

## United Nations Special Rapporteur on freedom of religion or belief, Nazila Ghanea

*Preliminary observations and recommendations*

*Dushanbe, 20 April 2023*

I carried out an official country visit from 11 April to 20 April 2023, upon the invitation of the Government of Tajikistan. I thank the Government for the invitation extended to me, particularly during the Holy Month of Ramadan, and the cooperation shown to enable me to carry out this official visit. My delegation and I were made to feel very welcome by the people of Tajikistan, indeed on many fronts it felt like arriving home from home.

This is my first country visit since taking up my mandate. During the visit, I have met government officials from various ministries, including the Ministry of Foreign Affairs, the Office of the President, the Ministry of Justice, the Ministry of Interior, the Ministry of Education and the Ministry of Culture. I have also met representatives of the Parliament, Supreme Court, General Prosecutor’s office, State Committee on Religion, Regulation of Traditions, Celebrations and Ceremonies, Committee on Women and Family Affairs, Centre for Strategic Studies, Council of Ulema and Centre of Islamic Studies as well as the Commissioner for Human Rights (Ombudsman). I was also able to visit a prison where so-called party prisoners, a term used to refer to prisoners who have been sent to prison on political and religious charges, are detained. I have met the UN Resident Coordinator and other members of the UN country team, members of the diplomatic community based in Dushanbe and with regional and international human rights organizations.

During my visit, I also met representatives of religious associations and communities and faith-based actors, members of non-governmental organizations (NGOs), human rights lawyers, journalists and scholars. In addition, I had the pleasure of delivering a lecture on the international human rights system, with a particular focus on freedom of religion or belief, at the Tajik National University, as part of the commemoration of the 75th anniversary of the Universal Declaration of Human Rights (Human Rights 75 Initiative).

The rich culture of the Republic of Tajikistan at the crossroads of civilisations over the centuries is visible in the wonderful diversity of its population. Government laws, policies and practices in the field of religion or belief today are impacted by broader geopolitical, strategic, security and economic concerns facing the country. The situation in Afghanistan after the return of the Taliban to power and the joint 1,400 km shared border with that country, relations with Russia after the war in Ukraine, tensions with Kyrgyzstan and economic cooperation with China are often mentioned by the authorities as factors that deeply impact national concerns.

The Republic of Tajikistan is established as a secular state (Constitution, as adopted on 6 November 1994 and amended on 26 September 1999, 22 June 2003 and 22 May 2016, article 1) and freedom of religion or belief is upheld in article 26 of the constitution. It states: “Everyone shall have the right freely to determine his position toward religion, to profess any religion individually or jointly with others or not to profess any and to take part in religious customs and ceremonies.”

One cannot say that freedom of religion or belief is totally absent in Tajikistan. There is a spectrum of treatment being experienced by both Muslims and non-Muslims. Some have sufficient scope for it to cater for most of their claims, others find an adequate fit within its directed parameters. Regardless, the spectrum of the enjoyment of freedom of religion or belief falls alarmingly short of the scope of guarantees in international human rights law, as the country is bound by, under the ICCPR and other international human rights instruments.

**Regulated scope**

What drives this highly regulated scope for freedom of religion or belief is an almost singular overarching driveto address violent extremism and terrorism. In conversations with the authorities the terms extremism and terrorism were regularly used interchangeably and questions regarding the former were often responded to in reference with the latter. A notable exception to this was during my meeting with the General Prosecutor’s office.

**The triple constraints of Extremism, Terrorism and Incitement**

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

In December 2021, Tajikistan adopted a Law on Combating Terrorism, which superseded the 1999 counterterrorism law. The law defines basic counterterrorism principles and establishes Tajikistan’s legal and organizational framework for counterterrorism efforts. Both this law and the Criminal Code offer an overbroad and ambiguous definition of “terrorist actions”, “terrorist crimes”, and "terrorist organizations". These include imprecise terms such as “the creation of a danger of harm to the life, health or property”, “dissemination of threat in any form and by any means”, “significant damage to property” and “socially dangerous consequences” and the “destruction (damaging) of or threat to destroy (damage) property and other material objects of individuals and legal entities”. The definitions do not meet the threshold of seriousness required for such acts, notably that the intent is to cause death or serious bodily injury. Article 4 of the counterterrorism law defines a "terrorist organization" as "an organization established for the purpose of carrying out a terrorist activity or which considers the possible use of terrorism in its activity". This provision criminalises activities that have not yet been committed in contravention of article 15 of the International Covenant on Civil and Political Rights (ICCPR). The overly broad definition of terrorist organizations has had practical implications, including in relation to the ever-growing [list of banned groups](https://nbt.tj/upload/iblock/32d/shahsoni_huquqi.pdf).

