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KYRGYZSTAN: "Draconian" proposed Religion Law and Administrative Code changes

By Mushfig Bayram, Forum 18

Kyrgyzstan is proposing to harshen its Religion Law and give even more power to the State Commission for Religious Affairs (SCRA). The proposals that have attracted most criticism so far from human rights defenders and religious and belief communities include: increasing the number of founders required for registered religious organisations to be founded from 200 to 500 and all such organisations to be re-registered; requiring anyone working in any capacity in any religious organisation to have an annually renewed SCRA license; and requiring every institution offering religious education to have an SCRA license. It is also proposed that existing punishments in the Administrative Code for exercising freedom of religion or belief be increased to up to the rough equivalent of 14 months' average salary. The proposals go directly against the UN Human Rights Committee's March recommendation that planned changes to the Religion Law should "remove all restrictions incompatible with article 18 of the Covenant [on Civil and Political Rights]".

Kyrgyzstan is proposing to harshen its Religion Law's attempt to make all exercise of freedom of religion or belief dependent on state permission, Forum 18 News Service notes. All exercise of freedom of religion or belief by groups of people is already – against international human rights obligations – illegal under the Religion Law. Under the proposed changes, even more power would be given to the State Commission for Religious Affairs (SCRA).

It is also proposed that existing punishments in the Code of Administrative Offences for exercising freedom of religion or belief be increased from a maximum of 50 Financial Indicators (FIs) to 700 FIs. Seven hundred FIs are equivalent to 70,000 Soms (about 8,210 Norwegian Kroner, 990 Euros or 1,250 US Dollars), which is roughly equivalent to 14 months average salary across the country.

The other proposals that have so far caused most concern to religious communities and human rights defenders are:

- a proposal that the SCRA should formulate and execute state policy on anything affecting freedom of religion or belief;
- plans to increase the number of founders required for registered religious organisations to be allowed to exist from 200 to 500, and for all such organisations to be re-registered;
- a proposal that all people working in any capacity in any religious organisation be licensed every year by the SCRA;
- a proposal that every institution offering religious education must be licensed by the SCRA.

Roundtable for some

The draft changes for both the Religion Law and Administrative Code, seen by Forum 18, were announced at no notice in a roundtable arranged by the SCRA with the United Nations Development Programme (UNDP) in the capital Bishkek on 9 October. Representatives of the SCRA-led Working Group which drew up the changes, the UNDP, local human rights defenders, and clergy from the state-backed Muslim Board, Russian Orthodox Church and several Protestant churches participated in the meeting. One participant told Forum 18 that the SCRA was reluctant to include religious organisations in the roundtable until approached by the UNDP.

The SCRA on 10 October claimed on its website that the opinions of roundtable participants will be taken into account. One participant, Aleksandr Shumilin of the Association of Evangelical Churches, told Forum 18 on 17 October that Buddhist and Jewish representatives were also invited but did not attend. He stated that Protestants at the meeting "were not given a chance" to give an in-depth critique of the draft amendments. The SCRA "asked us to give them our opinion in writing, but I think that they will just ignore it".

Drafts to become law in first quarter of 2015?

Parliamentary Deputy Damira Niyazaliyeva, Chair of the Zhogorku Kenesh's Social Policy Committee, who took part in the 9 October meeting, admitted to Forum 18 on 22 October that the proposed changes are "harsh," and "I do not think the SCRA will be given those competences because it would mean severe control by it." However, she said that the "chances are that the proposed changes, after they are further amended in the Zhogorku Kenesh, will pass in 2015." However, she said that the deadline for the re-registration once the Law enters into force indicated as 31 December 2015 may be moved to a later date.

Galina Kolodzinskaya of Kyrgyzstan's Interfaith Council told Forum 18 on 17 October that she thinks the authorities intend the legal changes to be passed and signed into law in the first quarter of 2015. However, she said that she is "not sure precisely when or if, or in what form they will reach Parliament, considering the government's record of postponing the adoption of various proposed laws".

As Kolodzinskaya noted, Kyrgyzstan has a record of proposed legal changes not being passed into law (see eg. F18News 27 February 2014 http://www.forum18.org/archive.php?article_id=1932).

Working Group

The proposed changes originate from a Working Group formed after a 3 February Defence Council meeting convened by President Almazbek Atambayev. It consists of officials from the SCRA, the Deputy Prime Minister, the Presidential Administration's Ethnic, Religious Policy, and Cooperation with Civil Society Department, six deputy ministers and the Deputy Head of the National Security Committee (NSC) secret police (see F18News 27 February 2014 http://www.forum18.org/archive.php?article_id=1932).

