

20 March 2014

KAZAKHSTAN: Religious freedom survey, March 2014

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Before the 2014 UN Universal Periodic Review (UPR) of Kazakhstan, and the 26 March - 6 April visit of UN Special Rapporteur on Freedom of Religion or Belief Professor Heiner Bielefeldt, Forum 18 News Service's religious freedom survey notes continuing violations of freedom of religion or belief and related human rights. Violations include: making the exercise of human rights conditional upon state permission; systematically increasing the range of possible "offences" people can be punished for if they exercise freedom of religion or belief and related human rights; officials routinely violating the rule of law with impunity; closing down independent mosques, and continuing to seek to close other smaller religious communities; censorship of religious literature and objects, including severe limitations on the numbers of premises where such literature and objects can be distributed; the misuse of psychiatry against people the authorities dislike; and exit bans and jailings imposed on those refusing to pay fines for exercising freedom of religion or belief without state permission.

Before the October-November 2014 UN Human Rights Council Universal Periodic Review (UPR) of Kazakhstan, and the 26 March - 6 April visit of UN Special Rapporteur on Freedom of Religion or Belief Professor Heiner Bielefeldt, Forum 18 News Service's religious freedom survey notes continuing violations of freedom of religion or belief. Also violated are intrinsically linked rights such as the freedoms of expression, assembly, and speech. This survey concentrates on the most important freedom of religion and belief violations Forum 18 has documented from the latest Religion Law coming into force in October 2011 until March 2014.

Serious violations Forum 18 has documented include: making the exercise of human rights conditional upon state permission; systematically increasing the range of possible "offences" people can be punished for if they exercise freedom of religion or belief and related human rights; officials routinely violating the rule of law with impunity; closing down independent mosques, and continuing to seek to close other smaller religious communities; censorship of religious literature and objects, including severe limitations on the numbers of premises where such literature and objects can be distributed; the misuse of psychiatry against people the authorities dislike; exit bans and jailings imposed on those refusing to pay fines for exercising freedom of religion or belief without state permission; and co-operation with other states which seriously violate human rights.

Kazakhstan's basic approach is to make the exercise of human rights conditional upon state permission, as a means of state control of society, flagrantly breaking its binding international human rights obligations. In the area of freedom of religion and belief this is seen in, among other things, imposing compulsory registration of religious or belief groups and the banning of all unregistered religious activity.

Fear within Kazakhstan of expressing views the government dislikes has increased in recent years. Forum 18 was told in early 2014 that fear of the consequences of criticising the government has caused some religious communities to decide not to participate in the UN Human Rights Council Universal Periodic Review, and to decide not to meet the UN Special Rapporteur on Freedom of Religion or Belief on his visit.

Context

Kazakhstan is geographically the largest country in Central Asia, and has the second largest population with nearly 18 million people. Roughly half the population are ethnic Kazakhs (regarded as being of Muslim background) and the rest are made up of ethnic Uzbeks (likewise of Muslim background), Slavs (mainly Russians and Ukrainians, many of Russian Orthodox or other Christian background) and smaller minorities of Koreans, Germans and Poles. Kazakhstan's economy has been the strongest in the region, buoyed by its oil and gas reserves, attracting migrants from its poorer neighbours.

Nursultan Nazarbaev has ruled Kazakhstan since 1989 when it was part of the Soviet Union. Elections have been repeatedly criticised as neither free nor fair by Organisation for Security and Co-operation in Europe (OSCE) election observers. In the last 2011 presidential election, Nazarbaev claimed to have gained over 95 per cent of votes. His Nur Otan political party has long provided the overwhelming majority of deputies in the Majilis (lower chamber) of Parliament.

Kazakhstan is a member of the Council of Europe's Commission for Democracy through Law, or Venice Commission. But this has

not led to implementation of the country's human rights obligations. Indeed, it applied for full membership of the Venice Commission the same day (11 October 2011) President Nazarbaev signed two laws violating international human rights commitments. These were a new Religion Law and an Amending Law amending nine other laws and legal provisions (see below).

As human rights defender Nazgul Yergalieva of the Legal Policy Research Centre observed to Forum 18 at that time, "strict regulation and limitation of fundamental rights, such as freedom of religion, by governments has already proved to be a dangerous path, leading to social tension and resentment".

Tolerance?

The government attempts to publicise its alleged "religious tolerance", for example in "Congresses of leaders of world and traditional religions". Revealingly, an employee of the state Agency of Religious Affairs (ARA) (which plays a key role in running Congresses) described the May 2012 meeting to Forum 18 as being "for foreigners".

One participant in a Congress planning process described these - in a confidential conversation - as prepared "in Soviet style top-down fashion". A secular guest from a well-known international organisation, invited by the Kazakh government, described - in a confidential conversation - their surprise that President Nazarbaev attended most of the Congress, and what they described as their "horrified amazement" when they witnessed religious leaders present - including prominent foreign religious leaders - ignoring fundamental human rights violations within Kazakhstan, as well as the indissoluble links between tolerance and human rights.

The rule of law?

Article 4 of Kazakhstan's Constitution states: "International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law." Article 2, Part 2 of the Religion Law states that in cases where an international agreement signed by Kazakhstan exists, this overrides other provisions of the Religion Law. If this and the Constitution's Article 4 were implemented, most of the Religion Law and other laws would be abolished, including demands for compulsory prior state permission to exercise human rights.

Those subjected to violations of their internationally recognised human rights frequently complain that trials are conducted unfairly, law seemingly being used to provide officials with excuses to engage in oppression. Officials do not appear to see law as imposing restraints on their actions. Indeed, the interlocking nature of violations of freedom of religion or belief and inseparably linked human rights appear designed to impose total state control on all of society.

Even if officials admit they acted unlawfully - as Adil Togayev, Director of Almaty Regional Land Inspectorate did in May 2012 in relation to a fine imposed on the wife of the pastor of a forcibly closed Methodist Church - there is no guarantee of redress. Officials have refused to admit that similar fines and bans - for example bans on Ahmadi Muslims meeting - are also illegal. No official Forum 18 has spoken to has been prepared to discuss what disciplinary or other action will be taken against officials who break domestic laws or international human rights law.

