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KAZAKHSTAN: Two repressive laws heading through Parliament at "unprecedented" speed

By Felix Corley, Forum 18 (<https://www.forum18.org>)

Within hours today (21 September) two controversial new laws which – if adopted by the Senate and signed into law by Kazakhstan's President Nursultan Nazarbaev – will impose severe restrictions on people exercising their freedom of religion moved decisively towards adoption. The Lower House of Parliament, the Majilis, approved them this morning. In the afternoon the two laws were given their initial presentation to the Social and Cultural Development Committee of the Senate, the Upper House. Forum 18 News Service has learned that privately many Majilis deputies were angry at provisions of the laws and the speed which the government is pushing the laws through Parliament, but no-one voted against either law. In discussion of both laws – a proposed new Religion Law and a separate law amending other laws affecting freedom of religion or belief - the fundamental incompatibility of both laws and current state actions with Kazakhstan's international human rights commitments do not appear to have been publicly discussed.

Within hours today (21 September) two controversial new laws which – if adopted by the Senate and signed into law by Kazakhstan's President Nursultan Nazarbaev – will impose severe restrictions on people exercising their freedom of religion moved decisively towards adoption. The Lower House of Kazakhstan's Parliament, the Majilis, approved them in the morning. The same afternoon the two laws were today given their initial presentation to the Social and Cultural Development Committee of the Senate, the Upper House.

Although Forum 18 News Service has learned that privately many Majilis deputies were angry at provisions of the laws and the speed which the government is pushing the laws through Parliament, no-one voted against either law. Several Majilis stated privately that Muslims too will suffer under these laws.

Forum 18 understands that of 107 Majilis deputies, 98 voted in favour, one or two abstained and the rest were absent.

The man who answered the telephone of Senate Social and Cultural Development Committee chair Akhan Bizhanov – who did not identify himself - told Forum 18 on 21 September that after the presentation that afternoon, consideration of the two laws will continue in his Committee before they are sent to the full Senate. He said the timetable is "open". However, Ninel Fokina of the Almaty Helsinki Committee told Forum 18 the same day that she fears they will be adopted by the full Senate "without any changes this week or next" (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

The proposed new Religion Law would impose a complex four-tier registration system, ban unregistered religious activity, impose compulsory religious censorship and require both central and local government approval to build or open new places of worship (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

A separate proposed Law, an Amending Law also seen by Forum 18, would amend nine other laws affecting freedom of religion or belief, with a sweeping revision to Article 375 of the Code of Administrative Offences to punish a range of "violations" of the new Religion Law (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

Majilis deputies made minor changes to both laws today, but there do not appear to have been any significant changes (see F18News 23 September 2011 http://www.forum18.org/Archive.php?article_id=1617).

Fundamental issues not debated

Forum 18 notes that the most controversial provisions in debate by deputies have been over whether government offices can be used even for private prayers and whether the Law should restrict women from wearing the headscarf. Wider issues – including the fundamental incompatibility of both laws and current state actions with Kazakhstan's international human rights commitments - do not appear to have been publicly discussed.

Fokina of the Almaty Helsinki Committee told Forum 18 she thinks the issue of prayer rooms in state-owned buildings was

deliberately included to distract attention from the fundamental violations of religious freedom in the new laws. "All the main arguments were around this issue [of prayer rooms]."

Criticisms of both laws by members of many local religious communities – such as Muslims, Christians and members of other faiths – also do not appear to have been publicly discussed by deputies.

"Unprecedented" speed

"This has all been abnormally quick," one observer told Forum 18 on 21 September. "Indeed, this is unprecedented." Saule Doszhanova of the Majilis Press Service declined to tell Forum 18 on 21 September whether any previous draft laws had passed through the Majilis so quickly.

Fokina of the Almaty Helsinki Committee criticised the haste in adopting these laws. "They pretend there was public discussion, but everything is being done not to allow anyone time to react."

"The presidential team has given an order that these laws should be in force by mid-October," one source told Forum 18. However, Askar Beisenbaev, President Nazarbaev's representative to Parliament, denied this to Forum 18 on 21 September. "Who told you that? There has been no such order." He declined to discuss anything else and put the phone down.

The timetable

In September 2009 the National Human Rights Action Plan - published that month – indicated that a draft Law would be introduced in the latter part of 2011 (see F18News 8 October 2009 http://www.forum18.org/Archive.php?article_id=1360). Draft legislation proposed in 2008-9 was, Forum 18 understands, postponed because of the bad publicity they would generate while Kazakhstan was (OSCE) Chair-in-Office in 2010. A member of the Senate, Garifolla Esim, told Forum 18 in June 2010 that a draft Law was being worked on (see F18News 18 June 2010 http://www.forum18.org/Archive.php?article_id=1458).