The objective of urging respect and tolerance to all religions and beliefs is a worthy one (2009 Law on Freedom of Conscience and Religious Associations). However, I wish to underline that legal provisions addressing incitement must be in line with the ICCPR (articles 19 and 20) and consider the guidance set out in the 2012 Rabat Plan of Action. The policy framework for combatting religious intolerance, stigmatization, discrimination, incitement to violence and violence against persons based on religion or belief, outlined in UN Human Rights Council resolution 16/18 and its follow up action plan in the Istanbul Process, would also greatly enrich Tajikistan’s laws and policies in this area and bring them in line with international standards.

The evidentiary requirements and threshold for incitement need to be clear in the law and strictly applied in conformity with human rights standards including due process. The UN Human Rights Committee has expressed serious concerns in this regard, and the mandate underscores the dangers that flow from this to freedom of religion or belief. (CCPR/C/135/D/2483/2014, para. 9.5).

The mandate welcomes the fact that the punishment for incitement for first time offenders was reduced to a fine. In the process of harmonizing its laws and policies in line with international human rights standards, this reduction of punishment is a good practice that should be more widely applied. The opportunity should also be taken to ensure that criminal punishments as well as penalties be made proportional and commensurate to the gravity of the crimes.

Article 8 of the Constitution of Tajikistan insists that “the Ideology of any party, social and religious association, movement and a group shall not be recognized as a state ideology.” “Religious organizations shall be separate from the state and shall not interfere in state affairs.” It then goes on to address the prohibition of the establishment and activity of “public associations and political parties which encourage racism, nationalism, social and religious enmity, and hatred, as well as advocate the forcible overthrow of the constitutional state structures and the formation of armed groups”. The Constitution also prohibits establishment of religious political parties.

This cluster of concerns around religious organizations and movements, religious enmity and the forcible overthrow of constitutional state structures, and political parties and armed groups acting against nationalism and religious hatred, can only be understood in the light of the civil war of 1992-1997 in Tajikistan. The shadow of that civil war looms very large over the current laws and practices in Tajikistan relating to freedom of religion or belief and serves to strike a heavy blow to it. Scope needs to be offered to freedom of religion or belief in Tajikistan. The imagination of the authorities regarding the positive contributions of religion or belief to a harmonious and rich public life need to grow in appreciation. Religion or belief do not in themselves pose severe risk factors to societal life, they can serve as active contributors to development, peace and understanding.

**Private sphere**

The authorities regularly describe freedom of religion or belief as an individual and private freedom. Everyone is free, it is argued, to believe what they want and worship and practice that in the privacy of their own home along with their immediate (but not extended) family - there is no interference whatsoever in this sphere. This highly impoverished understanding – that freedom of religion or belief entails an individual and private freedom, and that all beyond this should be understood as a bonus not a right – falls short of the constitutional guarantee that ‘everyone’ shall have the right to “profess any religion individually or jointly with others or not to profess any and to take part in religious customs and ceremonies” (article 26). This strongly selective application of the right to freedom of religion or belief reduces it to its ‘forum internum’ and results in the violation of many other aspects of the right.

**Manifestation**

Freedom of religion or belief does not allow any limitation whatsoever to the right to have, adopt and change religion or belief. There is adamance that this aspect of the right is the *objective* of the efforts and protections of the governmental authorities. I want to turn attention to manifestation of religion or belief, including in public and along with others, as upheld in article 18.1 of the ICCPR. The indicative scope of manifestation is worship, observance, practice and teaching. The “broad range of acts” that manifestation includes is provided for by the UN Human Rights Committee in paragraph 4 of its general comment 22. It includes: “ritual and ceremonial acts giving direct expression to belief, … building of places of worship, … the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, … the freedom to choose…religious leaders, priests and teachers, the freedom to establish seminaries or religious schools, and the freedom to prepare and distribute religious texts or publications.” It is elaborated yet further in article 6 of the 1981 Declaration on All Forms of Intolerance Based on Religion or Belief.

Whilst freedom of religion or belief *can* be limited, this can only be so “as prescribed by law” and “necessary to protect public safety, order, health, or morals and the fundamental rights and freedoms of others” (ICCPR, 18.3). Limitations must also be proportionate, through the least intrusive and restrictive measure possible, and non-discriminatory. The authorities widely shared the misguided belief that, in fact, manifestation can be limited on the grounds of national security, but this is explicitly not the case. Neither can it be subject to derogation in times of public emergency that threaten the life of the nation according to the explicit text of article 4.2 of the ICCPR.