Officials routinely deny human rights violations. President Nazarbaev claimed on 17 April 2013 to visiting Finnish President Sauli Niinistö that "Kazakhstan is an example to the world of equal rights and freedoms for all citizens" and that "religious freedom is fully secured".

Steadily increasing restrictions and violations

The authorities have long been increasing their "legal" instruments of repression. On 5 September 2011 a new Religion Law, and an Amending Law changing nine other laws and legal provisions including the Administrative Code were introduced into the parliament. Both were adopted very quickly, despite strong criticism from national and international human rights defenders, being signed into law by President Nazarbaev on 11 October 2011.

These laws were foreshadowed by raids on and punishments for meeting for worship without state permission by the police and National Security Committee (KNB) secret police. Prominent in these measures were state-funded so-called anti-sect centres, and attacks by officials on so-called "non-traditional" beliefs, which members of many religious communities state encouraged public hostility through statements in the state-controlled national and local media. Communities targeted included Hare Krishna devotees, Jehovah's Witnesses, and Protestants, described as "destructive religious movements". Also Ahmadi Muslims in the southern city of Shymkent had their community closed by the authorities. One Ahmadi suggested to Forum 18 that the "anti-sect" campaign was intended to prepare the ground for the two restrictive laws.

Officials of the ARA, the Muslim Board, and regional authorities also in August 2011 - during Ramadan - re-started earlier demands that independent legally registered mosques join the government-supported Muslim Board, although the National Security Law banned state interference in religious communities. One imam faced telephone demands "almost every day several times" that his mosque give up its independence. Another Imam was threatened that independent mosques will not be re-registered after - not if - a new Religion Law was adopted. Karaganda regional ARA Director Serik Tlekbayev claimed to Forum 18 that "they are not real

Imams".

Many in Kazakhstan were fearful of expressing their opposition to the laws in public, Forum 18 notes. Fear of expressing views critical of the state has increased since 2011. We are "very much followed by the KNB secret police" a member of one religious community - who wished to remain anonymous for fear of state reprisals - commented on this in early 2014.

"Terrorism"?

The authorities often associate the victims of freedom of religion or belief violations with words with negative overtones. Officials defended the 2011 laws restricting freedom of religion or belief as being needed as counter-terrorism measures.

In another example, January 2013 raids on Baptists refusing to seek state permission to exercise freedom of religion or belief were led or instigated by police Departments for the Struggle against Extremism, Separatism and Terrorism. North Kazakhstan Regional Police described the raids as "operational/prophylactic activity to counter manifestations of religious extremism and terrorism".

Media attacks on allegedly "non-traditional" beliefs and the use of state-funded "anti-sect" centres in attacks on people exercising freedom of religion or belief continue. This undermines social acceptance of Kazakhstan's diversity of ethnic groups and beliefs.

More repressive laws to come?

The "legal" mechanisms used to justify official violations of freedom of religion or belief may be added to. A new Criminal Implementation Code (which includes a draft provision banning prisoners from having any uncensored religious literature), a new Criminal Code, a new Code of Administrative Offences and a new Criminal Procedure Code are all now [March 2014] in preparation. They are currently planned to be adopted in 2014 and take effect from January 2015.

[All three new Codes were signed into law in July 2014, to take effect from 1 January 2015. For changes to the Criminal Code see F18News 9 July 2014 <http://www.forum18.org/Archive.php?article_id=1976>, and for changes to the Administrative and Criminal Procedure Codes see F18News 21 July 2014 <http://www.forum18.org/Archive.php?article_id=1979>.]

Current main "legal" justifications for repression

The current March 2014 main "legal" justifications of state violations of freedom of religion or belief are the Religion Law and the Administrative Code. Their main relevant provisions are outlined below.

The Religion Law

Compulsory re-registration

All religious communities were required under Article 24 to apply for re-registration - state permission to exercise freedom of religion or belief - by 24 October 2012. Failure to be re-registered led to many communities being forcibly closed (see below).

Complex registration system

Article 12 identifies four kinds of registration: national, regional, local and unregistered. All activity by those categorised as unregistered is banned. Local and regional organisations are only allowed to conduct activity in the geographic area they are registered in.

The three categories of registered religious organisations are allowed to teach their faith to their own members. However, only regional and national registered religious organisations are allowed, under Article 13, Part 3, to train clergy in institutions established - with state permission - by religious organisations. Under Article 13, Part 3, they are allowed to establish "professional educational programmes to prepare clergy". It remains unclear whether religious education not involving training of clergy will be allowed.

Geographic area and training of clergy appear to be the main differences between the three permitted types of religious organisations. Regional and national organisations must register with the Justice Ministry in the capital Astana. The system may have been designed to ensure that only the Muslim Board and the Russian Orthodox Church are able to gain top-level, national registration.

- Unregistered activity banned

Article 3, Part 11 bans all unregistered exercise of freedom of religion or belief. Communities which are unable to register, or which - like independent mosques and congregations of the Baptist Council of Churches - do not wish to seek state registration face punishment for any exercise of freedom of religion or belief.

- Local organisations

Under Article 12, Part 2, local religious organisations need at least 50 adult citizen members within one region of the country or main town, and must register with the local Justice Department.

- Regional organisations

Under Article 12, Part 3, regional religious organisations need 500 adult citizens belonging to at least two different registered local religious organisations (each with at least 250 adult citizens) located in two different regions or main towns. The regional organisation is only allowed to function in the areas where its local member organisations are based.

- National organisations

Under Article 12, Part 4, national religious organisations need at least 5,000 adult citizens from all regions of the country, the capital and all major towns (with at least 300 members in each of those territories). It also needs branches all over the country.

Article 15, Parts 5 and 6 require a national religious organisation to gain local registration of all its branches and provide the Justice Ministry with proof of this within one year, if it wishes to retain its registered status.

