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## KAZAKHSTAN: More restrictions to Parliament in December?

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*More restrictions on exercising freedom of religion and belief may reach Parliament in December. The latest October draft includes restrictions on parents' and childrens' freedom, more sharing belief restrictions, and more censorship. The draft ignores previous UN Human Rights Committee and OSCE legal recommendations.*

On 2 October, Kazakhstan's Religion and Civil Society Ministry published on its website in Kazakh and Russian a revised draft Amending Law proposing many wide-ranging changes to the 2011 Religion Law, Administrative Code and many other laws. The revised draft Amending Law changes follow an earlier August draft, and are due to be circulated again around government agencies soon, including the Justice Ministry, Interior Ministry and National Security Committee (NSC) secret police. The Prime Minister would need to approve the proposed changes before they are sent to Parliament.

The Religion and Civil Society Ministry first made public their proposed draft Amending Law changes on 14 August 2017 (see F18News 18 August 2017 [http://www.forum18.org/archive.php?article\\_id=2308](http://www.forum18.org/archive.php?article_id=2308)).

The latest October draft Amending Law changes are likely to reach Parliament in December and to be adopted in early 2018, an official of the Religion and Civil Society Ministry's Legal Department told Forum 18 (see below).

The draft changes have already been considered by various Ministries and agencies (such as the NSC), which set up working groups to discuss the draft. They provided their initial comments to the Religion and Civil Society Ministry before it prepared the 2 October 2017 draft.

### Earlier January 2017 Amending Law

The latest draft Amending Law follows a previous "extremism and terrorism" Amending Law, prepared by the NSC secret police, changing five Codes and 20 individual laws including the 2011 Religion Law. This came into force in January 2017 and imposed new restrictions on foreign religious travel and more explicit provisions banning and punishing the production or distribution of literature about religion. It also restricts the number of copies of publications about religion an individual is allowed to import "for personal use" without being subject to state censorship. Only one copy of any individual publication can now be imported without undergoing censorship. It ignored recommendations from an October 2016 Organisation for Security and Co-operation in Europe (OSCE) Preliminary Opinion calling for restrictions on the exercise of freedom of religion or belief – particularly over censorship of literature about religion and foreign travel for religious purposes – to be removed from the Amending Law and from existing laws (see F18News 5 January 2017 [http://www.forum18.org/archive.php?article\\_id=2243](http://www.forum18.org/archive.php?article_id=2243)).

### October 2017 draft

The October draft removed some of the provisions of the August draft, especially on children's participation in meetings for worship. The October draft requires one parent or guardian to give permission for a child under 16 to be present and require one of them to be present, while a child would not be allowed to be present if one parent objected. The August draft required both parents to have given such permission in writing for any child under the age of 18 to be present at meetings for worship (see below).

The October draft also removed the August draft's proposal to ban religious organisations permanently for first-time violations of the already-restrictive 2011 Religion Law (see below).

Despite these changes between August and October, the draft changes to a wide range of laws continue to include, among other restrictions: more restrictions on and punishments for religious teaching without state permission; more restrictions on sharing beliefs; and apparently increased but vaguely defined confiscation of religious literature which does not pass the compulsory state censorship. The long-announced changes would also double some administrative fines for exercising freedom of religion or belief (see below).

The ban on exercising human rights 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.

Two Codes and 11 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 changes to two Codes and 11 Laws, including the 2011 Religion Law (see Forum 18's Kazakhstan religious freedom survey [http://www.forum18.org/archive.php?article\\_id=1939](http://www.forum18.org/archive.php?article_id=1939)) and the Code of Administrative Offences .

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](http://www.forum18.org/archive.php?article_id=1939)).

The 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](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://forum18.org/archive.php?article\\_id=2201](http://forum18.org/archive.php?article_id=2201)).

The latest October version of the draft Amending Law – together with a Comparative Table which provides comments on the changes and additions – was made public in Kazakh and Russian on 2 October. It was prepared by the Religious Affairs Committee, part of the Religion and Civil Society Ministry.