1. Worship

The law elaborates that “Friday cathedral [Grand] mosques can be established in areas where population varies from 10,000 to 20,000 people… Five-time prayer mosques can be established in the areas where population ranges from 100 to 1,000 inhabitants.” What this means in practice is that local Muslim men may, at best, be able to attend local mosques for daily prayers but have to travel long distances for the Friday prayer. In effect, this puts the possibility of congregational Friday prayer out of the reach of large swathes of the population, imposing on them private practice of this congregational prayer. From this can be observed the heightened fear of the Friday sermon. Authorities suggested that the pay that Imam khatibs (Imams who offer the Friday sermon) are given through State channels is informal and low, so it should not be considered a salaried post. They therefore contested that Imam khatibs can be considered government civil servants. However, there is no question that the text of the Friday sermon is passed to Imam khatibs to read along with any Presidential announcements that are to be shared. The number and regulation of mosques and other places of worship throughout the country leads to severe restrictions on the freedom to manifest religion or belief through worship. Thousands of mosques have been rejected and closed through the approval process of the State Committee for Religious Affairs and Regulation of Traditions, Ceremonies and Rituals. Restrictions on places of worship also strongly impact other religion or belief communities. Surveillance, imposed reporting and intrusion, apply across the board to all but can have a disproportionate and disparate impact on religion or belief minorities.

1. Traditions, Celebrations and Rituals

Various officials highlighted to me that the 2018 Amendment to the Law on Regulating Traditions, Celebrations, and Rituals established new rules for conducting weddings, funerals, and celebrations of childbirth in order to prevent excessive spending on family celebrations and festivities. Violations of this Law are recognized as misdemeanours and prosecuted by heavy fines. Whilst encouraging financial responsibility among populations is worthy, I note with concern that events should be conducted in the state language, which is Tajik, and people should “demonstrate respect for the national dress,” including Islamic religious attire. This can result in restrictions on the use of minority culture and practice (in violation of article 27 of the ICCPR).

**Impact of the extensive limitations on manifestation imposed on various sections of society:**

1. Women

A variety of dress and headdress (hijab) codes are used by women and girls in public places, but particular types of headdresses are prohibited and restricted as being indicative of extremism or belonging to banned extremist or terrorist groups. Civil servants cannot wear these head and face coverings, and women may be restricted from wearing it when entering kindergartens, schools, universities, hospitals or other governmental buildings. Some authorities rejected that there was any law or regulation prohibiting this and couched it as this ‘not being our custom’ emphasizing the need to maintain Tajik traditions and customs. Reports confirm that it is enforced though there are ‘seasons’ of stricter and more lenient enforcement. This runs counter to the protection of manifestation of freedom of religion or belief since it cannot be proven that, in every single instance, the limitation was in accordance with international human rights law.

Women do not have the possibility to pray in the mosques. Explanations of this vary from ‘it is not our custom as Hanafi Sunni Muslims’, to ‘since children are not allowed in mosques, then women stay at home to look after them’. Irrespective, it is not possible, though women can enter a mosque outside prayer times as visitors. An exception to this is in the case of Ismaili mosques (called ‘jama’at khaneh) where the practice allows women and men to pray alongside one another in separate columns. However, the largescale closure of Jama’at khanehs leaves only two such places of worship in Tajikistan, one in Khorog and another in Dushanbe, some 600 km apart and absolutely impossible to cater for the over 3% of the population that are Ismailis.

1. Children and Youth

The authorities reported that children in grade 9 of the education system receive 36 hours of education regarding the history of religion. And in the first year of university, students receive approximately the same hours of mandatory religious education classes, this time more focused on the philosophy and teachings of religions, with textbooks produced by the Ministry of Education in collaboration with the Committee on Religious Affairs. There was no evidence that the religious groups concerned had been consulted as to the content that related to them in these texts, as would be merited by article 27 of the ICCPR.

The concern about children and youth being attracted to extremism and terrorism is given as the rationale for three exclusions. The first is the prohibition of boys under 18 from entering the mosque (2011 Law on Parental Responsibility). The second is the prohibition of all those under 18 participating in any religious events apart from funerals. And the third is the prohibition on children receiving any religious education outside the home and from their parents. The only alternative to this is to receive religious education in specific places licensed for such a purpose by the Committee for Religious Affairs, by a person licensed to provide such education and with the explicit permission of the parents. Our understanding is that no madrassahhas been able to meet the Ministry of Education’s requirements regarding the authorization of a religious organization, qualified teachers according to the authorities and an approved curriculum; though the law allows Grand mosques to create groups for educational purposes.