Article 15, Part 4 requires applications to register a regional religious organisation to present a full list of the founders of local religious organisations whose members are founding the regional organisation.

What is needed for registration?

Registering a religious organisation requires a statute adopted at a meeting attended in person by all the adult citizen founders, according to Article 13, Part 1. Founders can attend only "at their own request", but it is unclear who determines this. A religious organisation must have "a united faith; the carrying out of religious rites, ceremonies and preaching; religious education of its followers; and spiritual orientation of its activity".

Many of the terms used in both the laws - such as "a united faith" - are unclear and undefined. This leaves open the possibility of arbitrary official definitions and actions against groups which officials dislike.

Article 14 requires religious organisations to include the religious faith in the name and bans the name from using terms already used by another registered community.

Under Article 15, all the founders of a religious community must present their full details to the registering body, which is empowered to check them. This seems designed to intimidate potential founders of religious communities the government dislikes.

Article 16, Part 3 requires each organisation's statute to explain "the fundamental religious ideas, forms of activity of the religious association, particularities of its attitude to marriage and the family, education and health of the participants (members) of the given religious association and other people, and attitude to the realisation of the constitutional rights and obligations of its participants (members) and officials". It remains unclear how extensive this information has to be, why checking beliefs (not permitted in this context by international law) is required, and how state officials determine whether any of these explanations are adequate or not.

Article 15, Part 3, requires that copies of publications "revealing the emergence of and bases of the faith and containing information on the religious activity linked to it" are presented with registration applications.

Article 16 requires each organisation's statute to specify the geographic territory it operates in.

Basis for state refusal to register a group

Article 17, Part 1 states: "State registration of religious associations and state registration of their structural subdivisions (branches and representative offices) shall be refused in accordance with the laws of the Republic of Kazakhstan when the information contained in the charter and other documents is false, and/or if the created body is not recognised as a religious association on the basis of [state] religious examination."

Part 2 states that "Appeals against denials of registration may be made in court."

Suspension, closure, and restructuring of groups

Article 18, Part 1 states that: "Reorganisation of religious communities may be carried out in accordance with the laws of the Republic of Kazakhstan by way of merger, union, division, transformation, and separation by the decision of the body authorised by

the constituent documents of a religious association, or by court order. A religious association can only be transferred to another religious organisation or a private institution. Organisations formed as a result of the reorganisation of religious associations may be registered as religious organisations if they comply with the requirements of this Law."

Part 2 states that: "Suspension of operations and disbandment of a religious association shall be carried out in accordance with the laws of the Republic of Kazakhstan."

Implementation of the registration process - described by many religious communities as "complex", "burdensome", "arbitrary", "unnecessary" and "expensive" - is dealt with in a separate section below.

Censorship

The Religion Law claims everyone has the right to acquire and use "religious literature, other informational materials of religious content, and objects of religious significance at their own discretion". However, distribution is permitted, according to Article 9, Part 2, only in registered places of worship, approved religious education institutions and "special stationary premises determined by local executive authorities" (Akimats).

Article 5, Part 7 requires Akimats to name local "special stationary premises" (bookshops) they have inspected and approved to sell religious literature and other materials such as icons. Other bookshops and similar places are banned from selling religious literature and other materials.

Article 9, Part 3 requires that all imports of "informational materials of religious content" - apart from unspecified small quantities for personal use - be done only by registered religious organisations with prior approval from the ARA, which has to conduct an "expert analysis" of each title.

Article 9, Part 4 requires each work to have the "full name" of the registered religious organisation which produces or distributes it, apparently preventing individuals or other organisations producing such material.

ARA "expert analyses" are required for all imported "religious literature" or "other informational materials of religious content", and for any religious literature (imported or not) acquired by any library. The exact terms of this requirement are unclear. "Objects of religious significance" can include Koran stands, crosses, crucifixes, icons and religious clothing.

All "spiritual (religious) educational programmes" are also, under Article 6, Part 2, subject to an "expert analysis".

"Religious studies experts", as well as "when necessary" state officials, conduct such "expert analyses" on behalf of the ARA.

Censorship, including the strict controls on who can sell religious books and materials where, is also dealt with in a separate section below.

Restrictions on where meetings happen

Article 7, Part 2 states that: "Worship services, religious rites, ceremonies, and/or meetings may be freely carried out in religious buildings and their assigned territory, in places of worship, offices and premises of religious associations, in cemeteries and in crematoriums, and inside homes and dining halls if needed on condition that they respect the rights and interests of nearby residents. In other cases religious activities are carried out in accordance with the laws of the Republic of Kazakhstan."

Officials impose arbitrary interpretations of this and other legal provisions. In June 2013 Zarina Burova was fined an amount equivalent to two months' average salary for sending text messages to her friends inviting them to a Jehovah's Witness meeting. The case followed surveillance by the police Department for the Struggle against Extremism, Separatism and Terrorism and the KNB secret police. Nurali Kayrenbayev of Atyrau Religious Affairs Department, claimed to Forum 18 in August 2013 that Burova was fined because "all religious activity outside the building of a registered community is banned" citing Article 7, Part 2. When Forum 18 noted that sending text messages is not covered by this Article, Kayrenbayev repeated his claim.

Restrictions on new places of worship

Any new place of worship requires, under Article 5, Part 8, the approval of the local administration. This includes whether and where a religious community can build, and whether a religious community can gain official change of usage for a building it wants to turn into a place of worship.

Restrictions on children's freedom of religion or belief

Article 3, Part 16 requires leaders of religious organisations "to take steps to prevent the attraction and/or participation by underage children in the activity of a religious association if one of the child's parents or other of its legal guardians objects".

It remains unclear how religious leaders will know if parents disagree over whether their child can accompany one of them to a religious meeting. It also remains unclear whether leaders may be liable if a community under their jurisdiction does not take measures to ensure that every child who attends has the approval of both parents.

