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KAZAKHSTAN: Restrictive legal amendments reach Senate

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Wide-ranging amendments to Kazakhstan's Religion Law and 11 other laws that seem set to increase still further the already tight restrictions on freedom of religion or belief begin consideration in Parliament's upper house. Working Group chair Sergei Ershov was unable to say if he would send the draft Law for an OSCE review.

Kazakhstan's draft Amending Law proposing many wide-ranging changes to the 2011 Religion Law, Administrative Code and many other laws is now in the upper house of Parliament, the Senate. The Working Group is due to begin considering the Law on 8 June, not 6 June as originally scheduled, its chair Sergei Ershov told Forum 18. He said the Senate's Bureau is now deciding whether or not the Amending Law will be adopted before the Senate begins its summer break on 30 June.

Following its summer break, the Senate resumes its work on 1 September. "It generally takes up to 60 days for a law to be adopted," the Senate press service told Forum 18. "But it can be quicker."

The lower house of Parliament, the Majilis, approved the Amending Law on 23 May and sent it on to the Senate. The Senate assigned it to the Social and Cultural Development and Science Committee, which formed the Working Group, chaired by Committee member Ershov. Once the Committee has approved it, the Amending Law will require two readings in the full Senate before being sent to President Nursultan Nazarbayev for signature into law (see F18News 30 May 2018 <http://www.forum18.org/archive.php?article_id=2382>).

Yevgeni Zhovtis of the Kazakhstan International Bureau for Human Rights and Rule of Law condemned the Amending Law to Forum 18 as "conceptually wrong legislation". Russian Orthodox and Catholic leaders also expressed concern about some provisions (see F18News 30 May 2018 <http://www.forum18.org/archive.php?article_id=2382>).

Ershov refused to explain to Forum 18 on 5 June why the Amending Law does not remove restrictions in the existing Law which violate Kazakhstan's international human rights obligations and why it adds further restrictions on the exercise of freedom of religion or belief.

This includes continuing the ban on religious communities exercising their internationally-recognised right to freedom of religion or belief without state permission. This violates international human rights law, as outlined in the OSCE/Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (see <<http://www.osce.org/odihr/139046>>). Kazakhstan is both an OSCE participating State and a Venice Commission member state.

Ershov was also unable to say if he would send the Amending Law to the Organisation for Security and Co-Operation in Europe (OSCE) or the Council of Europe's Venice Commission for a legal review.

The Kazakh authorities sought no legal reviews of the Amending Law, either from the OSCE or the Venice Commission. The Chair of the Working Group in the Majilis rejected an April request from Kazakhstan's Human Rights Ombudsperson Askar Shakirov to send the Amending Law for such a review (see F18News 30 May 2018 <http://www.forum18.org/archive.php?article_id=2382>).

Many changes

The Amending Law imposes great state control than before over the exercise of freedom of religion or belief (see below).

New restrictions in the Amending Law likely to be adopted by Parliament include: where religious education is allowed to take place and who by, with new punishments for "offenders"; new restrictions and punishments for those seeking religious education abroad; new provisions over disturbing a religious community's "internal order" (such as by saying the word "Amen" in mosques); even more restrictions on sharing beliefs, with a new specific ban on spreading the beliefs of an unregistered religious organisation; a new definition of the term "clergy" and "worship meeting" which could reduce the number of individuals allowed to lead worship or share their faith, as well as disbar Jehovah's Witness young men from exemption from compulsory military service; require religious literature which does not pass the compulsory state censorship to be seized; a ban on state officials founding or being members of

religious communities; and a ban on holding religious weddings away from state-registered places of worship (except on grounds of sickness or imprisonment of one of the parties) (see below).

The Religion and Civil Society Ministry, which prepared the draft Amending Law, completed work on it in November 2017. Government agencies approved the draft Law, including the Justice Ministry, Interior Ministry and National Security Committee (KNB) secret police (see F18News 29 November 2017 <http://www.forum18.org/archive.php?article_id=2335>).

However, the Amending Law has been considerably changed since the text was first made public in late 2017. A requirement that almost all registered religious communities undergo compulsory re-registration - introduced into the draft in late 2017 - no longer appears in the Law as approved by the Majilis. Nor do punishments for conducting weddings away from a state-registered place of worship (though this would be banned except in limited circumstances). Nor does a requirement that clergy have "higher religious education". The proposed doubling of many administrative fines has been abandoned. Wording on children's participation in worship meetings has also repeatedly changed during the adoption process.

Three Codes and 9 Laws to be amended

The proposed new restrictions and punishments are part of a wide-ranging draft Amending Law "Introducing changes and Additions to Laws on Questions of Religious Activity and Religious Associations". The draft Amending Law proposes 53 changes to three Codes and nine Laws, including the 2011 Religion Law (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>) and the Administrative Code.

If adopted, almost all provisions of the Amending Law would come into force 10 days after its official publication.