In July 2010 internal document from the ruling Nur Otan Party attacking "non-traditional" faiths and calling for laws on religion to be harshened aroused concern among human rights defenders and some religious communities (see F18News 30 September 2010 http://www.forum18.org/Archive.php?article_id=1493).

On 5 September 2011 the two new proposed laws – signed off by the Prime Minister on behalf of the government on 1 September - were registered in Parliament. They were then assigned to the Majilis' Legislative and Judicial-Legal Reform Committee, which established a Working Group led by a member of the Committee, Ramazan Sarpekov. The Committee held the formal presentation of the laws on 8 September, led by Kairat Lama Sharif, Chair of the government's Agency of Religious Affairs (ARA) which prepared the drafts. The Working Group held eight meetings to discuss the drafts, meeting almost daily between its first meeting on 12 September and completion of its work on 19 September.

The parliamentary website notes that the Working Group included not only parliamentary deputies but officials of the ARA, the Supreme Court, the General Prosecutor's Office, the National Security Committee (KNB) secret police, the Interior Ministry, Justice Ministry, Defence Ministry, Culture Ministry, Education and Science Ministry, Foreign Ministry, and Communication and Information Ministry. The website added that representatives of higher education establishments and religious and social organisations also participated.

The Majilis' Public Chamber – a consultative body made up of persons who are not deputies (some close to the government and some independent) - held public discussion of the draft laws on 14 September. Lama Sharif of the ARA, Deputy Sarpekov and several other deputies of both houses of parliament addressed the meeting, which was also attended by an Orthodox, a Catholic and a Lutheran bishop, as well as the Chabad Lubavitch Chief Rabbi. Amongst the members is imprisoned human rights defender Yevgeny Zhovtis of the Kazakhstan International Bureau for Human Rights and Rule of Law, who could not attend the meeting.

Majilis deputy Kamal Burkhanov, as reported on the parliamentary website, stressed at the Public Chamber meeting what he called the "urgent need" to adopt the laws, though he did not explain why. He pointed to claimed restrictions in five European countries and Japan to justify the proposed new restrictions. Burkhanov, who led the Working Group which drew up 2008 restrictive draft laws, has previously defended restrictions on sharing beliefs in public with the comment "Do people go to the toilet on a bus?" (see F18News 10 June 2008 http://www.forum18.org/Archive.php?article_id=1141).

After approving the drafts on 19 September, the Working Group sent them to the Legislative and Judicial-Legal Reform Committee, which rubberstamped them on 20 September, sent its conclusions to all the relevant Majilis Committees and set the first reading in the full Majilis for the following day.

The Working Group collected 95 amendments to the government's original Religion Law draft, as well as 11 to the Amending Law amending other laws, according to parliamentary documents seen by Forum 18. ARA Chair Lama Sharif told the Legislative and Judicial-Legal Reform Committee on 20 September that the most controversial provision turned out to be Article 7 of the proposed

new Religion Law, which aims to ban prayers in government offices.

Maksut Narikbaev, a parliamentary deputy and member of the Public Chamber, had insisted at the 14 September Public Chamber meeting that such a ban was wrong. "I too pray the namaz in my office. What will happen tomorrow? Informers will be found, definitely. We're very capable people for that. You will discuss and condemn the fact that Narikbaev prays the namaz in his office? What's the harm in prayer rooms?" He pledged to oppose this provision.

Consultation with religious communities?

Regional officials of the ARA and Internal Policy Departments outlined the draft laws in mid-September in at least some regional Religious Councils, which consist of the Regional religious affairs officials and representatives of the Muslim Board and Russian Orthodox Church.

Asked why religious minorities in Aktobe were not invited or why they are not part the Religious Council, ARA official Baurzhan Yesmekhan told Forum 18 he did not know. "I have only been appointed a few days ago." One former regional official who asked not to be identified complained to Forum 18 that "The very fact that only representatives of the Muslim Board and Orthodox Church were invited for the discussions of the Law is discrimination."

Talgat Nygmetov, Director of West Kazakhstan's DRA told Forum 18 on 14 September that the Regional Internal Policy Department's Religious Council on 13 September discussed the draft Religion Law. Nygmetov said that the representatives of Catholics, Protestants, Jehovah's Witnesses, independent Muslims and other minority religions were not invited, since "they do not represent the country's majority".

No OSCE review?