Article 375 of the Administrative Code was amended in 2011 to introduce punishment for failing to prevent someone bringing a child to a religious meeting against the wishes of one of its parents. This facilitates state pressure against children or young people, parents - even separated or divorced parents - and guardians involved in a religious community state officials dislike. It allows pressure against anyone involved in such communities.

Similarly changed in 2011 was Article 19 of the Law on the Rights of the Child. This now includes: "The carrying out of services, religious rituals, ceremonies and/or meetings, as well as actions directed at spreading a faith, in children's holiday, sport, creative or other leisure organisations, camps or sanatoria is not allowed."

It remains unclear whether this bans religious organisations from running children's summer camps.

Restrictions on sharing beliefs

Article 1, Part 5 of the Religion Law defines "spreading a faith" as "missionary activity" and indicates that it is done "in the name of a religious organisation registered in the Republic of Kazakhstan", whether by a local citizen or a foreigner. Article 8, Part 1 states that all individuals engaged in this must be registered. This state permission must be renewed annually.

Only registered religious organisations can appoint "missionaries", who must act in the name of the organisation. All religious literature they use to share their beliefs must be presented when applying for missionary registration.

What constitutes "spreading a faith" or "missionary activity" is undefined. This could - to take one example - potentially make any conversation about religious matters by unregistered people an offence.

Restrictions on foreigners

All founders of religious communities must be Kazakh citizens. This in particular affects the many long-term residents of Kazakhstan after the break up of the Soviet Union who became foreign citizens.

In late 2013 fines and deportations were imposed on two legally resident foreign citizens simply for exercising the right to freedom of religion or belief. Polish cardiologist Robert Panczykowski had preached at a Jehovah's Witness meeting, while Kyrgyz citizen Shamurat Toktoraliyev discussed his faith in a private flat. Russian Imam Shamil Alyautdinov was blocked from presenting his books in Kazakhstan because the only legally registered Islamic organisation - the Muslim Board - refuses to invite him. Without personal registration as a "missionary", any public appearance would be illegal.

Leaders of all religious organisations named by foreign religious organisations (such as Russian Orthodox or Catholic bishops) need the approval of the ARA, regardless of whether the appointed leader is a Kazakh citizen or not. Article 19, Part 1 bans such foreign-named leaders from acting without ARA approval.

For foreign citizens to work as "missionaries" in Kazakhstan, they need (like local citizens) to have an invitation from a registered religious community in the country and need personal registration as a missionary. Under Article 8, Part 4, they also need a certificate proving that the religious organisation they represent is registered in their country of origin. It remains unclear what happens if a "missionary" is from a country where religious organisations are not subject to state registration.

Those seeking to conduct "missionary work" - whether local citizens or foreigners - are denied permission under Article 8, Part 5 if such work "constitutes a threat to the constitutional order, social order, the rights and freedoms of the individual, or the health and morals of the population".

Prisons and other state institutions

Religious pastoral care is allowed for people in institutions - including hospitals, prisons, or old people's homes - provided such care is not thought to obstruct the running of the institutions, or violate the rights of other residents. However, Article 7, Part 3 bans prayer rooms in state institutions. Even before the Religion Law came into force, the state closed mosques, churches and prayer rooms in prisons and state social care institutions, such as those for people with physical disabilities and mental health problems.

Also, under Article 7, Part 4 only clergy of state-registered religious communities can be invited to provide such care and conduct religious rituals. It also states that "the carrying out of religious rites, ceremonies and/or meetings must not obstruct the activity of the given organisations or violate the rights and legal interests of other individuals".

Some prisoners have stated that they have been placed in solitary confinement, on the instructions of the KNB secret police, for praying Muslim prayers.

[In July 2014 a new Criminal Procedure Code was signed into law, to take effect from 1 January 2015. This regulates conditions for those serving criminal sentences, including the extent to which they are or are not allowed to exercise their right to freedom of religion or belief while imprisoned - see F18News 21 July 2014 <http://www.forum18.org/Archive.php?article_id=1979>.]

- Licence to learn required

The Licensing Law was amended in 2011 to add a requirement in Article 27, Part 15 that religious organisations which send people abroad for study in religious educational institutions also require a state licence.

This restricts Article 11 of the Religion Law's apparent blanket permission for state-registered religious organisations to send students abroad for study. Organisations which do not have state registration cannot either exist or have permission to send students abroad.

Compulsory re-registration process

Kazakhstan used the Religion Law's re-registration process to close many religious communities, including mosques, after the deadline of 24 October 2012. Communities complained of arbitrary and flawed decisions, as well as pressure exerted by local authorities on people to withdraw their signatures from founding documents.

Members of many religious communities in Kazakhstan complained to Forum 18 of what they variously describe as the "complex", "burdensome", "arbitrary", "unnecessary" and "expensive" compulsory re-registration process. But few religious community leaders - even those whose communities were unable to apply for re-registration because of the new requirements - were prepared to discuss the re-registration process, for fear of state reprisals against their communities.

This pressure on the existence of communities has affected people's willingness to exercise their freedom of religion or belief in association with others. "Now our believers are afraid each time they gather for worship", a Kazakh religious leader told Forum 18.

Many communities complained that the ARA and local Justice Departments kept asking them to change their charters on arbitrary grounds. "They wanted us to write in more detail in our statutes what our doctrine is," Jehovah's Witnesses told Forum 18. "What we believe about army service and blood transfusions. We talked this through with them in a normal dialogue."

Once applications were lodged, Justice Departments and Regional ARA branches checked the full details of each founder of many organisations, religious leaders told Forum 18. In one case the street number of one founder was given incorrectly, requiring a correction and the whole application to be resubmitted.

In some cases, individual founders were questioned about their religious affiliation and why they had signed a registration application. "Many of our founders were summoned by Regional ARA offices," Jehovah's Witnesses told Forum 18. "Although no pressure was put on them to remove their names, they were asked: why do you belong to this particular faith?"