The draft Amending Law would remove none of the existing restrictions on the exercise of freedom of religion or belief which have been repeatedly criticised by international organisations, human rights defenders in Kazakhstan and abroad, and by many other local people (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

This failure to remove the existing restrictions on freedom of religion and belief is directly contrary to the recommendations of the United Nations (UN) Human Rights Committee, which in its July 2016 Concluding Observations (CCPR/C/KAZ/CO/2) called on Kazakhstan to "guarantee the effective exercise of freedom of religion and belief and freedom to manifest a religion or belief in practice. It should consider bringing article 22 of its Constitution into line with the Covenant [the International Covenant on Civil and Political Rights - ICCPR] and revise all relevant laws and practices with a view to removing all restrictions that go beyond the narrowly construed restrictions permitted under article 18 of the Covenant" (see <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKAZ%2fCO%2f2>). Yet Kazakhstan has ignored this and similar recommendations (see F18News 22 July 2016 <http://www.forum18.org/archive.php?article_id=2201>).

Despite ignoring UN Human Rights Committee recommendations on Kazakhstan's laws and state actions, the government has claimed that the Religion Law changes have been drafted in accordance with International Covenant on Civil and Political Rights (ICCPR) Article 18 ("Freedom of thought, conscience and religion"). But if adopted the changes would mean that Kazakhstan even more flagrantly than before breaks its binding international human rights law obligations to protect freedom of religion and belief and other human rights. In support of this, the drafters of the changes cite similar legal provisions violating human rights in Uzbekistan, Tajikistan, Turkmenistan, Azerbaijan and elsewhere (see F18News 29 November 2017 <http://www.forum18.org/archive.php?article_id=2335>).

Greater state control

A new Article 4, Part 13-1 of the Religion Law specifically declares that the Religious Affairs Committee "exercises state control over the activity of republic-level religious organisations in relation to their observance of the requirements of the [Religion Law]".

A new Article 5, Part 1, Point 12 gives similar "state control" over registered regional religious organisations to Regional Religious Affairs Departments.

A new Article 5, Part 2, Point 2 gives similar "state control" over registered local religious organisations to local administrations (which do not yet appear to have specific religious affairs departments).

Administrations and their leaders on a Regional level already have a duty to "study and analyse" the activity of "religious organisations, missionaries and religious educational establishments" in their area. This "study" is being expanded on a local level also.

Proposed amendments to Article 6 of the 2005 Countering Extremism Law introduce requirements for administrations and their leaders, not only on a Regional level but on a District level, to "study and analyse" the activity of "religious organisations, missionaries and religious educational establishments" in their area.

An amended Article 5, Part 3 of the Religion Law would introduce requirements for Akims (administration heads) at a District level similarly to "study and analyse the religious situation" in their area, as well as to "study and analyse the activity of religious associations, missionaries, and religious educational establishments functioning in the area". The Akims have a duty to ensure that religious communities do not violate the law.

At present, each Regional Akimat (administration) has a Religious Affairs Department, which has the power to initiate punishments for violations of the strict state controls on religion. Internal Policy Departments in Regional and District Akimats also often interfere in the activity of religious organisations.

The changes - if adopted - would increase the formal requirements for District level officials to conduct surveillance on and interfere in local residents' exercise of the right to freedom of religion or belief. The Comparative Table during earlier consideration of the Amending Law claimed that the current absence of control over exercise of freedom of religion or belief at a local level "creates certain difficulties in the timely collection of necessary information", especially given the remoteness of some locations.

An extensive new section of the Religion Law covers "state control of religious organisations". A set of new Articles (from 6-1 to 6-11) outline how state officials conduct inspections or national-level, regional and local religious organisations and seize literature and other materials from them for "expert analysis".

The new Article 6-1 empowers religious affairs and local officials to visit places of worship, attend a community's events, question a community's members about whether they are abiding by its charter, have access to financial documents, and issue written warnings if they discover "violations" of the law.

The new Article 6-2 specifies regular and unplanned inspections. Officials would launch unplanned inspections if they suspect a religious organisation has threatened the life or health of an individual, or "the legal interests of individuals or legal entities or the state". While reports of an alleged offence or crime can trigger such an unplanned inspection, an anonymous complaint cannot serve as the basis for such an unplanned inspection.

Officials must give at least 24 hours notice of such an unplanned inspection (and 30 days for a planned inspection), together with the reason. An inspection can last for up to 30 days.

Inspections can lead to administrative prosecutions, written warnings, handing of materials to the police for criminal investigation, and handing of materials to other state agencies for them to take action against a religious community.

The attempt to impose intrusive state control on the exercise by individuals and communities of freedom of religion and belief violates international human rights law, as outlined in the OSCE/Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (see <<http://www.osce.org/odihr/139046>>). Kazakhstan is both an OSCE participating State and a Venice Commission member state.

A new Article 4, Part 13-2 of the Religion Law requires the Religious Affairs Committee to "draw up and confirm the travel procedure for individuals going on pilgrimage (haj and umra)".

The Religious Affairs Committee was tasked with preparing regulations for tour firms organising "religious tourism", including pilgrimages, in a January 2017 Amending Law (see F18News 5 January 2017 <http://www.forum18.org/archive.php?article_id=2243>).