The effect of this is a severe control of the freedom of religion or belief of children (under 18s). Freedom of religion or belief in international human rights law is for ‘everyone’ including children. The Convention on the Rights of the Child (CRC) itself respects the “right of the child to freedom of thought, conscience and religion” (article 14), and only subjects this to the same limitations as those recognized in article 18.3 of the ICCPR. The CRC also gives explicit recognition to the importance of the spiritual well-being development of the child (articles 17, 23.3, 27.1 and 32.1). This is reinforced by the recognition given to parents and legal guardians to ensure the religious and moral education of children in conformity with their own convictions and provide direction to this (articles 18.4 ICCPR, 14.2 CRC). In Tajikistan, this has largely been reduced to provision in a private home by the nuclear family, with the Committee on Religious Affairs informing us that parents may only teach religion to their children at home provided they express a desire to learn. This weighs particularly heavily on persons belonging to religious and belief minorities, as their ability to maintain their culture and religion is even more challenged.

Some expressed serious concerns that this restriction of Islamic religious education in particular forces it underground and has the counterproductive impact of pushing curious minds to the internet making them more prone, out of curiosity, to extremism and terrorism than if the matter were dealt with openly. The authorities themselves share concerns regarding Tajiks who have become attracted to extremism or terrorism whilst working abroad and list the countries where they have committed crimes. They do so without any acknowledgement of the fact that these persons may have been rendered more vulnerable to being attracted to these activities because of their closed educational upbringing not allowing them to protect themselves from such tendencies. Instead, they put this forward as evidence that Tajikistan’s approach protected them but that they were put at risk once they left the country. Some authorities suggested that this policy may be under review, and that these educational pilots may be extended. What remains is the severe curtailment of religious education to children in Tajikistan and even the extension of this control to adults, since even they need the permission of the Committee on Religious Affairs and the Ministry of Education to receive religious education outside Tajikistan (2018 Amendments to the Law on Freedom of Conscience and Religious Associations).

1. Prisoners

My delegation visited Vahdat Prison 3/1, also referred to as the New Colony, where prisoners who have been sent to prison on political and religious charges, are detained jointly with others charged and convicted on other charges. Vahdat Prison is sectioned into 10 units composed of two parts for 50 prisoners each. The prison capacity is 1,500 and it has 13 mosques. The shaving of beards, and heads, occurs on arrival in the prison and then on a weekly basis. Prisoners are prohibited from praying anywhere except in the mosque and they receive penalties, including by being sent to isolation or punishment cells for approximately 10 to 15 days, if they defy these internal prison rules and regulations. The surveillance of religious practice extends from outside prison to inside. I will elaborate further on the issue of fair trial, reported impunity for torture and conditions of detention in my full report to the Human Rights Council.

1. Religious or belief minorities

Although Tajikistan is a secular state, there is a special place in public life and policy regarding the Hanafi Islamic school of thought, which is recognized as having a special role in the development of the national culture and spiritual life of the people of Tajikistan (2009 Law on Freedom of Conscience and Religious Associations). All others have to register.

The first thing to note is the long list of banned movements and groups, to which there may be further additions made at any time. Other religious groups and organizations need to apply for registration to the Committee on Religious Affairs. This Committee reported that 66 non-Muslim groups and two Muslim groups are recognized in the country, and we became aware of at least one group who is seeking re-registration and one that is seeking to be registered for the first time. Registration can only be withdrawn by a judgement of the Supreme Court, and then reinstated again by its judgement. Application for re-registration has proven very cumbersome and difficult. This ‘regulation’ of relations between the State and religious associations (2009 Law on Freedom of Conscience and Religious Associations) is highly restrictive and has a chilling impact on the environment of freedom of religion or belief.

Several sources noted that registered groups are required to report annually on any financial transfers and all of their activities. Another source noted that further information has only been required to be sent in whenever there is a key change of circumstance, such as the address of the organization for example. This is another instance where the application of the law is not always strictly followed up across different groups across the country.

1. Conscientious objectors to military service

In July 2022, Tajikistan enacted its first ever antidiscrimination law (Law on Equality and Elimination of All Forms of Discrimination). The law prohibits both government and private citizens from discriminating against individuals on enumerated grounds. I was informed that Tajikistan is in the process of harmonizing legislation with the new law and conducting awareness raising and other activities to implement the law. However, there are many instances in which discrimination is rife and religious accommodation almost completely absent.