Forum 18 has been unable to find out if Kazakhstan's authorities intend to take up the offer from the Organisation for Security and Co-operation in Europe (OSCE) for assistance in preparing the new Law and the associated legal amendments to ensure their compliance with OSCE human rights commitments.

On 8 September Forum 18 asked Zuhra Bektepova of Kazakhstan's Embassy to Austria – which handles the country's relations with the OSCE - in writing if such assistance would be sought and, if so, when. On 15 September she responded, telling Forum 18 that Usen Suleimenov is "in charge of requested issues". Forum 18 sent him the same written questions the same day. He replied on 20 September to say he is "waiting for the answers" from the Foreign Ministry in Astana.

An OSCE legal review of the 2008 draft legislation found that "many serious issues remain with respect to the Proposed Religion Law's compliance with international human rights standards, including in particular OSCE commitments" (see F18News 4 February 2009 http://www.forum18.org/Archive.php?article_id=1249).

Why the new laws?

Forum 18 has repeatedly tried to find out from the ARA why it considers the two new laws to be necessary. However, officials have declined to discuss the drafts.

ARA Chair Lama Sharif's presentation of the new laws to the Majilis on 8 September – according to the parliamentary website - gave no substantive reasons for the proposed changes. He claimed that the last decades had seen "cardinal changes in the role of religion and religious organisations in the life of society", though failed to explain why this necessitated these proposed changes. He insisted they were governed by three principles: neutrality of the government, tolerance, and parity of religious organisations before the law.

In describing proposed restrictions on religious activity, Lama Sharif was careful to find other countries where what he portrayed as similar restrictions were in force. Thus in defending religious censorship, he pointed out that in Malaysia, Bibles and other Christian literature in Malay cannot be freely distributed. As for restrictions on foreign missionaries, he claimed that China bans all foreign missionaries, while non-Muslim "emissaries" over 40 years of age cannot enter Malaysia. In Greece, he added, other faiths are banned from conducting missionary activity among Orthodox Christians.

Official justification for "necessary" laws

In an interview with the Russian-language paper *Kazakhstanskaya Pravda*, published on 14 September, Lama Sharif of the ARA said that in the current Law, as first adopted in 1992 and amended seven times since, there has never been a fundamental revision which is now "necessary". He complained that the current Law "does not adequately lay down the legal regulation of missionary activity. This also applies to distribution of religious products, the licensing of the activity of religious educational institutions and the absence of clear-cut criteria for legal entities which enjoy the right to engage in religious practice."

Lama Sharif claims the Law will allow "bringing order" to the activity of religious communities, as well as to end conflicts between competing laws. This phrase echoes comments of President Nazarbaev (see F18News 2 September 2011 http://www.forum18.org/Archive.php?article_id=1608).

While outlining many provisions of the proposed new laws, Lama Sharif did not explain why – for example compulsory registration – they were necessary.

Like other state officials, Lama Sharif claimed that the ARA had studied similar laws in a range of countries, including Russia, Belarus, Georgia (which does not have a Religion Law), Denmark, Spain, Italy, Belgium, Latvia, Portugal and Slovakia. He points out that many offer differentiated status to different communities, based on their historical presence in the country.

He insisted that mentioning "the historical role of Islam of the Hanafi school and Orthodoxy" does not turn them into state religions and that the secularity of the state is guaranteed by the Constitution. He stressed the ban on religious activity in state offices.

Lama Sharif insisted that the state "does not interfere in the activity of religious associations, but only in cases where their activity does not contradict Kazakhstan's laws". He said it also does not interfere in parents' rights to determine the religion of their children or give them religious education "if this education does not represent a threat to the life and health of the child or harms its rights". He pointed out the new provision of the Law that a child cannot attend a religious organisation if one of the parents objects.

"Foreign practice", Lama Sharif claimed, shows that a priority for governments in religious policy is "legislative securing of the status of traditional religious organisations for the given country". As evidence of what he claimed was the necessity of new laws was the "many conflicts and tragedies in Europe provoked by the appearance of new religious movements" which led to states and "European international organisations" – he identified a 1996 European Parliament resolution - taking "serious measures".

He also claimed that the new requirements for his Agency's permission for every new place of worship "will allow a barrier to be put on the uncontrolled construction of such buildings and resolve the problem of derelict places of worship".

Local commentators told Forum 18 that derelict places of worship do not appear to be common in Kazakhstan.

Lama Sharif made no reference to the OSCE's December 2010 Astana Declaration, in which President Nazarbaev and other OSCE Heads of State declared that "we reiterate that human rights and fundamental freedoms are inalienable, and that their protection and promotion is our first responsibility" (see F18News http://www.forum18.org/Archive.php?article_id=1351).