Such changes can happen very quickly. On 5 September 2011 a new Religion Law, and an Amending Law changing nine other laws and legal provisions including the Administrative Code were introduced into Parliament. Both were adopted very quickly, despite strong criticism from national and international human rights defenders. They were signed into law by President Nursultan Nazarbayev on 11 October 2011 – the same day that Kazakhstan applied for full membership of the Council of Europe's Commission for Democracy through Law, or Venice Commission (see Forum 18's Kazakhstan religious freedom survey [http://www.forum18.org/archive.php?article\\_id=1939](http://www.forum18.org/archive.php?article_id=1939)).

Draft to Parliament in December?

Erkinbek Amirgaliyev, Deputy Head of the Legal Department of the Religion and Civil Society Ministry, said that the 2 October 2017 draft Amending Law had been prepared in his Ministry. "The draft has not yet been discussed in the government and will now be presented to it," he told Forum 18 from Astana on 6 October. He said various state agencies – such as the Justice Ministry, the Interior Ministry and the National Security Committee (NSC) secret police – would all contribute their comments once again.

Amirgaliyev added that he expected that the government will send the draft to the Majilis, the lower house of Parliament, in December. "It will probably not be adopted until early next year [2018]," he told Forum 18.

Forum 18 asked why the 2 October 2017 draft contains many provisions which violate Kazakhstan's international human rights commitments. However, Amirgaliyev refused to discuss the content of the current proposed amending Law.

OSCE or Venice Commission legal review not to be sought?

Amirgaliyev of the Religion and Civil Society Ministry's Legal Department "couldn't say" whether the government will seek comments on the draft legal changes from the OSCE or the Council of Europe's Venice Commission. The Venice Commission told Forum 18 on 6 October that the Kazakh authorities have not "as of today" asked it for a legal review of the proposed changes. It similarly seems that an OSCE Legal Opinion has not been sought.

When the 2011 Religion Law was signed into law the OSCE Office for Democratic Institutions and Human Rights (ODIHR) expressed its "disappointment", as "the legislation appears to unnecessarily restrict the freedom of religion or belief and is poised to limit the exercise of this freedom in Kazakhstan". The ODIHR reiterated "the continued relevance of our 2009 Opinion on the previous draft legislation. ODIHR continues to stand ready to provide advice and assistance on bringing Kazakhstan's freedom of religion legislation fully in line with international standards and OSCE commitments."

The 2009 OSCE Opinion 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](http://www.forum18.org/Archive.php?article_id=1249)).

An October 2016 OSCE Preliminary Opinion Legal Review on the January 2017 Amending Law, which called for restrictions on the exercise of freedom of religion or belief to be removed, was ignored by the government (see F18News 5 January 2017 [http://www.forum18.org/archive.php?article\\_id=2243](http://www.forum18.org/archive.php?article_id=2243)).

#### Ignoring international human rights law

A new Article 3, Part 3 of the Religion Law states that "Manifesting the freedom to profess religion or belief is subject only to limitations prescribed by law and necessary to protect the constitutional order, public safety, the rights and freedoms of the individual, and the health or morals of the population".

Despite as noted above ignoring UN Human Rights Committee recommendations on Kazakhstan's laws and state actions, the Comparative Table claims the addition has been drafted in accordance with General Comment 22 of the UN Human Rights Committee on Article 18 ("Freedom of thought, conscience and religion") paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR). ICCPR Article 18 (3) specifies the only grounds on which manifestations of the freedom of thought, conscience and religion may be limited.

Indeed, the changes propose that Kazakhstan even more flagrantly break 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 below).

The proposed Religion Law changes also include criteria (such as protecting the constitutional order) which are not legitimate reasons for restricting the manifestation of freedom of religion or belief. It ignores the same General Comment No. 22 paragraph 3 that ICCPR Article 18 "is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner" (see [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en)).