Some punishments reduced, but punishable activities widened

Exercising many aspects of freedom of religion or belief is already punishable, particularly under Article 490 of the Administrative Code. This currently prescribes fines of 50 or 100 Monthly Financial Indicators (MFIs), together with bans on activity and, in some instances, deportation (see F18News 21 July 2014 <http://www.forum18.org/archive.php?article_id=1979>).

A fine of 100 MFIs, currently 240,500 Tenge (5,900 Norwegian Kroner, 620 Euros or 725 US Dollars), is equivalent to about two months' average wages for an individual in formal work.

Forum 18 found 45 prosecutions under Administrative Code Article 490 so far in 2018. Most of the 259 known administrative punishments in 2017 to punish exercising freedom of religion or belief were handed down under Article 490 (see F18News 30 January 2018 <http://www.forum18.org/archive.php?article_id=2347>).

The Amending Law as approved by the Majilis introduces for the first time a possible punishment under Administrative Code Article 490 of a warning for first "offences", alongside the existing fines and three-month bans on a religious organisation's activity. It also adds a new punishment under many provisions of confiscation of items used to commit an "offence".

However, Administrative Code Article 490 would still violate Kazakhstan's international human rights commitments by punishing individuals or communities for exercising the right to freedom of religion or belief.

The amended Article 490, Part 1 would continue to punish "Violating the requirements of the Religion Law" by

- 1) conducting religious rites, ceremonies and/or meetings;
- 2) carrying out charitable activity;
- 3) import, production, publication and/or distribution of religious literature and other religious materials, and items for religious use;
- 4) construction of religious buildings, and changing the profile (functional purpose) of a building into a religious building.

The Amending Law adds a further "offence":

- 5) organising and conducting the teaching of religion.

Punishments under Article 490, Part 1 would for the first time allow for a warning or a fine. Fines for individuals would be reduced from 50 to 35 MFIs, and for registered religious communities or other legal entities they would be reduced from 200 to 150 MFIs, plus the unchanged possibility of a three-month ban on activity, plus (a new addition) confiscation of property used in the "offence".

The amended Article 490, Part 3 leaves the punishable "offence" unchanged: "Carrying out missionary activity without state registration (or re-registration), as well as the use by missionaries of religious literature, information materials with religious content or religious items without a positive assessment from a religious studies expert analysis, and spreading the teachings of a religious group which is not registered in Kazakhstan". Fines of 100 MFIs, plus deportation if the individual is not a Kazakh citizen, remain unchanged. No possibility of a warning instead of a fine is introduced. The draft adds a provision confiscating property used in the "offence".

The amended Article 490, Part 4 widens the scope of the punishable "offence": "The carrying out by leaders or members of a religious association or by a religious association of actions outside the aims and tasks specified in the charter of this religious association." Punishments would for the first time allow for a warning or a fine. Fines for individuals would be reduced to 35 MFIs, but for registered religious communities they would remain at 300 MFIs, plus an unchanged three-month ban on activity.

The amended Article 490, Part 7 continues to punish "Leadership of a religious association by a person assigned by a foreign religious centre without the consent of the authorised state agency". Punishments would for the first time allow for a warning or a fine. The fine remains unchanged at 50 MFIs. Deportation remains part of the punishment for those who are not Kazakh citizens, but would be removed for those who are.

Punishments under the current Article 490, Part 7 for leaders who do not prevent children's participation in religious meetings if parents or guardians object would be transferred to a new Article 490, Part 8.

Article 490, Part 8 makes the "offence" more specific and punishes "the leader of a religious association not taking measures not to allow the involvement and/or participation of children who have not reached the age of 16 in worship meetings, religious rituals, ceremonies and/or meetings of a religious association when one of the parents or their other legal representatives objects". Punishments would for the first time allow for a warning or a fine. The fine remains unchanged at 50 MFIs, but a one-month ban on activity is added.

Article 490, Part 9 is a new "offence" of "Violation of the legal requirements over receiving spiritual (religious) education by Kazakh citizens in foreign states". The punishment would be a fine on individuals of 50 MFIs.

Article 490, Part 10 is a new "offence" of "Manifesting religious radicalism". Punishment is a warning or a fine (on individuals of 50 MFIs and on organisations of 100 MFIs).

Article 490, Part 11 is a new offence, punishing officials who abuse their position to promote the interests of a particular religious organisation or force others to participate in religious activity.

Article 490, Part 12 is a new "offence", punishing those who wear clothes or other attributes "demonstrating adherence to destructive religious movements". Punishment is a warning or a fine (on individuals of 50 MFIs and on organisations of 100 MFIs).

Article 490, Part 13 would punish repeat "offenders" within a year of a previous punishment under Parts 1 to 5, Parts 7 to 10 and Part 12 of this Article. Fines for individuals would be 200 MFIs, for officials 300 MFIs, and for organisations 500 MFIs with a permanent ban on their activity. These punishments are unchanged from the equivalent Part of Article 490 in the current Administrative Code, but are extended to many of the new provisions.