Asked why she thinks the authorities want to bring freedom of religion or belief under even stricter control, Deputy Niyazaliyeva claimed that "the authorities only want to bring more coordination and regulation to religious freedom". Asked to clarify this, she stated that "the state needs to know who these religious organisations are and what exactly they are doing, because we do not know how they are directing our children and youth". Asked whether it is not the responsibility of parents to take care of their children, and why the state wants to interfere in the personal decisions of its citizens, she declined to answer.

However, Deputy Niyazaliyeva stated that "I do not think the SCRA will be given those competences because it would mean severe control by it".

On 23 October, the official (who did not give her name) who answered the phone of SCRA Head Orobek Moldaliyev told Forum 18 that he is busy and cannot talk. She took down Forum 18's questions as to when the SCRA aims to present the proposed changes to Parliament; whether it will ask the Organisation for Security and Co-operation in Europe (OSCE) and the Council of Europe's Venice Commission (which Kyrgyzstan is a member of) for their expert legal opinion on the changes.

She asked Forum 18 to call back in 10 minutes, promising she would put Forum 18 through to an appropriate official. However, numerous calls in the next few hours went unanswered.

Reached on 23 October, Denis Pyshkin of the SCRA, who worked on the proposed changes and is part of the Working Group, also declined to discuss the changes. "I am not competent to answer but maybe you could talk to Gulnaz Isayeva, who is now next to me and is also an expert here." Forum 18 overheard Pyshkin and Isayeva talking to each other, but when Forum 18 immediately called Isayeva's number – as provided by Pyshkin - her phone was switched off. Pyshkin did not answer any subsequent calls that day.

Positive Supreme Court ruling

The Constitutional Chamber of the Supreme Court on 4 September ruled that a religious organisation is not limited to carrying out its activity only in the place where it has its legal address. Jehovah's Witnesses who brought the case think this will do much to stop the harassment that Jehovah's Witnesses have faced from law enforcement officials in the southern part of the country. Other communities have also welcomed the decision, but wonder whether it will be implemented (see F18News 30 October 2014 http://www.forum18.org/archive.php?article_id=2011).

In the decision, seen by Forum 18, the Court stated that "a registered religious organisation can perform its religious activity outside the address where the religious organisation is located" and that "a religious organization has the right to perform its rites and activities in the places in the territory shown in the Charter".

The Constitutional Chamber also found it unconstitutional for local keneshes (councils) to approve the list of 200 founding members of a religious organisation required for a legal status application. If implemented, this will remove a major obstacle to legal status applications.

For both decisions, the Court obliged the Zhogorku Kenesh to make the necessary changes to the Religion Law. It also stated that: "This Decision is final and cannot be appealed against. All governmental organs, legal entities, officials and citizens are bound by it."

Working Group response violates fundamental rights

The Working Group appears to have partially taken the Court's decision into account by removing the need for keneshes to endorse lists of founders in the proposed Religion Law changes. However, Jehovah's Witnesses told Forum 18 on 23 October that the demand for 500 members as founders violates their fundamental right to freedom of religion or belief.

The draft also states that local keneshes should set up their own committees working under the SCRA to control the exercise of freedom of religion or belief. This might be a way of getting round the Supreme Court's intentions in barring local keneshes from approving lists of founders.

Severe UN criticism of existing Religion Law, recommendations for change

The United Nations (UN) Human Rights Committee commented on the Religion Law and possible plans to amend it in 25 March Concluding Observations (CCPR/C/KGZ/CO/2) to its consideration of Kyrgyzstan's record under the ICCPR. It noted that "the Committee is concerned about the restrictions incompatible with provisions of the Covenant [ICCPR] contained in the current law, including with respect to missionary activities, registration procedure and dissemination of religious literature" (see F18News 1 April 2014 http://www.forum18.org/archive.php?article_id=1944).

The government has long claimed, including to the UN, an intent to change the Religion Law. Many in Kyrgyzstan feared this would be used to harshen restrictions on freedom of religion or belief via changes focusing on state registration of religious organisations (see F18News 27 February 2014 http://www.forum18.org/archive.php?article_id=1932).