Just one instance of this relates to the refusal to recognise conscientious objection to military service and provide for an alternative service. In fact, Jehovah’s Witnesses had their registration withdrawn due in large part to their refusal to perform military service. In light of the UN Human Rights Committee Views on a case relating to this matter – where violations were found to article 18.1 and 22.1 of the ICCPR (CCPR/C/135/D/2483/2014, para. 11) – Jehovah’s Witnesses asked for a review of the decision and the matter was before the Dushanbe Military Court.

The Military Court hearing was scheduled for Friday 14 April with very short notice, but this was adjourned at the request of the applicant to allow for proper representation, until Monday 17 April. Given that the delegation was travelling, I asked one member of the UN country team to attend the hearing. Unfortunately, observers were not allowed in, despite the interest in observing the case having been evident from the previous week. The motivation part of the decision will not be available for another few days. I urge the authorities to introduce an alternative to military service for conscientious objectors and to not penalise Jehovah’s Witnesses on this ground(CCPR/C/135/D/2483/2014).

**Gorno-Badakhshan Autonomous Oblast (province) (GBAO)**

Following numerous reports on the recent events from November 2021 onwards in GBAO and upon receipt of the special permission required, the team left Dushanbe for GBAO from 15 to 18 April 2023. I very much regret that the authorities did not facilitate official meetings and we were unable to meet with them. This is most unfortunate.

We reached out to a range of religion or belief communities and faith-based actors in GBAO. There was a widespread reluctance to speak and a fear of reprisals. We had first-hand information on the region that was cross checked and strongly confirmed through direct observation on the ground. According to tens of sources, the State Committee on National Security has recently invited heads of some 128 local NGOs to a meeting in GBAO and persuaded or forced them to “voluntarily self-liquidate”. More than 30 of those NGOs, even those working with children, suspended their activities, and more than 10 NGOs have self-liquidated under the pressure. The Ministry of Justice must urgently respond to these reports and reverse this pressure. A vibrant civil society and the operation of independent bodies in wider society and especially in places where there is a larger concentration of persons belonging to minorities, is essential to human rights, including freedom of religion or belief.

**Conclusion**

The mandate does not deny that violent extremism and terrorism constitute a serious concern with respect to human rights violations that may be carried out in the name of religion or belief. As such, countering violent extremism and terrorism *can* constitute legitimate grounds for limitations to manifestation of freedom of religion or belief. However, this needs to be carried out in a manner that does not risk extinguishing the right to religion or belief itself. In Tajikistan, this balance has not been struck in a way that fully upholds freedom of religion or belief.

I have welcomed some positive signs. One is the reduction of the penalty for incitement. Another is the initiative towards the Draft National Human Rights Strategy of the Republic of Tajikistan up to 2030 and its Action Plan. A third is the recognition of indirect discrimination and accommodation in the antidiscrimination law, though to date I saw no evidence of the application of this to practice regarding freedom of religion or belief.

I urge the authorities to re-examine each of the areas that I have outlined above and widen the scope of enjoyment of manifestation of freedom of religion or belief. The authorities’ pursuit of security does not stand at loggerheads with freedom of religion or belief. Quite the contrary. Widening the scope of freedom of religion or belief will lend to the confidence, the vibrancy and the conviction of the people in Tajikistan in both their unity and diversity, and protect them from any vulnerability to find appeal in those that call for violations in the name of religion or belief.

I will submit my report, containing my full observations and recommendations from my visit to Tajikistan to the UN Human Rights Council in March 2024. Recommendations will include those around upholding freedom of religion or belief whilst countering terrorism and preventing violent extremism; sharpening laws and practices regarding terrorism and violent extremism; dealing with any advocacy of hatred that constitutes incitement to discrimination, hostility or violence in line with the ICCPR and soft law instruments; encouraging the reduction if not the elimination of criminal punishments that overlap with freedom of religion or belief and ensuring that criminal punishments and penalties be made proportional and commensurate to the gravity of the crimes; emphasising the need to uphold the full scope of manifestation of freedom of religion or belief including for women, children and youth, prisoners, religious and belief minorities and conscientious objectors to military service; religious education; fair trials and due process; and being mindful of State obligations with respect to maintaining an open civic space in which freedom of religion or belief can flourish for the benefit of all.

I count on the continued cooperation of all relevant authorities in my follow up and stand ready to be of any assistance in advancing these objectives.

Thank you.