KYRGYZSTAN: Religious freedom survey, December 2009

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In its survey analysis of freedom of religion or belief in Kyrgyzstan, Forum 18 News Service finds that the state continues to violate its commitments to implement freedom of religion or belief for all. Limitations on this fundamental freedom and other human rights have increased – in both law and practice - under President Kurmanbek Bakiev. A harsh new Religion Law was adopted in 2009, despite international protests, and a similarly harsh new Law on Religious Education and Educational Institutions is being drafted. There are also plans for a new Law on Traditional Religions. State actions, including banning unregistered religious activity and raids on meetings for worship, show little sign of either a willingness to implement human rights commitments, or an understanding that genuine security depends on genuine respect for human rights. As a Baha'i put it to Forum 18: “Our country has so many urgent problems - poverty, the lack of medicine, AIDS, crime, corruption. Why don't officials work on these instead of making life harder for religious believers?” Kyrgyzstan faces the UN Universal Periodic Review process in May 2010.

Ahead of the UN Human Rights Council May 2010 Universal Periodic Review (UPR) of Kyrgyzstan, Forum 18 News Service has found that the country continues to violate its commitments to implement freedom of religion or belief for all. State limitations on this fundamental freedom and other human rights have increased – in both law and practice - since President Kurmanbek Bakiev took power in 2005. A harsh new Religion Law was adopted despite international protests in 2009. This has been followed by continuing repressive state actions. A similarly harsh new Law on Religious Education and Educational Institutions is also being drafted.

Kyrgyzstan is geographically the fourth largest of the five Central Asia countries, and also has the fourth largest population with over 5 and a half million people. Almost 70 per cent of the population are ethnic Kyrgyz (regarded as being of Muslim background), the next largest group being the over 10 per cent who are ethnic Uzbeks (often seen as the most devout Muslims). The rest of the population are ethnic Slavs (mainly Russians and Ukrainians, many of Russian Orthodox or other Christian background) and other ethnicities such as Dungans and Uighurs.

Decline in freedom of religion or belief since 2005

When President Bakiev took power both registered and unregistered religious communities were able to function freely, despite a 1996 Presidential Decree by then President Askar Akaev requiring religious communities to register. Believers of all confessions stated that they were able to manifest their religion or belief freely, problems that occurred from time to time - for example pressure against schoolgirls wearing hijabs - being ascribed to the attitudes of local officials. The exceptions to this were the Falun Gong movement, banned under Chinese pressure in February 2005, and social pressure – including violent attacks - against non-Muslims manifesting their beliefs in southern Kyrgyzstan.

However, in January 2009 a highly restrictive new Religion Law came into force, amid strong international criticism. It broke the Constitution's guarantee that "No laws restricting freedom of speech and freedom of the press may be adopted," as well as breaking the guarantee of freedom of "thought, speech and press, as well as to unimpeded expression of those thoughts and beliefs" in Article 14 paragraph 6 of the Constitution. Some of the Religion Law's restrictions – for example the wide-ranging bans on "proselytism" and the distribution of religious literature - restrict both freedom of speech and freedom of the press. A legal challenge in the Constitutional Court was dismissed on 24 July by Judge Chinara Musabekova with the claim that the "concrete constitutional rights of the applicants have not been violated."

Many features of the Law replicate parts of a proposed Presidential Decree, with attached Regulations, which was withdrawn in early 2008. For some years, the previous 1991 Religion Law and Decree had been under threat of further restrictions from officials, although they were reluctant to say why. For example Kanat Murzakhaliyev, Deputy Head of the then State Agency for Religious Affairs (SARA), characterised then existing legislation as "too liberal," adding that it did not "meet the requirements of reality." On 5 November 2008, as the current Law was going through parliament, he told Forum 18 that "we are not toughening the law but are bringing some orderliness to the relations between the state and religious organisations, which is missing in the current law." Denial of the reality of the law has been a standard feature of officials' responses to questions and criticism.

On 26 October 2009, President Bakiev decreed that the SARA was transferred from being under the authority of the government to
being directly under the President and renamed the State Commission for Religious Affairs (SCRA). The President also confirmed Kanybek Osmonaliev as head of the SCRA.