This has happened throughout Kazakhstan. For example, Almaty Regional officials telephoned or visited 14 of the 61 founders who signed the re-registration application of Grace Protestant Church in Karaturyk in the Region's Yenbekshikazakh District. Officials warned the signatories about the dangers of the "sectarian" Grace Church, and demanded that they revoke their signatures on the application. "The authorities especially chose to target those founders who are of Kazakh and Uygur ethnicity", the Church's Pastor Zhursyn Koshkinov and some of the signatories told Forum 18.

In another case, a religious leader who asked not to be identified told Forum 18 that by relentless examination of people on the list of founders, the authorities had been able to remove enough to bring the number down to 49, making the community ineligible to apply. The community had to resubmit the application, and they made sure they had more than 70 founders on the list the second time. The Justice Department has still not responded to the application.

Some smaller communities have been forced to "voluntarily" close, such as a Methodist Church which was threatened with a fine state officials admitted was unlawful (see above). Larissa Kim, the wife of the Church's Pastor, was fined for using her private home - the Church's registered legal address - for meetings for religious worship. The Church was then forced to pay for an announcement in newspapers that the Church had decided to liquidate itself. "We do not want more punishment from the authorities," Pastor Valery Kim told Forum 18 in May 2012. The authorities then forced the Church to pay for another announcement of its closure, this time in an official journal for legal announcements.

Some religious communities have from the Religion Law up to 2014 noted steep falls in the number of registered communities. In one case almost 66 per cent of pre-2011 registered communities were forced to close or were merged with others. A variety of threats were used by officials to achieve this. An independent mosque was threatened with demolition with a bulldozer if it did not

join the state-backed Muslim Board. Imam Kinayat Ismailov of the Tautan Molla Mosque in the small town of Prishakhtinsk in the central Karaganda [Qaraghandy] Region told Forum 18 in May 2012 that ARA regional Head Tlekbayev "visited our Mosque to inspect our activity and the property along with officials from the District Administration. He told me that he will close down our Mosque, and even demolish the Mosque building with a bulldozer."

Kazakhstan has used bulldozers before to violate freedom of religion or belief, when the country with no warning used bulldozers to destroy Hare Krishna devotees' homes in November 2006.

Catholic international agreement

Apart from the Muslim Board (see below), the only other religious community to be re-registered without apparent problems was the Catholic Church. An Agreement on Mutual Relations between the Holy See and Kazakhstan was signed on 24 September 1998, and hastily ratified in September 2012. The Agreement gives the Church the right to establish entities, maintain places of worship, send clergy and other personnel to the country, and establish church schools and charitable agencies "in conformity with the legislation of Kazakhstan".

Justifying differential treatment of the Catholic Church, the Justice Ministry pointed to Article 2, Part 2 of the Religion Law, which states that where an international agreement signed by Kazakhstan exists, this overrides other provisions of the Religion Law. The Ministry did not explain why Kazakhstan is not also implementing the International Covenant on Civil and Political Rights (ICCPR), which would if implemented abolish most of the Religion Law.

Independent mosques forcibly closed

Even before the Religion Law was adopted, officials were (as noted above) insisting in 2010 that mosques catering for non-Kazakh ethnic groups could not exist. Officials were also insisting before the Religion Law was adopted that all mosques independent of the state-backed Muslim Board must be closed. There is no "legal" basis for such demands.

The Justice Ministry - backed by the ARA - has denied all re-registration applications by non-Muslim Board Muslim communities. Under its 2012 Statute, the Muslim Board is registered as one legal entity with all mosques in the country as its branches. The Muslim Board is the only religious community given such a state-backed monopoly.

Under the Statute, all mosques must have their imams appointed by the Muslim Board, and these imams must only read out sermons at Friday prayers which have been provided to them by the Board. All mosques must also give the Board 30 per cent of their income. Independent mosques strongly objected to these state-backed restrictions.

The state also subjects Muslim communities to language restrictions which do not apply to other faiths. Mosques must use Kazakh rather than other languages such as Russian, Tatar, Chechen, or Azeri for sermons. Unlike communities of other faiths (eg. Russian Orthodox, Armenian Apostolic, or Jewish) mosques cannot have an ethnic affiliation in their name.

No independent mosques or Shia Muslim communities have been given state permission to exist. The Muslim Board's spokesperson told Forum 18 in November 2012 that all Islamic communities "must be Hanafi Sunni Muslim". "We don't have other sorts of Muslims here", he added. Asked about Shia mosques or mosques of other schools of Sunni Islam, he replied: "There aren't any."

State censorship has stopped the production and distribution of all Islamic literature that is neither Hanafi Muslim literature nor Muslim Board approved (see below).

State officials, along with Muslim Board officials, used a variety of tactics to force independent mosques to join the Board or close. For example, the Din-Muhammad Tatar-Bashkir Mosque in Petropavl in North Kazakhstan Region is mainly attended by ethnic Tatars and Bashkirs. It was built in 1852 and has been open since then, apart from when it was closed during Soviet-era repression of freedom of religion or belief.

The mosque community lodged a re-registration application before the Religion Law's October 2012 deadline, receiving no official response. Since then, the Mosque community and its imam have faced heavy state pressure. For example, on the night of 20 December 2012 the ARA telephoned the Imam and some elderly members of the community for an 09.00 meeting with the Head of North Kazakhstan Region's administration Serik Bilyalov. He threatened them that if they did not join the Muslim Board the community would be liquidated and the mosque would be taken over by the local authorities who would use it for some public non-religious purpose. A central ARA official claimed to Forum 18 in January 2013 that "there is no pressure on the mosques".

Members of the Din-Muhammad Mosque community continued to gather for prayers in their 19th century mosque, even after a 12 September 2013 court decision rejected an appeal against compulsory liquidation ordered on 20 February 2013. The appeal court ordered officials to complete the liquidation quickly. Attendance at prayers dropped from hundreds to tens because "people are afraid of the authorities", community members told Forum 18 in September 2013.

