced by district officials and senior officials in the State Secretariat.[21] However, such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them. There is a risk that "Freedom of Religion Acts" may become a tool in the hands of those who wish to use religion for vested interests or to persecute individuals on the ground of their religion or belief. While persecution, violence or discrimination based on religion or belief need to be sanctioned by law, the Special Rapporteur would like to caution against excessive or vague legislation on religious issues which could create tensions and problems instead of solving them.

51. The National Commission for Minorities also has expressed its profound concern over the attempt in such state laws on religious conversion to interfere with the basic right to freedom of religion or belief. Provisions relating to notice and selective enquiry will allow state functionaries to interfere in matters of personal life and religious beliefs, thus impinging on freedom of conscience and free profession, practice and propagation of religion guaranteed by article 25 of the Constitution. The Special Rapporteur would like to add that, according to universally accepted international standards, the right to freedom of religion or belief includes the right to adopt a religion of one's choice, the right to change religion and the right to maintain a religion. She highlights the fact that these aspects of the right to freedom of religion or belief have an absolute character and are not subject to any limitation whatsoever. Mr. Amor already stressed in an annual report to the Commission on Human Rights (E/CN.4/1997/91, para. 99) that "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".

52. The Special Rapporteur would also like to refer to her report to the 60th session of the General Assembly (A/60/399, paras. 40-68), in which she discussed the question of conversion in greater detail. She notes that international human rights law clearly prohibits coercion that would impair the right to have or adopt a religion or belief, including the use or threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Similarly, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards.

---

[21] National Commission for Minorities, *Report* of the Chhattisgarh Freedom of Religion (Amendment) Act 2006.e online at http://ncm.nic.in/pdf/orissa%20report.pdf).

5. Religion-based personal laws

53. Conversions are also addressed in some religion-based personal laws and some provisions may lead to discrimination, for example in matters of succession. Conversion to another religion by one spouse is a ground for divorce in some areas of personal law.

54. There is concern amongst women's rights activists regarding several discriminatory aspects, especially on the basis of gender, within personal laws governing each religious community. Women's groups recognise that religious minorities, particularly members of the Muslim community, have been opposed to the enactment of a uniform civil code mainly because according to religious Muslim leaders this would infringe upon their religious freedom and might be biased in favour of the majority religion. Their arguments are nonetheless challenged by many Muslims as well. The debate on upholding personal laws became heated after the *Shah Bano* judgement, where the Supreme Court of India confirmed that Muslims were subject to the secular criminal law of maintenance in the Criminal Procedure Code 1973.[22] The Supreme Court deprecated Muslim personal law for denying maintenance to a destitute woman by her former husband three months after their divorce. This judgement was not well-received by some Muslim groups and subsequently the Indian Parliament passed the Muslim Women (Protection of Rights on Divorce) Act 1986, thus diluting the effect of the Supreme Court judgement. This Act gives divorced Muslim women the right to "a reasonable and fair provision and maintenance to be made and paid to her within the *iddat*[23] period by her former husband".

55. The All India Muslim Personal Law Board, constituted in 1972, led the agitation against the *Shah Bano* judgement and arguably arrogated to itself the authority to speak on behalf of all Muslims on matters of personal law. The Board also opposed a subsequent bill on compulsory registration of marriages, arguing that a large number of Muslims in India were illiterate and might not be able to abide by the law. Women activists, on the other hand, advanced the very same reason in favour of a compulsory registration of marriages in order to protect the legal status of women and they subsequently set up parallel Muslim women personal law boards. They pointed out that women within religious minorities suffered from multiple discrimination, both as a religious minority and due to their gender within their own community. They argued that the secular nature of the state must also apply to women, while still respecting religious rights of all individuals, and that the option of invoking alternative secular family laws was not sufficient since most women remain disempowered and the ultimate decision of selecting a legal system

---

[22] Supreme Court of India, *Mohammad Ahmed Khan v. Shah Bano Begum and others*, judgement of 23 April 1985.

[23] For a definition of "iddat" see section 2 (b) of the Muslim Women (Protection of Rights on Divorce) Act 1986.

did not effectively lie with them. In addition, men mostly prefer to register their marriages under personal laws because of the preferential treatment they are entitled to under these laws especially in matters of inheritance.

56. Some Indian states have enacted laws to make the registration of marriages compulsory, yet there is no national legislation to this effect. In this regard, the Special Rapporteur would like to refer to the concluding comments of the Committee on the Elimination of Discrimination against Women, in which it expressed concern "that failure to register marriages may also prejudice the inheritance rights of women" (A/55/38, para. 62) and recommended that "the State party take proactive measures to speedily enact legislation to require compulsory registration of all marriages, work with states and union territories to effectively implement such legislation and to consider withdrawing its reservation to article 16 (2)" of the Convention on the Elimination of All Forms of Discrimination against Women (A/62/38, para. 196).