The changes would once again grant the police the right to prepare records of an offence under some parts of Administrative Code Article 490 ("Violation of the Religion Law"). Only religious affairs officials have previously been empowered to prepare such records. The Comparative Table providing commentary earlier in the drafting process claims that this has made it difficult to bring such prosecutions because religious affairs officials at a local level are absent.

More severe measures to follow administrative punishment

A new Article 26-1 of the 2010 Prevention of Violations Law would allow senior police officers to initiate "preventative measures" against an individual for "having committed an administrative violation in the area of religious activity". "Preventative measures" range from a "preventative conversation" to deprivation of parental rights, being placed on a "preventative register" or "preventative restriction of freedom of movement".

An addition to Article 6 of the 2014 Law on Internal Affairs Agencies would similarly allow the ordinary police to issue written warnings, which would have to be carried out, to individuals who have "committed an administrative violation in the area of religious activity". Those who have been given such written warnings are to be added to the list of those subject to fingerprinting, and having photos, video and sound recordings taken and biological and other samples taken. An individual can lodge a challenge to such a written warning to the Prosecutor's Office or a court.

The Comparative Table during earlier stages in the consideration process noted that such warnings are necessary because such individuals are a "risk group" of getting involved in "terrorism" (see F18News 29 November 2017 <http://www.forum18.org/archive.php?article_id=2335>).

Further punishments for religious education and teaching

A new Article 3, Part 5 of the Religion Law effectively bans religious teaching unless it takes place within registered places of worship or registered religious education establishments "in accordance with their statutes", or with the permission of the Regional authorities.

It remains unclear if the authorities will punish registered religious communities which conduct religious education in their registered place of worship if the organisation's statute fails to include specific reference to religious education. One legal specialist told Forum 18 that the reference to a religious organisation's statute might allow officials to punish religious organisations that have failed to make explicit reference to religious education of their members in their statutes.

The Amending Law adds a new provision in Article 3, Part 20 of the Religion Law requiring registered religious educational establishments to "carry out their activity openly, and inform the public about their academic, scholarly research and financial activity".

A new Article 490, Part 1, Point 5 would punish those who violate the Religion Law's restrictions on religious teaching (see above).

A new Article 3, Part 19 of the Religion Law would restrict applying for religious education abroad to those who have already gained higher religious education in Kazakhstan. This restriction would not apply to those who undertake foreign religious education under an international agreement, or to members of registered religious organisations that do not have higher religious education facilities within Kazakhstan.

A new Administrative Code Article 490, Part 9 would punish "violations of legal requirements for Kazakh citizens to receive religious education in foreign states according to the established procedure" (see above).

Disturbing a religious community's "internal order"

A new Article 7-1 in the Religion Law allows registered religious communities to draw up their own internal rules of conduct in their places of worship or other premises they maintain. Violations of such internal rules are not allowed, "except in cases of the securing of measures for the protection of public order and security".

Given that the Amending Law retains in the Religion Law (Article 3, Part 1) a provision declaring the state and religious communities separate, this new Article appears to violate this proclaimed separation.

This Article appears to be targeted at Muslims who follow rituals and practices which are not in line with those espoused by the state-backed Muslim Board. Although this is nowhere enshrined in law, the state has given the Hanafi Sunni Board a monopoly on all Muslim activity. No Muslim communities which are either outside the state-controlled Muslim Board or non-Sunni Hanafi Muslim are allowed to exist (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

The Ahmadi Muslim community is banned and all its mosques were forcibly closed and they have been banned from meeting even in their homes (see F18News 24 April 2012 <http://www.forum18.org/Archive.php?article_id=1692>). It most recently applied for state registration in 2015. The Religious Affairs Committee rejected the application in July 2016. Its "expert analysis" claimed the group was not Islamic and should therefore remove the word "Muslim" from its name. This followed similar earlier negative state "expert analyses" (see F18News 23 November 2012 <http://www.forum18.org/archive.php?article_id=1769>).

The October 2016 OSCE Preliminary Opinion Legal Review on an earlier January 2017 Amending Law, pointed out in relation to such "expert analyses" that "it is generally questionable whether a state body is able to or should be involved in assessing any material with religious content". It added that "the rights to freedom of religion or belief, and to freedom of expression exclude any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs, including religious literature or any other materials containing so-called 'religious content', are legitimate" (see F18News 5 January 2017 <http://www.forum18.org/archive.php?article_id=2243>).

The Muslim Board's Council of Scholars approved new Regulations for the Internal Order of Mosques in November 2016. This includes a ban on worshippers praying with the word "Amen" aloud. Numerous Muslims have been fined for this under Administrative Code Article 490, Part 2. This punishes: "Impeding lawful religious activity as well as violation of the civil rights of physical persons on grounds of their religious views or insulting their feelings or profanation of items, buildings and places revered by followers of any religion, unless there are signs of criminally punishable actions" (see F18News 28 March 2017 <http://www.forum18.org/archive.php?article_id=2267>).