On 4 February 2014, three officials of a court-appointed Liquidation Commission to dissolve the community arrived at the Mosque in Petropavl to prepare an inventory of all its possessions. "The mosque is to be handed over to another religious organisation", Marat Zhamaliyev, deputy head of the regional Finance Department, told Forum 18. He refused to say which religious community the mosque will be given to. Told by Forum 18 that the mosque community still exists, regularly holds the namaz (prayers) in the mosque and intends to continue to exist, Zhamaliyev responded: "We're not liquidating the mosque, we're liquidating the community." He insisted that the juridical community had been liquidated by a court and therefore did not exist.

The Din-Muhammad Mosque is thought to be the last remaining publicly-accessible mosque independent of the state-backed Muslim Board.

All Ahmadi Muslim mosques throughout Kazakhstan were closed in April 2012. ARA's then Spokesperson Svetlana Penkova told Forum 18 in November 2012 that she "cannot guarantee that the Ahmadi Community will be re-registered. But I can guarantee that whatever decision the ARA will make will be based strictly on the Law". The Ahmadis applied for re-registration for just one of their communities, in Almaty. On 19 November 2012 the community received a response from the regional Justice Department that "the statute did not qualify under the expert opinion". A positive ARA "expert analysis" is required for a community to be permitted to exist. Ahmadi Muslims are now legally banned.

Still closing communities

As well as targeting independent mosques, state pressure is still being used with the apparent aim of closing other religious communities down. For example, members of New Life Protestant Church in Arkalyk [Arqalyq], in the northern Kostanai [Qostanai] Region, have faced state interrogations and threats, particularly targeting state employees. On 2 December 2013 two church members were summoned to the Akimat (local district administration). One works for the prison service, the other for a state educational institution. All 52 signatories to the Church's successful 2012 re-registration application seem to have been later summoned to Daryn Zhapabayev, one of Arkalyk's Deputy Prosecutors, or Arkalyk's Deputy Akim, Yeslambek Mametekov.

"Our church members were questioned as to why they joined the church, why they attend and why they signed the re-registration application," Pastor Aleksii Fedoskin complained to Forum 18. "They were pressured to sign pre-prepared statements that they had not understood what they were signing." At least two of the interrogations at the Prosecutor's Office, church members' superiors from their workplace were also present. The Pastor fears that if the number goes below the required 50 for applications, the authorities may begin moves to strip the congregation of state registration. Without such registration, any activity the congregation undertakes would be illegal.

KNB secret police surveillance

On 8 December 2013, a KNB secret police officer attended New Life Church's Sunday service, using a hidden camera to film those present. "I saw him using a hidden camera, so I approached him after the service and asked who he was," Pastor Fedoskin told Forum 18. "However, he would not identify himself. Church members afterwards told me he was from the KNB and his surname is Alimbayev. It's a small town and everyone knows everyone else."

All religious communities are thought to be under surveillance by the ordinary police and KNB secret police. Many communities are reluctant to discuss this - including KNB attempts to recruit informers - for fear of state reprisals.

Censorship

As noted above, censorship is imposed by the state along with - for Islamic literature - the Muslim Board. Its spokesperson Ongar Omirbek told Forum 18 that "only Islamic literature from the Sunni Hanafi school can be distributed, as all other Muslim schools - including Ahmadis - are banned". Shia Muslims across Kazakhstan, who asked not to be named for fear of state reprisals, told Forum 18 that Shia literature cannot be found on sale.

The Religion Law gives a broad definition of what religious literature and objects are, and imposes censorship on them in both bookshops and libraries. There is confusion among officials about what is censored, what is involved and what if anything is exempt. Galym Shoikin of the ARA insisted to Forum 18 in November 2013 that unless a book or object is banned by a court, it is legal. But legal books or objects cannot be distributed without ARA censorship. When Forum 18 noted that this is censorship, he claimed that: "This is not censorship - it is defending the interests of our country". He was unable to state a legal basis for some official actions, for example stating in relation to a claim that some undefined "holy books" are exempt from censorship that "such issues are not put in law".

One Astana shop owner, Pyotr Volkov, sought clarification from the ARA of what constitutes "religious literature", and so is subject to censorship. He made the enquiry after books were seized from his shop during a police raid in May 2013 and he was fined in September 2013. Marat Azilkhanov, a then Deputy Chair of the ARA, responded that "religious literature" is "printed and electronic publications containing religious content designated for the satisfaction of religious and other socially significant needs of the population deriving from religious postulates". Azilkhanov added: "To this category belongs production of a theological,

theological/canonical, ritual/mystic and social/theological orientation." There does not appear to be a legal basis for this definition.

Azilkhanov was named on 4 November 2013 as the new ARA head.

Local authorities and "law enforcement" agencies enforce censorship - including severe limitations on the numbers of bookshops allowed to sell any kind of religious material - across Kazakhstan with raids and fines. Even some shops with permission to sell religious books such as Korans and Bibles have told Forum 18 that they do not want to do so, to avoid trouble from the authorities. Courts frequently fine commercial booksellers and individuals for distributing religious literature outside approved venues (state-registered places of worship and state-licensed shops). Forum 18 knows of 11 named commercial booksellers and traders given administrative fines in 2013 (one was fined twice) for selling religious books without a licence.

Allegedly "extremist" works are also banned, but because court hearings to rule whether materials are "extremist" take place unannounced and because no published list of banned books appears to exist, people in Kazakhstan remain unaware of what has and has not been banned. The unannounced nature of court hearings also makes it impossible for such bans to be challenged.

Censorship also includes religious objects. Twelve icons and three Bibles were seized from a commercial bookseller in Oral (Uralsk) in West Kazakhstan Region in October 2013. The bookseller narrowly avoided administrative prosecution. It remains unclear what happened to the icons and books. "Everything is OK now - he has agreed not to sell religious materials," Salamat Zhumagulov, the state religious affairs official who seized the items, told Forum 18. ARA spokesperson Saktagan Sadvokasov stated that "the Kazakh state must defend our citizens from harmful materials". Asked by Forum 18 whether he has known icons to be harmful, he responded: "We have experts to check icons."