Lack of openness

Excessive secrecy surrounded the preparation of both the withdrawn 2008 Decree and the preparation and passage of the 2009 Religion Law. Religious communities frequently complained about the secrecy surrounding the various proposed texts, and the absence of meaningful public consultation. They complained that some were not invited to roundtables, and that criticisms of the proposed Law were ignored. This lack of openness extended to international observers. Deputy Zainiddin Kurmanov, Chair of the parliamentary Committee on Constitutional Law, State Structure, Legality and Human Rights, denied to a European Parliament delegation – contrary to statements of Kyrgyz religious communities and human rights defenders – that the full text had not been available. He also wrongly claimed that the proposed law's restrictions – such as a requirement for 200 people to register communities - would be changed before the Law passed through parliament. Indeed, Kurmanov himself went on to vote for this provision in the Law's final parliamentary reading, in which the Law was passed unanimously.

Echoing the views of many, a Hare Krishna devotee told Forum 18 that it was "pointless" to write to the President to call for the new Law to be amended or abolished. "It would be stupid – the government machine has simply imposed this." The numerous unclear formulations in the Law give great scope for officials to take arbitrary and severe action against organisations they dislike. This, along with the persistent lack of transparency in the drafting and legislative process, suggests that Kyrgyzstan is both uninterested in and distrustful of the views and fundamental freedoms of its citizens, and may be highly committed to the restrictions it has imposed.

This official hostility to freedom of religion or belief causes great frustration among religious believers. As a Baha'i put it to Forum 18 in March 2008: "Our country has so many urgent problems - poverty, the lack of medicine, AIDS, crime, corruption. Why don't officials work on these instead of making life harder for religious believers?"

Registration – a means to ban religious communities?

The 2009 Law requires all religious communities to re-register with the then SARA (now replaced by the SCRA) by 1 January 2010; bars communities not registered by the SCRA and the Justice Ministry from receiving legal status, for which a SCRA certificate is necessary; and bars those with fewer than 200 members from registering with the SCRA. All the 200 must be adult Kyrgyz citizens. Even assuming that a community has 200 members willing to act as founders – which many do not – the 200 are to supply their full name, full date of birth, home address, place of work and job title and passport number. The application also needs to include information about the organisation's religious faith, form of rites, history in Kyrgyzstan, attitude to marriage and the family, attitude to education, and attitude to military service. Finally, the application needs written permission from the local authorities for use of premises where it meets.

Unlike in other countries of the region, Kyrgyzstan's new Religion Law does not specifically demand re-registration for all religious communities. However, Article 30 point 3 of the new Law points out that "charters and other founding documents of religious organisations and missions are effective only in that part, which is not in contradiction to this Law." Article 9 point 3 declares that "there shall be no norms in the charter of a religious organisation or mission contravening Kyrgyzstan's Constitution or Law." Officials commented to one religious community during the Law's passage that it was hoped that this de facto re-registration demand would not be noticed.

Kanybek Osmonaliev, Head of the SCRA, claimed to Forum 18 in October 2009 that – despite the Law's requirements - existing religious communities would not need to re-register as the Law was, he claimed, not retroactive. However, he would not reply when asked how this claim matches the Law's requirement that Charters of existing recognised religious communities must be "re-aligned".

Head of the SCRA Osmonaliev and his Deputy Kanatbek Murzakhalilov have given Forum 18 contradictory information on whether religious communities registered under the old Religion Law will need to re-register. Despite Osmonaliev's October claim that there will be no re-registration, Murzakhalilov, giving his opinion of the Religion Law, told Forum 18 in November that religious communities which need to make changes to their charters in order to bring them into harmony with the Law will need to be re-registered. Murzakhalilov did not say whether all the registered communities will need to re-register.

Zainiddin Kurmanov, a Parliamentary Deputy who was one of the initiators of the new Religion Law, told Forum 18 on 13 November that religious communities whose charters are not in accordance with the Law "must necessarily" amend their charters, which, in its turn, "definitely" entails re-registration.