#### New, harsher punishments proposed

Increased fines have been proposed in changes to the existing Administrative Code Article 490, Part 1 ("Violation of the Religion Law") (see F18News 21 July 2014 [http://www.forum18.org/archive.php?article\\_id=1979](http://www.forum18.org/archive.php?article_id=1979)). Punishments for individuals who "conduct religious rites", charitable activity, import, publish or distribute religious literature or other items, or build or re-designate places of worship without prior state permission or teach religion outside the narrowly-defined legal restrictions (see below) would face a fine of 100 Monthly Financial Indicators (MFIs), double the current fine. Registered religious organisations which commit the same "offences" would face an increased fine of 300 MFIs, and a ban on activity for three months.

The August draft had introduced the possibility for a first "offence" of permanently banning a religious organisation for violation of Administrative Code Article 490, Part 1. However, this has been removed in the October draft.

A fine of 100 MFIs (currently 226,900 Tenge – 5,300 Norwegian Kroner, 565 Euros or 660 US Dollars) represents about two months' average wage for those in work.

The changes would once again grant the police the right to prepare records of an offence under many parts of Article 490. Only religious affairs officials have previously been empowered to prepare such records. The Comparative Table providing commentary claims that this has made it difficult to bring such prosecutions because religious affairs officials at a local level are absent.

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.

#### Further punishments for religious education and teaching

A new Article 3, Part 6 of the Religion Law effectively bans religious teaching unless it takes place within registered places of worship or registered religious education establishments, or with the permission of the Regional authorities. The Comparative Table cites similar bans in Uzbekistan, Tajikistan, Turkmenistan and Kyrgyzstan.

A new Article 490, Part 1, Point 5 would punish those who violate the Religion Law's restrictions on religious teaching" with a fine on individuals of 100 MFIs. Registered religious organisations which violate this provision would face fines of 300 MFIs, and a ban on activity either for three months or permanently. Fines for a second offence within one year would be 200 MFIs on individuals,

300 MFIs on officials and 500 MFIs on religious organisations, with a ban on their activity.

The Comparative Table claims this is necessary as unspecified groups "sometimes spread [undefined] destructive ideologies" under the guise of foreign language teaching.

To support its advocacy of Kazakhstan even more flagrantly breaking its binding international human rights law obligation to protect freedom of religion and belief and other human rights, the Comparative Table cites Uzbekistan's Administrative Code Article 241 ("Teaching religious beliefs without specialised religious education and without permission from the central organ of a [registered] religious organisation, as well as teaching religious beliefs privately"). The Comparative Table in support of further restricting freedom of religion and belief also points to the punishment of an Uzbek imam in Namangan Region, Akhmadjon Eshmatov, in April for allegedly using language teaching as a cover for teaching about Islam. In Uzbekistan, even official imams have complained to Forum 18 that they cannot teach Islam to children (see Forum 18's Uzbekistan religious freedom survey [http://www.forum18.org/archive.php?article\\_id=2314](http://www.forum18.org/archive.php?article_id=2314)).

The Comparative Table similarly cites Tajikistan's Administrative Code Article 474-3 ("Carrying out of educational and preaching activity by religious communities in institutions of pre-school, secondary school, primary professional, secondary professional and higher professional education, as well as in residential buildings or homes of citizens"). After Tajikistan introduced it, the UN Human Rights Committee criticised the state's restrictions on religious education and other "severe restrictions on freedom of religion" - in its August 2013 Concluding Observations on Tajikistan (CCPR/C/TJK/CO/2) (see Forum 18's Tajikistan religious freedom survey [http://www.forum18.org/archive.php?article\\_id=2138](http://www.forum18.org/archive.php?article_id=2138)).

A new Article 3, Part 20 of Kazakhstan's Religion Law would restrict applying for religious education abroad to those who have already gained higher religious education in Kazakhstan, and only under international agreements. This restriction would not apply 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" with a fine of 100 MFIs. Fines on individuals for a second offence within one year would be 200 MFIs, for officials 300 MFIs and for organisations 500 MFIs and a ban on their activity.

