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KAZAKHSTAN: OSCE Legal Opinion seriously criticises draft Law

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Four weeks after Kazakhstan's Constitutional Council began reviewing a highly restrictive Law amending various laws covering religion, the Constitutional Council has told Forum 18 News Service that it has not finished its review. Human rights defenders and religious communities remain highly concerned about the Law, which has been seriously criticised in a Legal Opinion from the Organisation for Security and Co-operation in Europe (OSCE) made public today (4 February). The OSCE's Legal Opinion notes that "many serious issues remain with respect to the Proposed Religion Law's compliance with international human rights standards, including in particular OSCE commitments." Kazakhstan is due to chair the OSCE in 2010, and the OSCE Legal Opinion finds that there are serious problems with the Law, when it is compared against the country's OSCE commitments and international problems. Kazakhstan – also in breach of its OSCE commitments – continues to routinely incite intolerance of religious minorities.

Four weeks after Kazakhstan's Constitutional Council began reviewing a highly restrictive Law amending various laws covering religion, a senior official at the Constitutional Council has told Forum 18 News Service that final discussions on what their review will say have not yet taken place. "We have to finish the process of evaluation before 10 February," Mirambai Kemalov, Head of the Analytical Department, told Forum 18 from the capital Astana on 4 February.

Human rights defenders and religious communities remain highly concerned that the Constitutional Council will approve and President Nursultan Nazarbaev will sign the controversial Law (see F18News 9 January 2009 http://www.forum18.org/Archive.php?article_id=1238). Many provisions of the Law have been seriously criticised in a Legal Opinion from the Organisation for Security and Co-operation in Europe (OSCE) made public today (4 February).

Highly sceptical of the authorities' intentions is Ninel Fokina, head of the Almaty Helsinki Committee, who has long opposed the new Law. "The Constitutional Council will do what it is told," she told Forum 18. "But what it is being told is unknown." She said she hopes the Constitutional Council will reject the Law as unconstitutional, but believes that even if it does so a similar Law will be proposed very quickly as the authorities are intent on increasing their control over religious activity still further. "The state's policy towards religion is part of its general policy towards civil society – including political parties, the media and non-governmental organisations," she told Forum 18. "This policy is to strengthen and harshen control." She predicted that arrests, raids and fines on religious communities would continue, whether or not the new Law is adopted.

The OSCE Legal Opinion – prepared by the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief – highlights many provisions of the proposed Law which severely restrict freedom of religion and belief (see http://www.legislationline.org/download/action/download/id/3350/file/125_REL_KAZ_2009_eng.pdf). As the OSCE Legal Opinion notes, at the start of its detailed analysis of the Law's non-compliance with international standards (which begins at paragraph 27): "many serious issues remain with respect to the Proposed Religion Law's compliance with international human rights standards, including in particular OSCE commitments."

The adoption of the new Law by Parliament in 2008 was surrounded by a campaign of intolerance against religious minorities from officials and the media, a campaign that has continued since the Law was sent to President Nazarbaev in late December (see F18News 5 February 2009 http://www.forum18.org/Archive.php?article_id=1250).

Kazakhstan is due to chair the OSCE in 2010, and the OSCE Legal Opinion finds that there are serious problems with the Law, when it is compared against the country's OSCE commitments and international problems. Among the many problems identified in the OSCE Legal Opinion, the Executive Summary at paragraph 21 notes:

- a general pattern of structuring provisions in ways that impose impermissible limitations on manifestations of religion, in violation of applicable limitation clauses of international instruments;
- failure to fully respect the right of religious communities to acquire legal entity status;
- lack of clear standards for ascribing liability for wrongdoing of particular individuals to religious organizations;

- vague provisions which fail to comply with fundamental rule of law constraints because they are insufficiently precise and fail to give fair notice of what the law requires;
- inappropriate constraints on rights to express and disseminate religious beliefs;
- risks of non-neutral evaluation of the substantive content of religious beliefs;
- proscription of religious activities carried out by unregistered groups and on some of the religious activities of groups that have only "record registration";
- the requirement of an excessive number of members in order to obtain legal entity status (50 for each local religious organization);
- inadequate protection of the right of religious communities to autonomy in structuring their own affairs;
- parental consent provisions that are overly rigid and could deprive mature minors of religious freedom rights and could impose liability on religious groups for unpredictable teenage behavior despite good faith efforts to respect parental wishes regarding involvement of their children in religious activities;
- excessive penalties for non-compliance with registration rules;
- transition provisions that fail to adequately protect vested rights of existing religious organizations.

Paragraph 21 also notes that "in many key respects, their [smaller religious groups] rights to engage in the full range of religious activities are subjected to inappropriate limitations or restrictions."

The OSCE Legal Opinion notes in paragraph 22 that "rather than facilitating religious freedom, the Proposed Religion Law's registration provisions create potential obstacles to the rights of many groups to acquire legal entity status. The Proposed Religion Law is structured to make it difficult for smaller groups to carry out the full range of religious activities in which such groups would reasonably be expected to engage. Religious groups and local religious organizations and groups are not authorized to establish religious educational organizations. Rights to engage in missionary work, while less restricted than in an earlier draft of the legislation, are still constrained. Re-registration of all religious groups is required, putting at risk existing organizations and vested property rights in the event re-registration is denied."