Forum 18 notes that Article 12 Part 1 of the Law on State Registration of Legal Persons and Branches (Representations), which came into force on 1 April 2009, specifies that religious organisations are among those that require re-registration if their statute is amended.
The 2009 Law also imposes unclear reasons why activity can be banned, registration may be refused or the activity of an organisation suspended. These include organisations engaging in activity which are thought to be "religious fanaticism and extremism, actions directed to opposition and aggravation of relations, rousing of religious hatred between different religious organisations"; engaging in "coercion to family fragmentation leading to family disruption"; "endangering state security"; encouraging "persecution"; and "refusal to provide medical support to persons whose life or health are in danger." The unclear formulations and reasons given break Kyrgyzstan's international human rights commitments; under the International Covenant on Civil and Political Rights (ICCPR) for example, "national security" is not a permissible reason to limit freedom of religion or belief.

Religious organisations must also provide financial information to: the State Agency for Statistics; tax authorities; the SCRA and its territorial divisions; and the Public Prosecutor's Office. If this is not completely complied with in the view of the officials concerned, the SCRA or its territorial divisions can seek a court order to close down the religious organisation.

Even when the registration requirements are clear and communities want to register, the conditions are often unreasonable and break international human rights standards. As a Baha'i observed to Forum 18: "How can we gather 200 people to sign official papers for the [then] SARA, and then get them to go to local keneshes [local authorities] with their passports to be identified? People are usually reserved about signing official papers." One Protestant church in the north-west told Forum 18 that they had been unsuccessfully trying for two years to register. As they complained, "How can we collect 200 signatures if we are not allowed to function normally?" Similarly, the capital's Hare Krishna community stated that "under this new Law, we won't have the right to function at all as we don't have the necessary 200 members. We're not alone – all small religious communities will have to go underground."

 Asked by Forum 18 in August 2009 about what would happen to religious communities which have fewer than 200 members, and so cannot be registered, Kumar Dushenbayev of the then SARA (now replaced by the SCRA) replied: "Why should religious communities such as the Presbyterians try to open a branch in every corner of the country? Why can't they come together in one place, where they would not have a problem gathering 200 people?" When Forum 18 repeated the question, he said that "we will not fight with them. There is a Law, and we will deal with them accordingly."

Ban on sharing beliefs, restrictions on religious literature

The 2009 Law, like the withdrawn 2008 Decree, states that all "actions directed to proselytising of the faithful from one denomination to another (proselytism), as well as any other illegal missionary work, are prohibited". Typically, the Law does not define what constitutes "illegal missionary work". As the joint Council of Europe Venice Commission / Organisation for Security and Co-operation in Europe (OSCE) Advisory Council on Freedom of Religion or Belief legal review – made public in October 2008 - noted, "numerous provisions of the Draft Law inappropriately restrict freedom of expression and rights to disseminate religious and other materials".

The 2009 Law allows state examination of any religious literature and requires state examination of all religious materials placed in a library. It also targets distribution, banning all distribution of religious literature, print, audio-video religious materials in public places, on the streets, parks, and distribution to homes, children's institutions, schools and higher education institutions. Such distribution is permitted only within the confines of a religious organisation's legally owned property, or in places allocated by local authorities for this purpose.

Religious education and religious activity of minors

Echoing provisions of the withdrawn 2008 Decree, the 2009 Religion Law requires all religious educational establishments – universities, institutes, madrassas, seminaries, Sunday schools and orphanages – to gain official registration. These establishments can only be founded by registered organisations, and must - among numerous other requirements – have local authority permission to exist. All children are also banned from being active in religious organisations, and no religious organisations are permitted in any educational institute – apart from in religious education institutions. This prevents even secondary school and university students from organising religious groups in their place of education.

Since the Religion Law was enacted, the SARA and its successor the SCRA have been drafting a new Law on Religious Education and Educational Institutions which, if adopted in its current form, would impose further restrictions on the activities of religious organisations and educational institutions. The draft seen by Forum 18 in autumn 2009 would impose sweeping controls on who could open religious educational institutions, would ban all but approved and licensed institutions, limit the numbers of students in such institutions and ban individuals from seeking religious education abroad without state approval. Explaining in August 2009 what he sees as the need for such a Religious Education Law, then SARA (now replaced by the SCRA) head Kanybek Osmonaliev complained that "too many Islamic religious educational institutions with no licence exist".