57. During her visit, the Special Rapporteur also received reports of violence and rape, for example in Uttar Pradesh, as a reaction to cases of intermarriage between believers of different religions or castes. Acts of violence continue to occur while perpetrators are dealt with some sympathy by the law enforcement agents. This bias is deep-rooted in certain sections of society and it makes the protection of the victims even more difficult. In this regard it seems important to apply a gender perspective and to protect women effectively against any forms of violence or discrimination.

58. The visual arts industry seems to face difficulties when producing films which deal with cases of intermarriage, especially when the movie's story involves a Muslim woman who would like to marry a Hindu man. The Special Rapporteur was informed that some films are effectively censored or even banned by non-State actors due to intimidation and mob pressure. Regrettably, professionals of the visual arts industry seem to routinely seek the approval of self-appointed custodians of religious sentiments before finalising a film which touches upon communal issues. A number of film producers and directors confirmed to the Special Rapporteur that they felt compelled to get their scripts cleared by a Hindu leader in Mumbai in order to avoid subsequent mob violence. This shows how religious intolerance might adversely affect cultural and commercial activities. At the same time, culture and media may be used as powerful tools to foster mutual tolerance, respect and understanding. The Special Rapporteur would like to emphasize that there are a number of positive examples where Indian films contributed to public education with regard to religious tolerance and inter-communal harmony.

V. CONCLUSIONS AND RECOMMENDATIONS

59. Historically, India has been home to believers of a whole range of religions and beliefs and India's society is still characterized by a remarkable religious diversity. The Supreme Court has recently emphasized that "India is a country of people with the largest number of religions and languages living together and forming a Nation". The Special Rapporteur would like to acknowledge that such diversity poses particular challenges for the executive, legislative and judicial branches. There are democratic safeguards within the political system and the institutions have accumulated a vast experience in protecting human rights. Many of the Special Rapporteur's interlocutors have pointed to the positive impact of Indian secularism as embodied in the Constitution as well as to the high degree of human rights activism in India.

60. The central Government has developed a comprehensive policy pertaining to minorities, including religious ones. In this context, the Special Rapporteur would like to laud the Prime Minister's New 15 Point Programme for Welfare of Minorities as well as various reports on religious minorities, for example the reports issued by the committees headed by Justice Rajinder Sachar in 2006 and by Justice Renganath Misra in 2007. Such committees mandated by the Government are good examples of mechanisms put in place to analyse the situation and put forward recommendations for Government action. Concrete follow-up to such recommendations both at the national and at the state levels seems vital in order to address the problems identified in these reports.

61. The National Commission for Minorities, too, has taken up several challenges. Their members took prompt action and issued independent reports on incidents of communal violence with concrete recommendations. However, the performance of various state human rights commissions depends very much on the selection of their members and the importance various governments attach to their mandates. It is vital that members of such commissions have acute sensitivity to human rights issues and they must reflect the diversity of the state, particularly in terms of gender, since women are often subject to religious intolerance. The inclusion of women in such commissions would be welcomed by the Special Rapporteur as she noticed that women's groups across religious lines were the most active and effective human rights advocates in situations of communal tension in India.

62. All of the Special Rapporteur's interlocutors recognised that a comprehensive legal framework to protect freedom of religion or belief exists, yet many of them - especially from religious minorities - remained dissatisfied with its implementation. Since the political system of India is of a federal nature and states have wide powers, including in the field of law and order, the level of action of the Government to protect its citizens in terms of freedom of religion or belief varies from state to state. The Special Rapporteur would like to recognize the efforts and

achievements of the central Government. However, several issues of concern with regard to intolerance and discrimination based on religion or belief remain pertinent, especially in the context of certain states.

63. Organised groups claiming roots in religious ideologies have unleashed an all-pervasive fear of mob violence in many parts of the country. Law enforcement machinery is often reluctant to take any action against individuals or groups that perpetrate violence in the name of religion or belief. This institutionalised impunity for those who exploit religion and impose their religious intolerance on others has made peaceful citizens, particularly the minorities, vulnerable and fearful.

64. In this report the Special Rapporteur would also like to follow-up on her predecessor's country visit to India in 1996 and on his pertinent recommendations. As the communal violence in Gujarat in 2002 evidences, Mr. Amor was unfortunately prophetic in his country report, in which he expressed his fears that "something in the nature of the Ayodhya incident will recur in the event of political exploitation of a situation" (E/CN.4/1997/91/Add.1, para. 46). She is also very much concerned about the degree of polarization in some pockets of different faith groups and about the danger of chain reactions that can be triggered by communal tensions. The Special Rapporteur would like to emphasize that there is at present a real risk that similar communal violence might happen again unless political exploitation of communal distinctions is effectively prevented and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence is adequately addressed.