In support of Kazakhstan further violating its binding international human rights obligations, the Comparative Table also cites similar legal provisions violating human rights in Turkmenistan (see Forum 18's Turkmenistan religious freedom survey [http://www.forum18.org/archive.php?article\\_id=2244](http://www.forum18.org/archive.php?article_id=2244)), Azerbaijan (see Forum 18's Azerbaijan religious freedom survey [http://www.forum18.org/archive.php?article\\_id=2081](http://www.forum18.org/archive.php?article_id=2081)), and other human rights violating states.

Disturbing a religious community's "internal order"

A new Administrative Code Article 490, Part 10 would punish "violations of legal requirements for observance of the internal order in places of worship and the premises of religious organisations". Individuals would face fines of 50 MFIs, and religious organisations 100 MFIs.

This 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](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 private homes (see F18News 24 April 2012 [http://www.forum18.org/Archive.php?article\\_id=1692](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](http://www.forum18.org/archive.php?article_id=1769)).

The October 2016 OSCE Preliminary Opinion Legal Review on the 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](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 on 16 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](http://www.forum18.org/archive.php?article_id=2267)).

The draft does not ban the government from disturbing a religious community's "internal order", for example by a ban on two Protestant churches and the Jehovah's Witnesses Almaty Administrative Centre from any activities, including meeting for worship, for three months (see F18News 6 August 2017 [http://forum18.org/archive.php?article\\_id=2313](http://forum18.org/archive.php?article_id=2313)).

Even more restrictions on sharing beliefs

Article 3, Part 8 of the proposed amended Religion Law defines what the state claims is individuals' rights to freedom of religion or belief. 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](http://www.forum18.org/archive.php?article_id=1939)). The proposed Article 3 Part 8 then narrows further what was left of an individual's explicit right to "spread" religious beliefs without state permission.

Article 3, Part 11 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.

The Comparative Table complains that individuals facing administrative punishment for "missionary activity" have cited in their defence the already restricted right to share beliefs as set out in the current 2011 Religion Law (see Forum 18's Kazakhstan religious freedom survey [http://www.forum18.org/archive.php?article\\_id=1939](http://www.forum18.org/archive.php?article_id=1939)).

State "clergy" definition to be used to restrict sharing beliefs and conscientious objection?

The requirement in the proposed new state definition of "clergy" in the August draft that they have state-recognised higher theological education has been removed in the October draft. However, some religious communities remain concerned that the state's definition that "clergy" are the ones to conduct preaching could restrict preaching and similar such activities by those not recognised by the state as "clergy", and that "clergy" require nomination by a higher, state-registered religious body.

Article 1, Part 5 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".

Some fear that this restriction on religious communities' choice of their own leader 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](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 – as officials highlight their refusal to perform military service.

People who share their beliefs can also be jailed as prisoners of conscience. Jehovah's Witness prisoner of conscience, pensioner and cancer-sufferer Teymur Akhmedov was jailed in Astana on 2 May for five years and banned for a further three years from conducting "ideological/preaching activity" (see F18News 3 May 2017 [http://forum18.org/archive.php?article\\_id=2277](http://forum18.org/archive.php?article_id=2277)). Prisoner of conscience Akhmedov was, as in other cases involving Muslim and Protestant prisoners of conscience, to have been set up for prosecution by the NSC using informers it recruited. These informers invited those prosecuted to meetings the NSC recorded in which they shared their beliefs (see F18News 2 February 2017 [http://www.forum18.org/archive.php?article\\_id=2252](http://www.forum18.org/archive.php?article_id=2252)).

The Comparative Table complains 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 does not outline] contradicts the concept of 'missionary activity'."

"Introducing such required elements," the Comparative Table adds, "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](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://forum18.org/archive.php?article\\_id=2201](http://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. Six Jehovah's Witnesses are known to have been under criminal investigation for refusing compulsory military service despite having certificates from the Jehovah's Witness Administrative Centre confirming that they are "religious ministers" (see F18News 22 September 2017 [http://www.forum18.org/archive.php?article\\_id=2317](http://www.forum18.org/archive.php?article_id=2317)).