State officials have continued the lack of openness seen in the Religion Law's passage in their approach to the draft Religious Education Law. Some religious communities were not invited to an October roundtable to discuss the draft Law. Indeed, officials claimed to have invited some named religious communities to a roundtable discussion, but the same religious communities told Forum 18 they were unaware of any invitation. At a 29 October conference Kanatbek Murzakhalilov, Deputy Head of the SCRA,
gave religious communities just one week to submit comments. Murzakhalilov refused in November to tell Forum 18 why the SCRA was refusing to allow the publication of the Legal Opinion on the draft by the OSCE requested by the SCRA (the Opinion was later published). Several directors of medreses (Muslim secondary schools) across Kyrgyzstan were afraid to comment to Forum 18 on the draft Law, for fear of reprisals from the authorities.

The joint Council of Europe Venice Commission / OSCE Advisory Council on Freedom of Religion or Belief Legal Opinion found that the draft Law imposes "undue constraints on religious activity in the country" and that "a number of the provisions are inconsistent with OSCE commitments and general international human rights standards". Murzakhalilov of the SCRA told Forum 18 in December that some changes, which he would not specify, would be made to the draft Law after the Legal Opinion.

SCRA officials told Forum 18 in November 2009 that the Law would go to Parliament within two months. In December, Murzakhalilov of the SCRA told Forum 18 that the Law "will go to Parliament in six months to a year." He also claimed that a new draft of the Law would be published on the SCRA official website at the end of February 2010.

Hostility to other international contacts

The 2009 Religion Law is hostile to religious communities with foreign contacts. If a community has "administrative centres located beyond Kyrgyzstan or having foreign citizens in its administrative body" it is classified as a "mission". This must re-register every year and does not have legal status. It can be refused registration if it poses "a threat to the state and social security, the interethnic and ecumenical concord, health and morality of the population, or in other cases anticipated by legislation". Similarly, foreign religious workers must register with the State Agency before they can engage in religious activities. This can be denied "if this may endanger public safety, social order, interethnic and ecumenical consensus, social health and morality." The authorities have, in several cases known to Forum 18, compelled foreign missionaries to leave the country or have denied them permission to extend visas.

Use of property restricted, non-Muslim burials made exceptionally difficult

The 2009 Law states that organisations can "own only buildings, constructions, ceremonial objects, objects of production, social, and charity functions, monetary funds, and other property necessary for provision of their activities." However, the Law does not define what is meant by "necessary" or who decides on necessity. Religious events outside a community's own premises can, in the 2009 Law, "be performed in the procedure stipulated by the legislation of Kyrgyz Republic." However, no such procedure is specified in the Religion Law.

In a small but crucial sentence – which will make it impossible for many non-Muslims to be buried according to their own wishes – the Law states that "Recognition of regulations of use of confessional cemeteries and regulations of cemetery exactions shall be governed by regulations of local municipalities." Local authorities have routinely denied non-Muslims the possibility to be buried in a non-Muslim way, which has caused deep distress to the family and friends of the dead and their communities. Attempts to discuss the issue – including a meeting at the then SARA - have not led to a solution. Asan Saipov of the Muftiate told Forum 18 in July 2008 that they had decided "not to allow the burial of non-Muslims in Muslim cemeteries" - even though these are run by local authorities and are usually the only local cemeteries. Discussing one example of the distress caused by this, Saipov insisted that villagers – backed by the authorities - made the right decision in May 2008 in stopping the family of a deceased 14 year old Baptist from burying him with Christian rites.

Hostility to international human rights standards, no Religion Law changes

The 2009 Religion Law claims that: "If there exist other conditions defined within international agreements signed by the Kyrgyz Republic, different from those stated in the legislation of the Kyrgyz Republic related to freedom of religion and religious organisations, then the conditions of the international agreements shall prevail." However, so many provisions of the Law contravene international human rights standards – as the Law's drafters were well aware, not least following the joint Council of Europe Venice Commission / OSCE legal review - that it is difficult to accept that this claim is meant to have any force.

Since the Law came into force in January 2009, Kanatbek Murzakhalilov, Deputy Head of the then SARA, told Forum 18 in May 2009 that a high-level Commission had been set up to resolve these issues in the new Law before regulations to implement the Law were prepared. The three issues identified were: the ban on sharing beliefs, severe restrictions on distributing religious literature, and the 200 founder threshold required before religious communities can register and thus function legally. All three issues were identified in the Venice Commission / OSCE legal review. Murzakhalilov of the then SARA avoided stating whether there would be any substantive changes. No comment was made on whether other parts of the Law which break international human rights standards would also be examined. No changes had been made by the end of 2009.