The UN Human Rights Committee stressed on 25 March that planned amendments to the Religion Law should "remove all restrictions incompatible with Article 18 of the Covenant, by providing for a transparent, open and fair registration process of religious organizations and eliminating distinctions among religions that may lead to discrimination" (see F18News 1 April 2014 http://www.forum18.org/archive.php?article_id=1944).

Commenting on the UN Human Rights Council recommendation to "remove all restrictions incompatible with article 18 of the Covenant", SCRA lawyer Zhanibek Botoyev told Forum 18: "Go and bring some order to your own countries and Norway. We are a sovereign country here, and you cannot command us what to do or what not to do" (see F18News 30 October 2014 http://www.forum18.org/archive.php?article_id=2011).

Severe criticism of draft texts

Many aspects of the draft texts violate Kyrgyzstan's international human rights obligations and cause concern to human rights defenders and religious and belief communities in Kyrgyzstan. The aspects that have attracted most criticism so far are outlined below.

- SCRA to control policy on freedom of religion or belief

The draft Religion Law states that the SCRA should be the only state body which "forms and conducts state policy on religious freedom, coordinates the activity of Kyrgyzstan's state bodies in the religious sphere in order to ensure the protection of public order, spiritual security, territorial integrity and constitutional order from religious extremism". This formulation violates Kyrgyzstan's international obligation that freedom of religion or belief may not be limited on security grounds.

An Ahmadi Muslim, who asked not to be identified for fear of state reprisals, told Forum 18 on 23 October that their community thinks that, if the SCRA "obtains such powers we will not have any chances to restart our activity as a community in future".

The Supreme Court on 10 July ignored violations of due legal process and human rights obligations by rejecting an appeal against two lower courts' support of the SCRA's refusal to give state registration to the Ahmadi Muslim community. Asel Bayastanova, the Ahmadi's defence lawyer, told Forum 18 that "it means that Ahmadi Muslims cannot act like Ahmadi Muslims and organise meetings for worship or any other activity together". The community has not been able to meet together since July 2011.

The SCRA's lawyer, Zhanibek Botoyev, claimed to Forum 18 that "we are not going to send them to prisons". He also stated that "they can individually pray or read their books in their homes but they must not worship together. Otherwise they will be punished." He refused to say exactly what punishments will be imposed (see F18News 17 July 2014 http://www.forum18.org/archive.php?article_id=1977).

Kolodzinskaya of the Interfaith Council noted to Forum 18 that "if the SCRA is granted these powers, this will seriously violate the Constitution as well as interfere with Kyrgyzstan's system of government". She pointed out that the SCRA is only an administrative organ, but it is asking for powers to both bring it onto the same level as government ministries as well as to directly interfere in the internal life of religious and belief communities.

- Number of required founders raised from 200 to 500

The proposed draft Religion Law raises the required number of founders of registered religious organisations (the only legally allowed kind of religious body) from 200 to 500. Other parts of Article 8 also introduce various restrictive and unclear conditions banning people from belonging to a religious organisation, including a ban on people whose actions have been found by a court "to contain signs of extremist activity".

The draft also demands that all existing registered organisations must register no later than 31 December 2015 under the new Religion Law. All religious organisations which do not re-register will be subject to liquidation by a court.

This proposal means that "almost all the existing registered organisations will have to cease officially existing, as the proposed changes also demand that all organisations must be re-registered after the changes enter into force," Shumilin of the Association of Evangelical Churches told Forum 18. He added that it will also mean that it will be "impossible to create new religious organisations."

Kolodzinskaya of the Interfaith Council pointed out that some settlements where there are religious communities of various faiths do not have 500 residents. "Whole settlements will be deprived of their Constitutional rights thanks to this SCRA proposal," she observed.

Tamilla Zeynalova of Bishkek's Baha'i Community told Forum 18 on 23 October that "If the SCRA accepts our old registration we do not have a problem with this. But if we have to re-register we will have problems, as we have several registered communities but none with 500 members in total".

Kolodzinskaya also expressed concern that "if the Law enters into force sometime in 2105 not all religious Communities will be able to receive re-registration before the deadline of 31 December 2015".

The 2009 Religion Law similarly demanded re-registration. In late 2013, the SCRA published on its website lists of both Muslim and non-Muslim registered organisations. The published lists reveal that only 11 Muslim communities and 2 non-Muslim communities (both Russian Orthodox parishes) have been able to gain registration since the entry into force of the 2009 Religion Law.