#### More censorship

A new Article 6, Part 5 of the Religion Law would specify that religious literature which is submitted to the Religious Affairs Committee for the compulsory state religious censorship but which is not approved is subject to "removal from circulation". The Comparative Table notes that at present the fate of such unapproved literature is not defined.

There is under the 2011 Religion Law 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](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](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 one parent or guardian to give permission and to accompany children below the age of 16 in attending worship services and other religious events, and for another parent or guardian not to object to their attendance. These requirements would not apply to those studying in religious education establishments.

This is the biggest change between the 14 August and 2 October drafts of the proposed changes. The August draft required written permission from both parents for a child under 18 to attend "religious services, religious rites, ceremonies and/or meetings", and/or for at least one parent to be present with them "or other legal representative with the exception of those studying in religious education establishments".

The Comparative Table says this is to bring the Law on the Rights of the Child into line with provisions in Article 3 Part 16 of the 2011 Religion Law. This requires leaders of religious organisations "to take steps to prevent the attraction and/or participation by underage children 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](http://www.forum18.org/archive.php?article_id=1939)).

The proposed Amending Law adds to the proposed Religion Law Article 3, Part 19, a requirement for leaders of religious organisations to ensure that one parent or guardian gives permission for their child to participate in a religious community. It also adds requirements that at least one parent or guardian is present, and that another parent or guardian has not objected.

Religious leaders who fail to prevent children from attending activities of their registered religious organisation without such permission and without being accompanied by at least one parent or guardian, as well as who ignore an objection from another parent or guardian, face increased punishment. The "offence" has been moved from Administrative Code Article 490, Part 7 to Part 8, while the fine has been doubled to 100 MFIs, plus a newly-added three-month ban on activity.

This flagrantly violates the right in international human rights law of children to freedom of religion and belief, as well as the of parents to ensure the religious and moral education of their children (see the UN Special Rapporteur on Freedom of Religion and Belief's compilation on International standards on freedom of religion or belief <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Standards.aspx>). It also violates the right of everyone to give and receive religious education, 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.

#### 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](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](http://www.forum18.org/archive.php?article_id=1939)).

On 23 August, Balkhash Specialised Administrative Court found Ildus Khairullin guilty under Article 490, Part 7 of failing to prevent children being present at meetings for worship despite the objection of a parent. The court fined him 50 MFIs, 113,450 Tenge, according to the decision seen by Forum 18. A woman had been attending the community since 2000 with her children. Her former husband, with whom the woman and their children had had no contact since the 2005 divorce, suddenly objected that the youngest child was being taken to Jehovah's Witness meetings.

The police had visited the community on 18 June 2017 to confirm the daughter's presence. Khairullin had first learned from the police during the visit that the girl's father objected to her attendance. He was acquitted of any offence over the first incident, but was fined after police discovered the girl during a 30 July visit. Khairullin appealed against the punishment, but it was upheld on appeal by Karaganda Regional Court on 13 September, according to the decision seen by Forum 18.

Hearings in the case of Seventh-day Adventist Pastor Oleg Bondarenko under Article 490, Part 7 began on 3 October at Astana's Specialised Inter-District Administrative Court, with a further hearing on 9 October. No date for a further hearing was set immediately.

Pastor Bondarenko is accused of allowing a child to attend meetings for worship with his father against the objections of the boy's mother. The mother had appealed first to the city Religious Affairs Department on 15 August, then two days later to the Police's Department for Countering Extremism and Terrorism.

Pastor Bondarenko told Radio Free Europe's Kazakh Service on 3 October that the father had said in his statement that he had visited the church twice out of curiosity, once with his son, but had not spoken to the pastor. Bondarenko had not spoken with the boy's mother either.

Jehovah's Witness leaders have earlier been fined in similar cases under Administrative Code Article 490, Part 7, according to court decisions seen by Forum 18. Mikhail Amanov was fined 35 MFIs at Lisakovsk Town Court in Kostanai Region on 16 November 2016. Sergei Roshchenya was fined 50 MFIs at Shaktinsk Specialised Administrative Court in Karaganda Region on 13 June 2017.