The Amending Law does not ban the government from disturbing a religious community's "internal order". In 2017, local courts issued three-month bans on all activity by four Protestant churches and the Jehovah's Witnesses Almaty Administrative Centre, including meetings for worship, and banned unregistered Muslim prayer rooms for three-months or permanently (see F18News 30 January 2018 <http://www.forum18.org/archive.php?article_id=2347>).

An earlier proposed new provision in Administrative Code Article 490 would have punished "violations of legal requirements for observance of the internal order in places of worship and the premises of religious organisations". This no longer appears in the Amending Law approved by the Majilis.

Even more restrictions on sharing beliefs

Article 3, Part 7 of the proposed amended Religion Law defines what the state claims is individuals' rights to freedom of religion or belief. "Everyone has the right to hold religious or other beliefs, spread them, participate in the activity of [registered] religious associations, and engage in missionary activity in accordance with the laws of Kazakhstan," it claims.

However, both the current and the proposed amended Religion Law severely restrict individuals' enjoyment of their rights, particularly to spread their beliefs and engage in missionary activity.

An amendment maintains the 2011 Religion Law's already high restrictions on conducting "missionary activity", under which all discussion of faith by people without state permission, or not using state-approved texts, or outside state-approved locations, is banned (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

The Amending Law includes wide-ranging restrictions on where literature and other materials related to religion may be distributed (see below).

Under the current and the amended Religion Law, members of registered religious communities who wish to conduct "missionary activity" must register beforehand with the Regional Religious Affairs Department and gain permission for any literature they intend to use.

An addition to Religion Law Article 8, Part 4 would require individuals (Kazakh citizens and non-citizens) seeking personal state registration as a "missionary" also to present documentation "confirming the presence of spiritual (religious) education". The addition does not specify what response state religious affairs officials will give to applicants who do not have documentation confirming formal religious education.

Article 3, Part 13 of the proposed amended Religion Law already bans the activity of unregistered religious communities. An addition would also explicitly ban the sharing with other people of an unregistered religious community's beliefs.

Further registration restrictions

The Amending Law does not remove the state's insistence that communities need state permission before they are allowed to exist.

The ban on exercising freedom of religion and belief without state permission violates international law, as outlined in the OSCE/Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (see

<<http://www.osce.org/odihr/139046>>). Kazakhstan is both an OSCE participating State and a Venice Commission member state.

The Amending Law would particularly make registering a new local religious community more difficult. An amendment to Article 12 of the Religion Law would require the 50 adult founders of a local religious organisation to have been registered as resident in the place the organisation would exist for at least five years before they can lodge a registration application.

An amendment to the same Article would require regional religious organisations to be founded not by 500 adult members of at least two registered local religious organisations but by at least two registered religious organisations with at least 500 adult members in total.

A new Article 13, Part 6 of the Religion Law would ban state officials from being founders or members of a registered religious community (see below). Also banned would be individuals who have been added to the Finance Ministry Financial Monitoring Committee List of individuals "connected with the financing of terrorism or extremism".

Almost all the Muslims convicted of alleged Tabligh Jamaat membership, as well as formerly jailed Jehovah's Witness Teymur Akhmedov and formerly jailed Seventh-day Adventist Yklas Kabduakasov, were added to the Financial Monitoring Committee List (see F18News 22 May 2018 <http://www.forum18.org/archive.php?article_id=2379>).

State "clergy" definition to restrict who can lead worship and share beliefs?

Some religious communities remain concerned that the state's definition in the Religion Law that "clergy" are the ones to conduct worship and preaching could restrict leading worship and preaching and similar such activities by those not recognised by the state as "clergy". They are also concerned that "clergy" require nomination by the leaders of a state-registered religious body. Some religious communities do not have "clergy" and it remains unclear if this would ban them from conducting worship.

Article 1, Part 6 of the proposed amended Religion Law defines "clergy" more closely as an individual appointed by a registered religious organisation to conduct "spiritual and preaching service". Gaining such a designation requires an individual to be appointed "on the basis of an order from the leader of a [registered] religious organisation".

Article 1, Part 9 defines a "worship meeting" as "a conglomeration of religious rituals and ceremonies conducted by clergy in accordance with the demands of the faith".

Article 7, Part 2-1 declares: "Worship and religious ceremonies are conducted by persons authorised by religious organisations to conduct them."

Given that the Amending Law retains in the Religion Law (Article 3, Part 1) a provision declaring the state and religious communities separate, these new provisions in the Religion Law appear to violate this proclaimed separation and represent state interference in the way religious organisations organise themselves and conduct their worship.

Some fear that this restriction on religious communities' choice of their own leader or of who leads their worship could be used to close down those which do not have a hierarchical structure, as well as to reduce the number of people allowed to exercise leadership roles in a community's worship.

The new definition appears to be aimed at reducing the number of individuals who share beliefs without personal state registration as a "missionary" (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

It also appears targeted at Jehovah's Witnesses - who are already frequently fined for sharing their faith.