In May 2013, four books confiscated from a bookseller in East Kazakhstan Region - including two with prayers to Russian Orthodox saints Serafim of Sarov and Sergius of Radonezh - were ordered destroyed when the bookseller was fined. If it was carried out, this would have been the first known time that a court-ordered religious book destruction has been carried out in Kazakhstan.

Yerlan Kalmakov of Kostanai Regional Internal Policy Department, asked why people must ask for permission to distribute books from the authorities, replied in February 2013: "Imagine what could happen if we allow just anybody to distribute religious materials". He added that "unregistered religious organisations, which are illegal in Kazakhstan will use this and attract people to their ranks. They will thus continue their illegal existence".

Smear attempts?

There have also been apparent attempts to smear or blackmail members of some religious communities. In March 2013, Pastor Yevgeni Medvedev and others from New Life Pentecostal Church in Stepnogorsk - all men - arranged a visit to the local sauna. Before their arrival, a man who claimed to be from an unnamed "law-enforcement agency" visited the sauna to persuade the sauna staff to allow in two young women when the church members were alone in the sauna. Sauna staff stated that the "law-enforcement agency" man said that the "most important thing was to let the girls in and that they should be able to take off all their clothes. And after that, two police officers will arrive."

Two young women were on the street outside when the church members arrived, Pastor Medvedev told Forum 18. But the sauna staff did not let them in. The women telephoned someone and passed the phone through the window to the sauna staff, but the staff continued to prevent them from entering.

Both the ordinary police and the KNB secret police denied to Forum 18 that they had any involvement.

Petropavl's Din-Muhammad Tatar-Bashkir Mosque has also experienced a possible provocation. "Some long-bearded young men with a radical appearance also recently came to the mosque and walked amid the praying community members during the prayer and filmed everything," one community member told Forum 18 in September 2013. "They disturbed the people and told them that they are not praying correctly." The community member added that "it is difficult to say whether the young men came by their own will or were instigated to make a provocation in the mosque".

Muslim Board and state officials have claimed to Forum 18 that allowing independent mosques to exist "will breed terrorists". But officials have not produced proof for these assertions.

Misuse of psychiatry

Two freedom of religion or belief cases involve apparent misuse of psychiatry against atheist writer Aleksandr Kharlamov and retired Presbyterian pastor Bakhytzhn Kashkumbayev. Both were held against their will for over a month in a psychiatric hospital, and no evidence was ever produced that they needed psychiatric medical help. This misuse also appears to have occurred in the case of human rights defender Zinaida Mukhortova, in which freedom of religion or belief is not involved.

Atheist writer Kharlamov was freed from prison on 4 September 2013 after nearly six months' pre-trial detention, having been

arrested on 14 March. During that time he was held for a month in a psychiatric hospital. While in the psychiatric hospital, Kharlamov was not allowed to wear glasses, stopping him from reading, or even have a toothbrush - allegedly on safety grounds.

One doctor told Kharlamov that he had been sent to the psychiatric hospital "because you are an inconvenient person for the authorities". The police investigator responsible for the case, Captain Alikhat Turakpayev of Ridder Police, refused to explain to Forum 18 on what, if any, medically-relevant evidence he ordered two previous psychiatric examinations of Kharlamov.

Despite the state's criminal charge and "expert examination" of Kharlamov's writings, Turakpayev admitted to Forum 18 in April 2013 that "no-one suffered from what he [Kharlamov] wrote on religion". But he is still facing criminal charges for articles he wrote in defence of atheism, having allegedly broken Criminal Code Article 164 Part 1 by allegedly "inciting religious hatred".

A criminal case was brought against Pastor Kashkumbayev, who led Astana's Grace Church until his retirement in October 2011. Kashkumbayev was, while in pre-trial detention from May 2013, held for over a month in a psychiatric hospital. The state claimed he had harmed the health of church member Lyazzat Almenova, and charges were formally brought in February 2012. Almenova repeatedly insisted that Kashkumbayev had not harmed her and that he was "totally innocent".

Masked police searched the Church on 3 October 2012 and seized computers, valuables and religious books they insisted were "extremist" (though they could not explain what was "extremist" or who had declared them so). Police requested church members to give blood specimens to see if the Church uses "hallucinogenic" substances for Communion - local media carried the same allegations. The alleged "hallucinogens" were a commonly drunk local red tea used as a non-alcoholic communion wine. Church members noted that police displayed a curious lack of interest in the allegations they were supposedly investigating.

The defence strongly contested the legality of the trial and the state's claims. The trial finally opened on 22 January 2014, and on 17 February 2014 Kashkumbayev was convicted of harming Almenova's health. He was ordered to pay his alleged "victim" large "moral damages" of 2 Million Tenge (65,800 Norwegian Kroner, 7,900 Euros or 10,800 US Dollars).

Like Kashkumbayev's Grace Church, other Protestant churches are also subjected to investigations on criminal charges, including "harming health" or possession of "extremist" books. However, prosecutors normally refuse to divulge the specific allegations made or how the investigations are proceeding. Such criminal investigations can continue for years.

Prosecution procedure

Prosecutions alleging that the Religion Law has been broken need to invoke an article of the Administrative Code (Articles 374-1 and 375) or in rare cases the Criminal Code. Administrative Code Article 636 ("Issuing a charge for an administrative offence") gives regional administrations the right to prepare cases to be sent to court for violations of Article 374-1 ("Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation") and Article 375. Police also have the right to prepare Article 374-1 cases.

Administrative Code Article 375

Amid the 2011 legal amendments, Article 375 ("Violating the Religion Law") was expanded to considerably increase Religion Law "offences" subject to punishment. However, as with the Religion Law, many of the "offences" are not precisely defined, leaving much room for arbitrary official actions.

[Article 375 will be replaced from 1 January 2015 by a new Article 490 ("Violating the Religion Law") - see F18News 21 July 2014 <http://www.forum18.org/Archive.php?article_id=1979>.]