Leaders of Protestant churches have similarly been punished over children's presence at summer camps (see F18News 23 August 2016 [http://www.forum18.org/archive.php?article\\_id=2210](http://www.forum18.org/archive.php?article_id=2210)).

#### Religious clothing ban and punishment

A new Article 3, Part 21 of the proposed Religion Law would ban wearing religious clothes that obscure the face, except when required in religious settings or for medical purposes.

An addition to Article 11 of the 2006 Culture Law proposed in the August draft of the changes – which would have banned individuals from "using, wearing or distributing in public places outward attributes or items of clothing demonstrating an adherence to [undefined] destructive ideological movements" – has been removed in the October draft.

Similarly, a proposed addition to Article 156 of the Administrative Code in the August draft – which would have punished those who violate these restrictions – has been removed in the October draft.

A new Administrative Code Article 490, Part 11 would punish those who wear clothes in public places that do not leave the face visible with a fine of 100 MFIs.

#### More severe measures to follow administrative punishment

An addition to Article 24 of the 2010 Prevention of Violations Law would allow "preventative measures" to be initiated 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.

The Comparative Table notes that this is necessary because such individuals are a "risk group" of getting involved in "terrorism".

"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](http://www.forum18.org/archive.php?article_id=1939)). The draft Amending Law continues this pattern.

The Comparative Table makes 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](http://www.forum18.org/archive.php?article_id=2243)).

A new Article 4, Part 15 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](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](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](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://forum18.org/archive.php?article\\_id=2201](http://forum18.org/archive.php?article_id=2201)).

Greater official control

A new Article 4, Part 14 of the Religion Law specifies that the Religious Affairs Committee sets out the procedure for pilgrimages. This builds on the January 2017 Amending Law, which among other things imposed new restrictions on foreign religious travel (see F18News 5 January 2017 [http://www.forum18.org/archive.php?article\\_id=2243](http://www.forum18.org/archive.php?article_id=2243)).

A proposed new Article 4, Part 17 of the Religion Law in the August changes – which required the Religious Affairs Committee to "prepare and confirm checklists on the observance of the Religion Law in the activity of [registered] religious associations" - has been removed in the October draft.

Similarly, a proposed new Article 4, Part 18 in the August changes – which required the Religious Affairs Committee to prepare and publish on its website "the criteria for the evaluation of the level of risk" as to whether religious organisations are likely to abide by the Religion Law - has been removed in the October draft.

Proposed changes to the 2001 Local Government Law would introduce requirements for administrations on a District level and their leaders to ensure state control of the activity of religious organisations in their area.

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 claims 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 amendment to Article 31 would introduce requirements for District or small town administrations to "study and analyse the religious situation" in their area; approve the building of or re-designation of an existing building as a place of worship and its



location after the leader of a registered religious organisation has submitted an application and after public hearings on the application.

A further requirement in Article 31 in the August changes - that District or small town administrations also "control the activity of religious associations" insofar as they comply with the Religion Law and "recommend the removal of any violations they discover" - has been removed in the October draft.

An amendment to Article 35 would introduce requirements for Akims (administration heads) also 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".

On the building or re-designation of places of worship, the Comparative Table claims that such places of worship have been built without permission and without "taking into account the views of the local population on the appropriateness of the building of a place of worship and an analysis of the possible consequences". It complains about "the partial absence of data on the number and ethnic composition of the residents of a given settlement and the presence of potential believers".

The wording implies that the government thinks that it – not communities of individuals – should decide whether a place of worship is "appropriate", and that religion is directly tied to ethnicity.

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.

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 and members of religious associations". The Comparative Table claims that this – and an addition banning officials from favouring a particular religious community in their official duties – are necessary to ensure the state remains secular.

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](http://www.forum18.org/archive.php?article_id=2240)).

Other proposed changes

The changes would punish a range of other activity, only some which is related to freedom of religion or belief.

August draft proposals to punish couples and clergy if they have a religious marriage without first undergoing a state marriage, or who end a religious marriage without first ending their state marriage, have been removed from the October draft. (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](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](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](http://www.forum18.org/Archive.php?article_id=1351).

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