The "Law on Amendments and Additions to Several Legislative Acts on Questions of Freedom of Conscience and Religious Associations" amends numerous articles of the current Religion Law, the Code of Administrative Offences and several other laws (see F18News 9 January 2009 http://www.forum18.org/Archive.php?article_id=1238). The Law flagrantly ignores the suggestions contained in the OSCE / Venice Commission Guidelines for Review of Legislation Pertaining to Religion or Belief (see <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282004%29028-e>).

As the OSCE Legal Opinion concludes at paragraph 104: "significant outstanding issues remain if the law is to be brought into full compliance with Kazakhstan's OSCE commitments and other international standards. In many areas, the problems with the legislation reflect legitimate concerns that appropriate legislation can address, but in a manner that addresses problems with more narrowly tailored and sensitive provisions that can solve actual problems without imposing excessive burdens on freedom of religion or belief."

Kazakh officials repeatedly - and falsely - claimed that the OSCE blocked publication of the OSCE Legal Opinion. Kazakhstan has also consistently refused to make successive drafts and amendments of the Law available for discussion, both within and outside the country. As Kazakh officials continued to claim that publication of the Legal Opinion was being blocked by the OSCE, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) told Forum 18 that it "has recommended to the Kazakh authorities that the legal review be made public, as is normal practice" (see F18News 18 November 2008 http://www.forum18.org/Archive.php?article_id=1218).

Ambassador Janez Lenarcic, Director of the ODIHR, expressed disappointment at the "hasty" passage of the Law through Parliament, and has called for it to be changed to make it "fully reflecting OSCE commitments and other international standards" (see F18News 26 November 2008 http://www.forum18.org/Archive.php?article_id=1222).

Kazakhstan – also in breach of its OSCE commitments - routinely incites intolerance of religious minorities. Kazakh Air Force personnel, for example, have been shown a film by the Justice Ministry claiming that the Hare Krishna faith incites devotees to murder people (see F18News 9 January 2009 http://www.forum18.org/Archive.php?article_id=1238).

Official incitement to intolerance has also been formalised in a "State Programme of Patriotic Education," approved by a decree of President Nazarbaev, and a Justice Ministry booklet "How not to fall under the influence of religious sects" (see F18News 3 April 2007 http://www.forum18.org/Archive.php?article_id=939). President Nazarbaev has openly attacked the right to freedom of

religion or belief in Kazakhstan, despite the country being due to be Chairman-in-Office of the OSCE in 2010 (see eg. F18News 5 February 2008 http://www.forum18.org/Archive.php?article_id=1081).

Nurym Taibek of the Ahmadis pointed out that the Justice Ministry booklet "How not to fall under the influence of religious sects" – which includes the Ahmadis – was just a "small link in a chain" of measures against them by government officials.

Intolerance of everyone's right to freedom of religion and belief has been repeatedly incited through the mass media, which has been used by the state to encourage support for both the Law (see eg. F18News 10 June 2008 http://www.forum18.org/Archive.php?article_id=1141) and police raids on religious communities (see eg. F18News 22 February 2008 http://www.forum18.org/Archive.php?article_id=1091).

Religious communities in Kazakhstan have also been disturbed by increased official demands that they and their leaders complete highly intrusive questionnaires covering personal, political, religious and other matters, including who the close friends of leaders are (see F18News 25 February 2008 http://www.forum18.org/Archive.php?article_id=1092).

Even the administration of legal rights supposedly guaranteed in Kazakhstan is open to serious criticism. In a February 2007 report on trial monitoring, the OSCE found that Kazakh court proceedings needed to offer "the right of the public to attend court, equality between the parties and the presumption of innocence" (see <http://www.osce.org/astana/24153>).

In late January Kazakhstan banned a Hare Krishna devotee from visiting the country, openly breaking its own laws and also citing as a reason a trial which apparently never took place (see F18News 30 January 2009 http://www.forum18.org/Archive.php?article_id=1247). Baptists and a missionary for the Unification Church (commonly known as the Moonies) – jailed after proceedings they strongly object to - are among the religious minorities who complain of unfair trials (see F18News 3 February 2009 http://www.forum18.org/Archive.php?article_id=1248).

Similarly, legal experts have told Forum 18 that terrorism charges brought against 15 devout Muslims - which resulted in jail sentences of up to 19 and a half years - were not proven, and that at least fourteen of the accused are completely innocent (see F18News 8 April 2008 http://www.forum18.org/Archive.php?article_id=1110). (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=701.

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 survey of the religious freedom decline in the eastern part of the Organisation for Security and Co-operation in Europe (OSCE) area is at http://www.forum18.org/Archive.php?article_id=806 and a survey of religious intolerance in Central Asia is at http://www.forum18.org/Archive.php?article_id=815.

A printer-friendly map of Kazakhstan is available at <http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=kazakh>.

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