People who share their beliefs can also be jailed as prisoners of conscience. Jehovah's Witness pensioner and cancer-sufferer Teymur Akhmedov was jailed in Astana in May 2017 for five years and banned for a further three years from conducting "ideological/preaching activity" (see F18News 3 May 2017 <http://www.forum18.org/archive.php?article_id=2277>). He was freed from prison in April 2018 after being pardoned (see F18News 5 April 2018 <http://www.forum18.org/archive.php?article_id=2366>).

Former prisoner of conscience Akhmedov was, as in other cases involving Muslim and Protestant prisoners of conscience, set up for prosecution by the KNB secret police using informers it recruited. These informers invited those prosecuted to meetings the KNB recorded in which they shared their beliefs (see F18News 2 February 2017 <http://www.forum18.org/archive.php?article_id=2252>).

During the Amending Law's earlier consideration, the Comparative Table complained that clergy can currently conduct "missionary activity" while "solely having in hand a certificate from a religious association recognising them as clergy, which [for reasons the Table did not outline] contradicts the concept of 'missionary activity'."

The Amending Law also imposes state interference in the way foreign-based religious organisations name leaders of their Kazakh-based communities. A new Article 19 of the proposed amended Religion Law bans religious leaders named by foreign-based religious organisations from exercising this leadership without the agreement of the state's Religious Affairs Committee. The foreign-based religious organisation must notify the Religious Affairs Committee of such an appointment within 30 days.

Administrative Code Article 490 provides fines and, for those without citizenship, deportation for acting as a religious leader named by a foreign-based religious organisation without Religious Affairs Committee approval (see above).

State "clergy" definition to restrict conscientious objection too?

The new definition of "clergy" may also be targeted at reducing the number of young men exempt from compulsory military service. This particularly concerns pacifist Jehovah's Witnesses, as officials highlight their refusal to perform military service.

Introducing tighter restrictions on "clergy", the Comparative Table drawn up during the Amending Law's earlier consideration added, "would exclude the illegal use of such status (for example in refusing military service)."

The UN Human Rights Committee in its July 2016 Concluding Observations (CCPR/C/KAZ/CO/2) stated that Kazakhstan "should ensure the legal recognition of conscientious objection to military service, and provide for alternative service of a civilian nature for conscientious objectors" (see http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKAZ%2fCO%2f2). Yet Kazakhstan has ignored this and similar recommendations (see F18News 22 July 2016 http://www.forum18.org/archive.php?article_id=2201).

Whether the authorities aim to require Jehovah's Witnesses to conduct military service - their pacifist beliefs do not allow them to have any connection with the military - remains unclear.

Although the cases were subsequently dropped, six Jehovah's Witnesses are known to have been under criminal investigation in 2017 for refusing compulsory military service despite having certificates from the Jehovah's Witness Administrative Centre confirming that they are "religious ministers" (see F18News 17 November 2017 http://www.forum18.org/archive.php?article_id=2333).

Article 3, Part 9 of the proposed amended Religion Law declares: "No one has the right on the basis of their religious convictions to refuse to carry out obligations envisaged by the Constitution and Kazakhstan's laws."

Article 3, Part 14 of the proposed amended Religion Law includes a ban on the activity of religious organisations that "incite individuals to refuse to carry out obligations envisaged by the Constitution and Kazakhstan's laws".

No explanation is given of whether or not either of these provisions refer to young men's obligation to conduct compulsory military service.

More censorship

The Amending Law prescribes no easing of the existing tight state control over what literature and other materials related to religion are allowed to be published or imported, and where they are then allowed to be distributed and who by.

Administrative Code Article 490 continues to provide fines for those who violate the strict state religious censorship (see above).

As part of extensive new state controls and inspections of religious communities (see above), a new Article 6-7 of the proposed amended Religion Law sets out how state religious affairs officials or other local officials are to seize religious literature or other items from registered religious communities for inspection. Seized items must be listed, packaged and sealed. One certificate of seized items must be sent with them for "expert analysis", the official seizing the items keeps one certificate and the religious community the third copy.

Article 6-8 of the proposed amended Religion Law specifies how the seizure certificate is to be completed.

A new Article 6, Part 5 of the proposed amended Religion Law specifies that religious literature which is submitted to the Religious Affairs Committee for the compulsory state religious censorship but which "has received a negative religious expert conclusion" is subject to "removal from circulation". No mention is made as to who will remove such items from circulation and whether such items will be destroyed.

The 2011 Religion Law prescribes strict censorship of all religious books including the Bible and Koran, and objects such as Russian Orthodox icons - including strict limits on where they can be bought or given away (see Forum 18's Kazakhstan religious

freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

The October 2016 OSCE Preliminary Opinion Legal Review on the January 2017 Amending Law described the censorship as "a system of authorization which appears to be an excessive, disproportionate and unnecessary limitation to the right to acquire, possess, use, produce, import and disseminate religious publications and materials, which is an integral component of the right to freedom of religion or belief" (see F18News 5 January 2017 <http://www.forum18.org/archive.php?article_id=2243>).