The "offences" punished in Part 1 of Article 375 are: "Violation of the demands established in law for the conducting of religious rites, ceremonies and/or meetings; carrying out of charitable activity; the import, production, publication and/or distribution of religious literature and other materials with religious content and objects of religious significance; and building of places of worship and changing the designation of buildings into places of worship".

Penalties for breaking Part 1 of Article 375 are fines of 50 Monthly Financial Indicators (MFIs) for physical persons, 100 MFIs for leaders of religious associations, and 200 MFIs for legal persons (groups with state registration) with suspension of their activity for three months.

The MFI is set annually, and since 1 January 2014 has been 1,852 Tenge (60 Norwegian Kroner, 7 Euros, or 10 US Dollars). 50 MFIs are equivalent to about one month's average salary.

- "Missionary activities" scope expanded and punishments increased

Article 375, Part 3 punishes: "The carrying out of missionary activity by citizens of the Republic of Kazakhstan, foreigners and persons without citizenship without registration (re-registration), as well as the use by missionaries of religious literature,

information materials with religious content or objects of religious significance without a positive assessment from a religious studies expert analysis".

The fine for this "offence" is for citizens 100 MFIs. The punishment for foreigners and stateless persons is 100 MFIs with deportation.

As usual in such laws, the definition of "offences" is unclear, allowing room for officials to expand the range of activities they can bring prosecutions for. Two Muslim brothers, Rafael and Kamil Bayshev, were fined 100 MFIs, or about two months' average salary, after inviting two passers-by outside the Central Mosque in Oral (Uralsk) in West Kazakhstan Region to attend night prayers in June 2012.

In an August 2013 case, the presence of several guests at a religious meeting of a state-registered Jehovah's Witness community was enough to cause four fines of 100 MFIs for illegal "missionary activity".

- Other "offences" and punishments

Other "offences" and punishments in Article 375 include leading a religious organisation at the nomination of a foreign religious organisation without state approval.

Violations of Article 375 mostly lead to fines, but could lead to bans of up to three months or even a permanent ban on a religious community. Foreigners who conduct violations are subject to "administrative deportation". This is also confirmed in Article 730 governing deportations.

Article 375, Part 9 punishes offences under most other Parts of Article 375 committed again within a year with fines of 200 MFIs.

Many fines

Articles 375 ("Violating the Religion Law") and 374-1 ("Leading, participating in, or financing an unregistered, halted, or banned religious community or social organisation") have long been heavily used to fine individuals and communities exercising their right to freedom of religion or belief.

Over 150 people in 2013 are known to have been fined under these Articles, normally for meeting for worship or sharing their beliefs without state permission. Over 40 people are known to have been fined between January and March 2014.

Most known cases have involved Baptists, Jehovah's Witnesses and some Muslims. Such fines normally accompany raids on meetings by police and other officials, with all the participants being questioned and some being fined. Fines range between the equivalent of one or two months' average wages, depending on whether or not the authorities identify the person concerned as having played a leading role in the "offence".

Exit bans

People who refuse to pay fines imposed under Articles 374-1 and 375 - which as those fined frequently note break Kazakhstan's Constitution and international human rights obligations - are automatically placed on Justice Ministry lists banning travel outside the country. Human rights defender Yevgeni Zhovtis, of the Kazakhstan International Bureau for Human Rights and the Rule of Law, noted that this "double punishment" isn't governed by any law. He pointed out that "officials of the Justice Ministry's Committee for the Execution of Court Judgments simply take the decision and individuals don't have the proper opportunity to challenge this in court".

Jail

A number of people have been given short jail terms for refusal to pay fines imposed under Article 375. The jailings are imposed under Administrative Code Article 524 ("Failure to carry out court decisions"). Since January 2014 this carries a punishment on individuals of up to 20 MFIs (30 MFIs if they are acting in an official capacity), or between 5 and 10 days in jail.

Six such cases are known to have taken place in 2013. Four of the six were Council of Churches Baptists and two were Muslims. Four received small fines, but one received a 3-day jail term and the last a one-day jail term.

So far in 2014, seven such jailings of between one and 10 days - all against Baptists - are known to have taken place. For example, shoe-repairer Vyacheslav Cherkasov and plumber Zhasulan Alzhanov were each sentenced to 48-hour prison terms at evening court hearings in Akmola Region on 9 January 2014. "We haven't lodged appeals," Cherkasov told Forum 18 after his release. "There's no point."

Co-operation with other states violating human rights

In March 2013 - and against a written 28 February request by the UN Committee Against Torture - Khayrullo Tursunov was extradited back to his native Uzbekistan. In early June he was sentenced to 12 years in jail for alleged "extremist" religious activity. Relatives outside Uzbekistan complained that the case had been "fabricated" to punish him for his religious activity. In a very similar case, the UN Committee against Torture is also investigating the fate of 29 Muslims illegally extradited by Kazakhstan in 2011 back to Uzbekistan.

The future?

Kazakhstan tries to make exercising human rights conditional upon state permission. It systematically violates intertwined fundamental rights - such as the freedoms of religion or belief, of expression and of assembly - it has solemn international obligations to respect and defend. There is a culture of impunity for such violations among officials. Increasing repression, combined with the threat of further "legal" harshening of laws in 2014, make it likely that the government will continue violating the freedom of religion or belief and intertwined human rights of its citizens and others legally resident in the country. (END)

Reports on freedom of thought, conscience and belief in Kazakhstan can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=29>.

Previous Forum 18 Kazakhstan religious freedom surveys can be found at <http://www.forum18.org/analyses.php?region=29>.

For a personal commentary from 2005 on how attacking religious freedom damages national security in Kazakhstan, see F18News http://www.forum18.org/Archive.php?article_id=564.

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

A printer-friendly map of Kazakhstan is available at <http://nationalgeographic.org/education/mapping/outline-map/?map=Kazakhstan>.

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