State actions since Religion Law came into force

Almost no religious communities have been registered by the SCRA since the Religion Law's adoption in January 2009, despite the Law's registration deadline of 1 January 2010. Dushenbaev of the SCRA told Forum 18 in October that "we have not been
registering new communities, because the Regulations to apply the law have not been signed into force.” SCRA officials told Forum 18 in November that "the Regulations [to implement the Religion Law] have been prepared but not signed into force." Officials claim to have made the text of the Regulations available for public discussion, although no-one who Forum 18 has spoken to – apart from officials – has seen the text.

However, Kubat Imarov, Assistant to Rahmatulla Egemberdiyev, Deputy Head of Kyrgyzstan's State-backed Muslim Board, told Forum 18 on 13 November that two new mosques - Ismet-Kagyr and Agturpak - in Batken region's Kadamjay district were registered by the SCRA two days earlier. He could not explain to Forum 18 how it was possible to register the mosques while non-Muslim communities have been told to wait until after the Regulations were enacted. Asked if the mosques had collected 200 signatures, he claimed: "This rule applies only to medreses not mosques."

Lack of registration potentially has serious consequences. The Law's Article 8 bans all unregistered activity and subjects it to prosecution. Asked what will happen to religious communities which are unable or do not want to register or re-register, Kumar Dushenbaev, the SCRA official in charge of registering religious communities, told Forum 18 in October that "we will deal with them in accordance with the Law of Kyrgyzstan." He would not specify what actions the state authorities would take.

Even if religious communities could now submit applications, groups without registration face much tougher conditions which few can meet. For instance, Jehovah's Witnesses and many Protestant churches complained to Forum 18 that they cannot gather the 200 adult citizen founding members now required before each congregation can apply for registration.

Despite the fact that the Regulations to implement the Law are not yet in place, officials of the Prosecutor's Office, Police, NSS secret police, local Executive Authorities and the SCRA have visited many non-Muslim religious communities across the country. Jehovah's Witnesses in Maili-Suu faced raids and summonses in April 2009. "The Police told our members that in the light of the new Law they have no rights to distribute or to keep any religious literature at their homes," their lawyer Mikhail Kokhanovsky told Forum 18. Police told Forum 18 they had to confiscate the literature to check if it is "legally permitted". In some regions branches of Protestant Churches, which were officially registered in Bishkek, were ordered by the local authorities in March-April 2009 to stop their worship meetings saying their "registration in Bishkek does not cover their activity" outside Bishkek. Some communities have been ordered to bring their charters into line with the new Law – which would force them to re-register.

SCRA officials have contradicted themselves on whether or not existing registered communities need to be re-registered. Religious communities have often faced difficulty in recent years in gaining state registration, with many complaining that none of their new communities have been registered in this time. Bishkek's Hare Krishna community – which has been told a "secret instruction" bans it from registering – fears it will never be able to gain legal status. Officials of the then SARA told some communities in 2009 that no further registrations could take place until regulations implementing the new Law are promulgated. Religious organisations which are not communities also face problems registering. An example of this is the Bible Society, which is facing demands that it must register as a religious organisation. The Religion Law requires all religious organisations to have no fewer than 200 members, yet as Valentina An, Chair of the Bible Society, explained to Forum 18 "we have only 3 employees."

Some religious communities are facing problems in registering as they cannot get a certificate from the State Agency for Architecture and Buildings. In some cases religious communities are told that, on the instructions of the SCRA, their building must be 1,000 metres away from any school building, and 10,000 metres away from any mosque. In another case, an organisation was asked to build an electricity substation to obtain a certificate. Officials have evaded answering Forum 18's questions about these problems.

In protest at the extra-legal bureaucratic obstructions and the Law's unreasonable requirements – including that all religious organisations must in defiance of international human rights standards be registered – many Protestant churches have decided to protest against the Law by refusing to register. As Aleksandr Shumilin of the Baptist Union told Forum 18 on 4 November: "Why should we agree with the new Law, which does not allow us to freely share the good news?" he asked. "Second of all to register our many un-registered congregations we need to give the names and personal data of 200 members as founders, which we will not do."