At the time that Law came into force, the SCRA claimed that 2,200 religious organisations and associations were officially registered, including 77 Islamic organisations, 1,764 mosques, 62 madrassahs (Islamic religious schools), and 140 Christian communities, including Baptist, Catholic, Pentecostal and Russian Orthodox churches.

- "Spiritual ministers" to be licensed annually by SCRA

The draft Religion law also states that all undefined "spiritual ministers" working in any voluntary or paid capacity for a religious organisation must be licensed every year by the SCRA. (A similar provision is also proposed for foreign religious workers.) Among the connected restrictive provisions for "spiritual ministers", the draft states that they "can be refused registration if their submitted documents and religious activity do not correspond to the stated requirements for persons carrying out religious activity". The draft does not clearly state either what documents are required or what the "stated requirements" are.

One observer noted that the SCRA's desire for power over anyone active in any capacity in any religious organisation - whether preaching, teaching, leading prayers, or involvement in charity work - with such licenses be renewed every year is an "obvious interference of the state in the internal life of organisations, and total control of freedom of religion or belief".

Other observers noted that this opens for SCRA officials the possibility of corruption.

Kolodzinskaya of the Interfaith Council noted that the license proposal will "very severely limit foreigners' freedom of belief, as their saying a prayer or reading sacred texts in a community can be interpreted as religious activity, for which they must in advance receive permission from the SCRA".

Zeynalova of the Baha'is pointed out that "we do not know whether we will have to receive each year registration for foreign believers living here. They are not here for as missionaries, but they sometimes participate with us in the community's decisions." She said that "if they will need registration it will be burdensome and difficult for us".

On 14 July the SCRA refused registration as a missionary to Bishop Feodosy, the head of the Russian Orthodox Church in Kyrgyzstan. "This is a ban on the Bishop", Orthodox Church spokesperson Yuliya Farbshteyn told Forum 18. The SCRA claimed that the Bishop was denied registration as he "threatens the public security of Kyrgyzstan and sows religious discord among the population". Orthodox believers totally denied these claims to Forum 18 (see F18News 18 July 2014 http://www.forum18.org/archive.php?article_id=1978).

Russian Orthodox Sunday school catechist Vakhtang Fyodorov has similarly been banned and forced to leave Kyrgyzstan (see F18News 30 October 2014 http://www.forum18.org/archive.php?article_id=2011).

- Education license requirement reinforced

Reinforcing the existing requirement for all religious education to have state permission, the draft Religion Law states that every institution offering religious education must be licensed by the SCRA. It grants the SCRA extremely wide and unclear grounds to refuse such licenses. It also bars anyone from receiving religious education abroad without the SCRA's permission.

Vadim Grigoryan, Director of the Protestant Silk Road Bible College, on 22 October commented on the wide grounds for refusing licenses. For example, he told Forum 18, "anything that the SCRA or the authorities do not like in the programme of a religious education institution can be described as a threat to security or accord between religions".

Shumilin of the Association of Evangelical Churches wondered aloud to Forum 18 how "the SCRA, which does not have the specialists or means, can evaluate the theology of various beliefs. It is not possible." Like security, theological beliefs are not under Kyrgyzstan's binding international human rights obligations a permissible reason to restrict freedom of religion or belief.

- "Draconian" Administrative Code changes

Fines under the Administrative Code for exercising freedom of religion or belief are proposed to dramatically increase. For a number of Administrative Code articles these are being raised from up to 10 FIs for members of religious organisations and up to 50 FIs for leaders, to up to 100 FIs for members and up to 700 FIs for the leaders. Seven hundred FIs are equivalent to 70,000 Soms (about 8,210 Norwegian Kroner, 990 Euros or 1,250 US Dollars), which is roughly equivalent to 14 months' average salary across the country.

Kolodzinskaya of the Interfaith Council described these proposed punishments as "draconian". She noted that "any exercise of freedom of religion or belief without SCRA permission, even teaching art to children, discussions of secular fiction books or any other youth activity having no religious elements in it, if done by members of a religious community can be punished." This is because the proposals "allow such activity to be characterised as involving children in religious activity or being engaged in religious activity without registration". (END)

For background information see Forum 18's Kyrgyzstan religious freedom surveys at <http://www.forum18.org/Analyses.php?region=30>.

More reports on freedom of thought, conscience and belief in Kyrgyzstan can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=30>.

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 Kyrgyzstan is available at <http://education.nationalgeographic.com/mapping/outline-map/?map=Kyrgyzstan>.

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