65. It is a crucial - albeit difficult - task for the State and civil society to challenge the forces of intolerance. The Special Rapporteur would like to refer to encouraging examples where private individuals have come to each other's rescue during communal violence, crossing all religious boundaries. Indeed, a large number of victims in Gujarat recognised the positive role played by some national media channels and other courageous individuals who effectively saved lives during the communal violence in 2002.

66. The visual arts industry in India has played an important role in public education regarding religious tolerance and can contribute to the prevention of communal tensions. However, due to its visibility and potential impact on the population, the visual arts industry remains a target of mob pressure and intimidation by non-State actors. While any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence needs to be prosecuted, this subtle form of self-censorship begs the question how the State could prevent the build-up of an atmosphere of fear of repercussions and mob pressure.

67. The Special Rapporteur appeals to the Indian authorities to take quick and effective measures to protect members of religious minorities from any attacks and to step up efforts to prevent communal violence. Legal aid programmes should be made available to survivor groups and minority communities in order to effectively prosecute and document cases of communal violence. Furthermore, a central telephone hotline might be set up to accept complaints and to register allegations concerning police atrocities. Any specific legislation on communal violence should take into account the concerns of religious minorities and must not reinforce impunity of communalised police forces at the state level.

68. **While inquiries into large-scale communal violence should not be done in indecent haste, they should be accorded the highest priority and urgency by the investigation teams, the judiciary and any commission appointed to study the situation. Furthermore, the State could envisage setting up of truth and reconciliation commissions to create a historical account, contribute to healing and encourage reconciliation in long-standing conflicts, such as the one in Jammu and Kashmir.**

69. **Concerning vote-bank politics and electoral focus on inter-communal conflicts, the Special Rapporteur would like to reiterate her predecessor's suggestion to debar political parties from the post-election use of religion for political ends. In addition, the Representation of the Peoples Act 1951 should be scrupulously implemented, including the provision on disqualification for membership of parliament and state legislatures of persons who promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language.**

70. **The laws and bills on religious conversion in several Indian states should be reconsidered since they raise serious human rights concerns, in particular due to the use of discriminatory provisions and vague or overbroad terminology. A public debate on the necessity of such laws, more information on their implementation and safeguards to avoid abuse of these laws seem vital to prevent further vilification of certain religious communities. The Special Rapporteur is concerned that such legislation might be perceived as giving some moral standing to those who wish to stir up mob violence. She would like to emphasize that the right to adopt a religion of one's choice, to change or to maintain a religion is a core element of the right to freedom of religion or belief and may not be limited in any way by the State. She also reiterates that peaceful missionary activities and other forms of propagation of religion are part of the right to manifest one's religion or belief, which may be limited only under restrictive conditions.**

71. **The Special Rapporteur would like to recall the recommendation by the Committee on the Elimination of Racial Discrimination (A/62/18, para. 179) to restore the eligibility**

for affirmative action benefits of all members of Scheduled Castes and Scheduled Tribes having converted to another religion. The Special Rapporteur recommends that the Scheduled Caste status be delinked from the individual's religious affiliation.

72. **With regard to religion-based personal laws, the Special Rapporteur would like to recommend that such laws be reviewed to prevent discrimination based on religion or belief as well as to ensure gender equality. Legislation should specifically protect the rights of religious minorities and of women, including of those within the minority communities.**

73. **In order to protect and empower members of religious minorities, the State should be proactive and take appropriate measures against all forms of intolerance and discrimination based on religion or belief which manifest themselves in school curricula, textbooks and teaching methods as well as those disseminated by the media and the new information technologies, including Internet. Also in line with the Final Document of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination (E/CN.4/2002/73, appendix), the Government should favourably consider providing teachers and students with voluntary opportunities for meetings and exchanges with their counterparts of different religions or beliefs as well as facilitating educational study abroad. Furthermore, specific education components on mass media could be envisaged in order to help the students to select and analyse the information conveyed by the mass media concerning religions and beliefs.**

74. **Finally, the State, non-governmental organizations and all members of civil society are encouraged to join their efforts with a view to taking advantage of the media and cultural institutions to provide the individual with relevant knowledge in the field of freedom of religion or belief. In this regard, setting up educational institutions for the whole South Asian region or encouraging joint movie productions might contribute to strengthening peace, understanding and tolerance among individuals, groups and nations.**