State officials and government-backed bodies, such as the Muslim Board and "anti-sect centres", have been publicly praising so-called "traditional religions" and warning of the alleged dangers of so-called "non-traditional religions" (see F18News 20 September 2011 http://www.forum18.org/Archive.php?article_id=1614). When in 2008-9 a similarly harsh package of measures restricting freedom of religion or belief were being considered, similar attempts were made to encourage intolerance of people exercising their human rights (see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1352). This campaign continued throughout the time that Law was being considered (see F18News 5 February 2009 http://www.forum18.org/Archive.php?article_id=1250).

In a similar return to past practices, state officials have also re-started demanding detailed and intrusive information from non-Muslim communities (see F18News 20 September 2011 http://www.forum18.org/Archive.php?article_id=1614). Officials have also re-started demands that independent mosques join the Muslim Board (see F18News 16 September 2011 http://www.forum18.org/Archive.php?article_id=1613).

"We don't know exactly what they are all doing"

Deputy Sarpekov, head of the Majilis Working Group on the new laws, gave an interview to the government-owned Kazinform agency, published on 14 September. Like ARA Chair Lama Sharif, he claimed that the 1992 Religion Law needs to be rewritten as "it does not reflect today's demands". Amendments adopted since then were only "editorial" and did not touch "such important issues" as registration. He complained that a "large number" of Kazakhstan's 4,000 religious communities have not gained state registration "and we don't know exactly what they are all doing".

In talking of the proposed new ban on worship in state-run institutions, Sarpekov noted – in an apparent complaint – that "now even in prisons there are mosques and churches".

Sarpekov spoke out for more employees for the ARA. He complained that it now has only about 80 employees at a national and regional level. He insisted that ARA officials should be "in every district". "The majority of religious people live in villages. How will the Agency control the situation in individual places?"

The 1 August Decree establishing the ARA's duties set a ceiling of 146 on its national and regional staff and made no provision for staff at a district level (see F18News 16 September 2011 http://www.forum18.org/Archive.php?article_id=1613).

Deputy Sarpekov noted that among amendments to the drafts proposed by deputies, some wished to increase the minimum number of adult citizens required to found a religious community. "Deputies believe that now when there is the internet and telephone contact, it will not be difficult for religious communities to collect the required number of people wanting to join these associations," he told Kazinform.

He added that deputies had also demanded that the ARA be given the duty of approving the sending abroad of young people for religious education, something he said was "important". "You see many go abroad, study something, and then behave as though only they have everything correct and other people are wrong". "So the Agency must control these questions too."

On missionary activity, he said that several countries – he identified Singapore, Malaysia and China – which ban foreigners from conducting missionary activity.

Sarpekov maintained that once the Law is adopted, the "traditional" faiths will only need to bring their statutes into line with it, though he admitted that re-registration will now require "four or five documents", compared to two currently.

New criminal penalties planned?

While claiming that the "new Law will give a guarantee of freedom of religious confession", Deputy Sarpekov pointed out that penalties for violating the Law will increase. He detailed the wider range of "offences" under Article 375 of the Code of Administrative Offences.

Asked whether these increased punishments would be enough to prevent such "violations", Sarpekov responded: "If administrative measures do not turn out to be effective and activity causing harm to the interests of society and state security continues and a threat to our independence is created, then we could additionally introduce criminal punishment measures."

One local observer who asked not to be identified told Forum 18 that officials might already be planning criminal punishments for religious activity, but plan to wait until any "noise" over these restrictive amendments dies down.

Previous laws unconstitutional merely because of "mistakes"?

Kazakhstan's Constitutional Council in 2002 and again in 2009 ruled that harsh proposed new laws restricting freedom of religion or belief already approved by Parliament were unconstitutional (see F18News 12 February 2009 http://www.forum18.org/Archive.php?article_id=1255).

Sarpekov claimed in his Kazinform interview that the previous restrictive Religion Law amendments had been ruled unconstitutional in 2009 because "there were terms not correctly used and linguistic mistakes". He claimed that "the procedure for relations between state organs and religious associations had not been exactly formulated". "In the new draft Law, all these mistakes have been taken into account and the document has as a whole been drafted to a very high quality." (END)

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

For more background, see Forum 18's Kazakhstan religious freedom survey at http://www.forum18.org/Archive.php?article_id=1352.

More 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>.

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://education.nationalgeographic.com/education/mapping/outline-map/?map=Kazakhstan>.

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