Impact on charitable work

The bans on sharing beliefs and the Religion Law's statement that "charitable activities shall not facilitate dissemination of doctrine or religious beliefs" may have a negative impact on charitable work, even if a religious community has no intention of using this to attract followers. Brother Damian Wojciechowski of the Catholic parish of Blessed Mother Teresa in Jalal-Abad in southern Kyrgyzstan told Forum 18 in May 2009 he is not sure how the new Law will work, but the ban on sharing of faith “may effectively stop our charity work”. Asked what would happen if an individual from one faith who received help decided to accept the helper's faith, Shailibek Orkunbaev, Secretary of the then SARA (now replaced by the SCRA), told Forum 18: "All that will be made clear in the regulations to come. The Justice Ministry is at the moment working on the regulations." He added that the "courts would ultimately decide" whether or not an individual had been forced to convert to a religion.

Future state plans
In August 2009, Kyrgyzstan established a state Coordinating Council on the Struggle against Religious Extremism. The execution of Council decisions will be obligatory for the different parts of the government, but officials were unclear when asked by Forum 18 what they mean by religious extremism and what the Council will do. It is led by the SCRA, the Interior Ministry and the NSS secret police, and will have members from other parts of the government, the Muslim Board, and the Russian Orthodox Church.

Civil society and religious organisations reacted with concern, Raya Kadyrova of the Foundation for Tolerance International pointing out that "unfortunately our laws give a very wide definition of religious radicalism and extremism." She suggested that the Collective Security Treaty Organisation might be a reason for the Council. The Jehovah's Witnesses noted that some officials have previously described them as "a destructive movement," but "hoped" the Council would not listen to such opinions. One Protestant asked why there was a need for the Council, given the other responsible state organisations. The Hare Krishna community observed that they did not know what the position of the Council on their community would be, although "the NSS secret police has told us that we are a totalitarian sect, and are in a list with the banned terrorist organisations."

In October 2009 the government made public a draft Strategy on State Policy in the Religious Sphere from 2009 to 2015, aimed at tackling "external and internal threats connected with religion, and the rise of radical religious movements and inter-confessional contradictions in Kyrgyzstan" and amplifying the National Security Concept approved by the President in February 2009. It said that "religious organisations and objects of religious significance (mosques, medreses, churches, houses of prayer, and religious educational organisations)" could encourage the growth in members of "banned politicised religious-extremist parties". The Strategy gave a timetable of measures, including the Regulations to enact the Religion Law, the Religious Education Law, as well as a new Law on Traditional Religions.

The Strategy also stated that a new analysis centre is to be created in the SCRA and a list of banned religious organisations is to be prepared. Local religious affairs committees are to be introduced at the village level. Foreign missionaries will be monitored annually by the NSS secret police and other agencies and missionaries preaching "destructive faiths" will be stopped. An inter-agency commission will be created to monitor religious education establishments' staff, curricula and buildings. Imams and teachers in Muslim educational establishments will undergo attestation each year by the SCRA, local administrations and the Muslim Board.

Repression boosts extremism

However, a Kyrgyz NGO, the Foundation for Tolerance International (FTI), has found that Kyrgyz citizens think such state measures encourage the growth of extremism. Participants – from both the state and civil society - in a series of workshops run across Kyrgyzstan in 2009 have stated that repressing freedom of religion or belief and other fundamental freedoms boosts the credibility of radical extremist groups as an alternative to the present government. The authorities' actions are thought by ordinary Kyrgyz to be motivated by a wish to stay in power against the people's will, and are said to allege threats to justify restrictions and even to obtain funding from foreign donors.

Fears that the authorities are motivated by a wish to stay in power against the people's will were reinforced by the disputed July 2009 presidential election, which the OSCE noted had "instances of obstruction of opposition campaign events as well as pressure and intimidation of opposition supporters." Election day itself was "marred by many problems and irregularities, including ballot box stuffing, inaccuracies in the voter lists, and multiple voting".

Need to implement existing human rights commitments

Kyrgyzstan shows little sign of being willing to implement its UN or other human rights commitments in practice, and shows little sign of understanding that genuine security depends on genuine respect for human rights. Rather, the evidence of its actions against Kyrgyz religious believers and communities indicates that it has little intention of implementing its commitments to respect freedom of religion or belief, or other fundamental freedoms. (END)

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.