Children's freedom of religion and belief

A proposed amendment to Article 35 of the 2002 Law on the Rights of the Child requires parents or guardians to give permission before "religious worship, religious rituals and/or ceremonies" can be conducted on children who have not reached the age of 16. No mention is made of what happens if a child has only one parent or guardian.

Article 3, Part 18 of the proposed amended Religion Law (echoing a provision in the current Law) requires leaders of religious organisations "to take steps to prevent the attraction and/or participation by underage children who have not reached the age of 16 in the activity of a religious association if one of the child's parents or other of its legal guardians objects".

The 2011 Religion Law is unclear both how religious leaders will know if parents disagree over whether their child can accompany one of them to a religious meeting, or 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 (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

Religious leaders who fail to prevent children under 16 from attending activities of their registered religious organisation if at least one parent or guardian objects, face a warning or a fine of 50 MFIs under Administrative Code Article 490, Part 8. The religious community would be banned from functioning for one month, a punishment that does not exist in the current Administrative Code (see above).

A provision in the current equivalent Article (Article 490, Part 7) specifying deportation as an additional punishment (whether or not the individual is a Kazakh citizen) no longer appears.

Earlier drafts of the proposed amended Religion Law proposed a requirement for leaders of religious organisations to ensure that for children under the age of 16 to participate in religious events, one parent, other adult close relative or guardian was present with a child. This provision does not appear in the Amending Law as approved by the Majilis.

A new Article 9, Part 5 of the proposed amended Religion Law bans the distribution of literature or other materials about religion to children under the age of 16. The only exceptions cover materials used by the child's parents or guardians "for educational purposes", or by registered religious organisations for teaching their faith.

Leaders already punished over children's attendance

A growing number of leaders of religious organisations have faced punishment under the current Administrative Code Article 490, Part 7 (see F18News 21 July 2014 <http://www.forum18.org/archive.php?article_id=1979>). This punishes leaders of registered religious organisations who fail to abide by the 2011 Religion Law's existing requirement "to take measures not to allow the involvement and/or participation of under age children in the activity of the religious association when one of the parents or their other legal representatives objects" (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

Five religious leaders are known to have been fined under Administrative Code Article 490, Part 7 in 2017 because children were present at meetings for worship. A sixth religious leader was acquitted, as was a Russian Orthodox priest who baptised a child against the absent mother's subsequent wishes (see F18News 30 January 2018 <http://www.forum18.org/archive.php?article_id=2347>).

New concept of "destructive religious movement"

The Amending Law introduces in the Religion Law a new legal concept of a "destructive religious movement". The amended Article 1 defines this as "a conglomeration of religious views, ideas and teachings representing a threat to the protected rights and freedoms of an individual capable of weakening and/or destroying the moral foundations, spiritual and cultural values and traditions".

A new provision in Article 3, Part 21 of the Religion Law bans "spreading the ideology of destructive religious movements".

The Amending Law does not indicate who determines whether a religious movement is "destructive" and whether such a religious movement is or will be banned. It also does not indicate if a religious movement will be able to challenge such a designation.

Officials often accuse religious communities they do not like of being "destructive sects" (see F18News 31 August 2016 <http://www.forum18.org/archive.php?article_id=2212>).

The law already allows organisations and movements to be banned through the courts. An Astana court banned the Muslim missionary movement Tabligh Jamaat in February 2013. Forum 18 found 65 criminal convictions of alleged Tabligh Jamaat movement members since the beginning of 2015. Of these, 51 were given prison terms while 14 were given restricted freedom sentences (see F18News 22 May 2018 <http://www.forum18.org/archive.php?article_id=2379>).

As well as this court-ordered ban, other religious communities have de facto been banned from meeting for worship. This includes all Muslim communities independent of the state-backed Muslim Board (including Ahmadi Muslims or mosques mainly serving one ethnic community) which are not allowed to gain state registration and this legally exist. Such a ban is not in any published law (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>).

"Extremism" and "terrorism"

State rhetoric routinely mentions the exercise of freedom of religion or belief alongside "extremism" and "terrorism" as an excuse for restricting this and other freedoms (see Forum 18's Kazakhstan religious freedom survey <http://www.forum18.org/archive.php?article_id=1939>). The draft Amending Law continues this pattern.

The Comparative Table made specific reference to the State Programme to Counter Religious Extremism and Terrorism for 2017-2020, which attacks the exercise of freedom of religion and belief and other human rights (see F18News 5 January 2017 <http://www.forum18.org/archive.php?article_id=2243>).

A new Article 4, Part 13-3 of the Religion Law places the duty on the Religious Affairs Committee of determining "signs showing adherence to destructive religious movements, including external attributes and items of clothing".

An addition to Article 5 of the 2005 Law on State Grants would provide for state grants to organisations offering "measures to prevent religious extremism and terrorism". This would include grants to centres to help "those who have fallen under the influence of destructive and extremist religious movements", as well as those conducting "preventative informational work among the population".

The government already funds so-called "anti-sect" centres which often criticise the exercise of freedom of religion and belief and participate in prosecutions of people exercising this freedom (see F18News 8 February 2016 <http://www.forum18.org/archive.php?article_id=2147>). These centres have also been thought by local people to be used "to prepare the ground for restrictive laws against freedom of religion or belief" (see F18News 6 May 2011 <http://www.forum18.org/archive.php?article_id=1568>).

The October 2016 OSCE Preliminary Opinion Legal Review on the January 2017 Amending Law called on Kazakhstan to "at a minimum, to amend and more strictly circumscribe the definition of "extremism" and "extremist activities" to ensure that only acts connected to violence or other criminal acts are criminalized" (see <http://legislationline.org/download/action/download/id/6423/file/296_TERR-KAZ_6Oct2016_en.pdf>). The UN Human Rights Committee's July 2016 Concluding Observations (CCPR/C/KAZ/CO/2) on Kazakhstan were similarly highly critical of, among other things, Kazakhstan's "broad formulation of the concepts of "extremism", "inciting social or class hatred" and "religious hatred or enmity"" and called for laws to be brought "into full compliance" with its international human rights obligations (see F18News 22 July 2016 <http://www.forum18.org/archive.php?article_id=2201>).

Clothing bans and punishment

A new Article 3, Part 22 of the Religion Law would ban individuals from "using, wearing or distributing in public places outward attributes or items of clothing demonstrating an adherence to destructive religious movements". The Religious Affairs Committee, police or the KNB secret police would be authorised to determine what items fall under the provisions of this ban.

A new Article 490, Part 12 of the Administrative Code would punish violations of this ban with a warning or a fine. Fines would be increased for second "offences" within a year (see above).

A new Article 21, Part 2 of the 2010 Prevention of Violations Law would ban wearing in public places clothes that obscure the face, except when required for official duties, medical purposes, sporting or cultural events, or for protection against the weather.

A new Administrative Code Article 434-2 would punish those who wear clothes in public places that do not leave the face visible with a warning or a fine of 30 MFIs. The fine would rise to 100 MFIs for a second "offence" within a year.

It remains unclear if the authorities will use these provisions to punish Muslims who wear clothing the authorities regard as being signs of possible "extremism", such as hijabs (headscarves) for women, and short trousers or South Asian clothing for men.

KNB secret police approval for prisoners' "theological rehabilitation"

The Amending Law would add a new provision to the 2014 Criminal Implementation Code. The new Article 16, Part 1, Point 19 specifies that the Interior Ministry's Committee for the Criminal Execution System (which oversees prisons) must gain KNB secret police approval for how it implements "the organisation of theological rehabilitation work" with prisoners.

No freedom of religion and belief for officials?

A proposed addition to Article 13, Part 6 of the 2011 Religion Law - and a parallel addition to Article 13 of the 2015 State Service Law - would ban state officials from being "initiators in the creation of, as well as participants (members) of religious associations". A "member" of or "participant" in a religious organisation is to be defined as an adult who applies in writing to a religious organisation to have the full rights of membership or participation under a religious organisation's charter.

The Comparative Table from earlier consideration of the draft claimed that this - and an addition banning officials from pressuring people to participate in a religious community or favouring a particular religious community in their official duties - are necessary to ensure the state remains secular.

It remains unclear what would happen if a state official attends a meeting for worship of a registered religious community after the Amending Law has entered into force. A legal specialist pointed out to Forum 18 that different religious organisations organise themselves differently and some do not have formal "members".

Religion and Civil Society Minister Darkhan Kaletayev insisted to the Majilis first reading of the Amending Law on 16 May that this ban would not violate state officials' "basic rights in the area of religion" as they would be allowed to attend religious events in their free time (see F18News 30 May 2018 <http://www.forum18.org/archive.php?article_id=2382>).

An initial draft of the Code of Judges' Ethics - which sets out rules for judges' conduct inside and outside the courtroom - would have banned them from exercising freedom of religion or belief in their free time. However, when the Code was finally adopted in November 2016 the restrictions had been removed (see F18News 16 December 2016 <http://www.forum18.org/archive.php?article_id=2240>).

Bans on weddings outside registered places of worship

A new Article 7, Part 5 of the Religion Law bans the conducting of ceremonies of a religious marriage or the ending of a religious marriage away from registered places of worship. The only exception would be in cases of medical emergency or imprisonment, where such ceremonies could take place in homes, medical facilities or prisons and in the presence of both parties and a cleric of a registered religious organisation.

Earlier drafts of the Amending Law proposed a corresponding new Article to the Administrative Code, Article 491-1. This would punish those who violate these restrictions with a fine. The Amending Law as approved by the Majilis did not include this proposed punishment.

The Comparative Table during the Amending Law's earlier consideration noted what it claimed as a high number of marriages of teenagers, particularly girls, often in religious ceremonies. However, it remains unclear why the draft Amending Law does not address this, while instead targeting those who conduct weddings in unapproved locations. (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>>.

For more background, see Forum 18's Kazakhstan religious freedom survey at <http://www.forum18.org/Archive.php?article_id=1939>.

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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